

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

In the matter of an appeal under and in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA. No. 301/2016

Vs.

High Court of

Halpita Acharige Rathnasiri

Colombo

Accused

Case No.7285/1994

And Now Between

Halpita Acharige Rathnasiri

Accused-Appellant

Vs.

The Hon. Attorney General

Complainant-Respondent

BEFORE : N. Bandula Karunaratna, J.

: R. Gurusinghe, J.

COUNSEL : R. Arsakularathne PC., with Chamindri
Arsakularathne for the Accused-Appellant.

Riyaz Bary SSC., for the Respondent.

ARGUED ON : 04.03.2021

DECIDED ON : 27.04.2021

R. Gurusinghe, J.

The appellant was indicted on the charge of possession of 31.7 grams of heroin, an Offence Punishable under Section 54 (a), (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984. After trial in the absence of the appellant, he was convicted and sentenced to death.

This case has a somewhat peculiar history. The Appellant was indicted for the same charge in the High Court of Colombo case No. 6253/1995. As the prosecution witnesses had failed to appear before the Court on the date of the trial, the learned Trial Judge had discharged the Appellant on 14th October 1994. The appellant was on bail at the time of the discharge.

The Attorney General had filed another indictment against the appellant on the same charge in the case No.7285/1994. The appellant was

noticed to appear and thereafter a warrant was issued. The appellant had surrendered to Court through an Attorney-at-Law and moved for bail as he was on bail for the same charge previously in which he had been discharged. This application was rejected by the learned High Court Judge and ordered the Appellant to be remanded.

Thereafter, it has been brought to the notice of the High Court Judge at later point of time on the same day on 29th May 1995 that the accused had escaped from custody and an open warrant had been issued. Counsel for the appellant argued that judgment delivered on 11th July 1995 was not in conformity with Section 283 of the Criminal Procedure Code Act and therefore it is a nullity.

On 22nd November 1996 the same Judge had delivered another judgment against the appellant on the same indictment. By her second judgment on 22nd November 1996, the learned Judge had imposed the death sentence on the accused-appellant for the second time. There are two convictions and two death sentences. There is an order by the succeeding High Court Judge on the 21st September 2016 to carry out the judgment dated 22nd November 1996.

In terms of the provisions of Section 241 of the Criminal Procedure Code, there is no right of appeal from an order made under Section 241 of the Criminal Procedure Code. The Appellant has not filed a revision application. Counsel for the Appellant did not invite this Court to act in revision.

However, the second judgment was delivered without jurisdiction

In the case of Rajapaksha Vs. State [2001] (2) Sri Lanka Law Report 161, it was held that an application in revision should not be entertained save

in exceptional circumstances. It was held in the same case that when considering this issue Court must necessarily have regard to the contumacious conduct of the accused. In addition the party should come before Court without unreasonable delay. In the same case it was held *“The period of time within which an appeal should be preferred must be calculated from the date on which the reasons are given. The conviction/sentence was given on 22.7.98. The Petition of Appeal was lodged on 17.9.1999. The appeal is therefore out of time.”*

Similarly in this case the judgments were delivered in 1995 and 1996. The appeal was filed in 2016; therefore, it is clearly out of time.

However, with regard to the second judgment, there are sufficient grounds to act in revision. Now, I consider whether there can be two valid judgments in the same case. Section 283 of the Criminal Procedure Code reads as follows:

(283) The following provisions shall apply to the judgments of Court other than the Supreme Court or Court of Appeal.

(1) the judgment shall be written by the Judge who had the case and shall be dated and signed by him in Open Court at the time pronouncing it, and in the case where appeal lies shall contain the points or points for its determination, the decision thereon, and the reasons for the decision.

(2) it shall specify the offence if any at which and the Section of the law under which the accused is convicted and the punishment to which he is sentenced.

(3) if it be a judgment of acquittal, it shall state the offence of which the accused is acquitted,

(4) when a judgment has been so signed it cannot be altered or reviewed by the Court which gives such judgment.

Provided that a clerical error may be rectified at any time and that any other error may be rectified at any time before the Court is adjourned for the day.

(5) the judgment shall be explained to that accused affected thereby and a copy thereof shall be given to him without delay if he applies for it.

(6) the original shall be filed with the record of the proceedings.

In terms of the Section 283(4) a judgment that has been so signed cannot be altered or reviewed by the Court which delivers such judgment. It is the law that once the judgment is pronounced and signed, there can be no other judgment.

Section 314(1) of the Criminal Procedure Code reads thus:

314(1) The persons who have once been tried by Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remain imposed not be liable to be re-tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 176 or for which he might have convicted under Section 177.

The judgment delivered on 13th July 1995 was not set aside at any stage of this action.

In view of the provisions of Sections 341(1) and 283(4) of the Criminal Procedure Code the judgment pronounced by the learned Judge against the same accused on the same charge on 22nd November 1996 was made without jurisdiction and has no force in law. That judgment is a nullity. Acting in revision, I set aside the second judgment.

With regard to the first judgment, though there are some infirmities as pointed out by Counsel for the appellant, there are no exceptional grounds for this Court to act in revision.

Since the appeal of the appellant against the judgment delivered in 1995 is out of time, the merits of the appeal cannot be considered; the appeal should stand dismissed.

After escaping from the prison authorities on 29/5/1995 the appellant never turned up in Court. He had been absconding over 20 years. He was apprehended in 2016. There was an inquiry under Section 241(3) of the Criminal Procedure Code Act. The appellant knew that he had a case in the High Court of Colombo. The appellant had not given evidence at the inquiry. The explanation given by the appellant was rejected by the learned High Court Judge. I see no reason to interfere with the order of the learned High Court Judge when he refused the application for a *de novo* trial and made order to implement the sentence already imposed.

The Order of the learned High Court Judge dated 21/9//2016 is varied by substituting the date of judgment as 13/7/1995.

I have set aside the judgment dated 22/11/1996. However, no relief could be granted to the appellant. The appeal of the accused-appellant is dismissed.

Judge of the Court of Appeal

N. Bandula Karunaratna, J.

I agree.

Judge of the Court of Appeal