

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

C.A. (PHC) No. 156/2001

PHC Ratnapura No.HCR APL 03/99

M.C. Ratnapura No. 21449

1. Kuruppuge Piyadasa,
Balibathgoda,
Karangoda.

1st Accused – Appellant-Appellant

2. Waduge Pemananda,
Balibathgoda,
Karangoda.

2nd Accused – Appellant- Appellant

Vs.

01. Officer-in-Charge,
Crime Investigation Branch,
Police Station,
Ratnapura.

Complainant-Respondent-Respondent

02. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondent

BEFORE : P. PADMAN SURASENA, J. (P/CA) &
A.L. SHIRAN GOONERATNE, J.

COUNSEL : Mahendra Kumarasinghe for the
accused- appellant.
Nayomi Wickremasekera S.S.C. for the
respondents.

DECIDED ON : 08th February, 2018

P. PADMAN SURASENA, J. (P/CA)

Learned Senior State Counsel raises a preliminary objection to the maintainability of this appeal. The accused-appellant has preferred an appeal to the Provincial High Court of Ratnapura against the judgment (conviction) pronounced by the Magistrate's Court. Learned Provincial High Court Judge

has dismissed this appeal on 21.03.2001. Thereafter the accused-appellant had preferred an appeal to this Court (Court of Appeal) against the judgment of Provincial High Court which is a judgment pronounced in the exercise of the appellate jurisdiction of the Provincial High Court.

It is the contention of the learned Senior State Counsel that the Court of Appeal does not have appellate jurisdiction in respect of judgments pronounced by the Provincial High Court exercising its appellate jurisdiction. Learned Counsel for the appellant concedes this position.

Upon consideration of the above submissions and the existing law, this Court is satisfied that this is an appeal which cannot be entertained by this Court.

The appeal must therefore stand dismissed.

Learned Counsel for the appellant however makes an application urging this Court to treat this appeal as an application for revision.

This Court observes

- (i) that the Magistrate's Court has convicted the accused-appellant on 1998.11.30, (Sentence was passed on 1998.12.14).
- (ii) that it was the same Counsel who had appeared for the accused-appellant in this Court for a considerably long period. (According to minutes in the docket.)
- (iii) that the said learned Counsel has failed to bring this position to the notice of this Court at the first opportunity or at any of the subsequent stages until 2014.10.28.
- (iv) that he had chosen to make this application only when this Court was making the order of dismissal of the instant appeal.
- (v) that in any case this Court had ruled on 2014.10.28 that this Court is not in a position to consider favourably the instant application by the Counsel for the appellant.

This Court is of the opinion that there is an undue delay in making this application. Further there is no exceptional circumstances also for this Court to act in revision. In any case this Court had previously declined to entertain this application. For these reasons we decide to refuse the application made by the learned Counsel for the appellant.

Registrar of this Court is directed to send the original case record back to the relevant Magistrate's Court.

PRESIDENT OF THE COURT FO APPEAL

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=