

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

**In the matter of an Appeal under and in
terms of the Section 331 (1) of the Code
of Criminal Procedure Act No. 15 of 1979
and in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka**

The Democratic Socialist Republic of Sri
Lanka

Complainant

CA HCC 129-130/2020

High Court of Colombo
Case No. HC 111/19

Vs.

1. Christie Vivian Rodrigo
2. Dhammika Rodrigo
3. Jayaraj Amarasiri *alias* Jayanath
4. Jayanatha Rodrigo
5. Chintha Rodrigo

Accused

AND NOW BETWEEN

1. Christie Vivian Rodrigo
2. Dhammika Rodrigo
3. Jayaraj Amarasiri *alias* Jayanath
4. Jayanatha Rodrigo
5. Chintha Rodrigo

Accused-Appellants

Vs,

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

Respondent

Before: **B. Sasi Mahendran. J,**
 Amal Ranaraja. J,

Counsel: Nalin Ladduwahettiy, P.C. with Kavithri Hirusha
 Ubeysekera, Rajith Samarasekera and Rajitha Abeysekera
 for the 1st,4th, and 5th Accused-Appellants.

Moditha T.B. Ekanayake for the 3rd Accused-Appellant.

Wasantha Perera, D.S.G. for the Respondent

Argued on: 19.02.2026

Judgment on: **16.03.2026**

Judgment

Amal Ranaraja. J,

1. The accused-appellants (hereinafter referred to as the first appellant, third appellant, fourth appellant, fifth appellant, or appellants) have been indicted in the High Court of Colombo in High Court Case No. HC 111/2019. The charges in the indictment are as follows;

01. That between the dates of 01st of November, 2012 and 30th of October, 2013, in the district of Colombo, within the jurisdiction of this Court, or in other areas unknown to the complaint, you along with others, did deceive a certain person by indicating that the above named first accused, was the lawful owner of the premises bearing *Assessment No. 18/2, Aloe Avenue, Colombo 03* and did thereby honestly or

dishonestly induce said person into paying money to purchase said property, to commit offence of cheating, or abet the commission of said offence, or conspired to act together to commit said offence or abet the commission of said offence. Since the offence of cheating was committed because of that conspiracy, you have committed an offence punishable under Section 403 of the Penal Code read with Sections 113B and 102.

02. That in the location, time, and course of action mentioned in the first charge above, you, the first accused, did sign the Deed of Sale for the aforementioned property for the purposes of cheating with the intention of causing it to be believed that such document was signed by or by the authority of the seller of that land by whom or by whose authority, you knew it was not signed; thereby you have committed an offence punishable under Section 457 of the Penal Code.

03. That in the location, time, and course of action mentioned in the first charge above, you, the second accused, did abet the commission of said offence in the second charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 457 read with Section 102 of the Penal Code.

04. That in the location, time, and course of action mentioned in the first charge above, you, the third accused, did abet the commission of said offence in the second charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 457 read with Section 102 of the Penal Code.

05. That in the location, time, and course of action mentioned in the first charge above, you, the fourth accused, did abet the commission of said offence in the second charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 457 read with Section 102 of the Penal Code.

06. That in the location, time, and course of action mentioned in the first charge above, you, the fifth accused, did abet the commission of said offence in the second charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 457 read with Section 102 of the Penal Code.

07. That in the time, course of action mentioned in the first charge above, in Colombo, you the fifth accused, did fraudulently use as a genuine document purporting to be a valuable security which you knew to be a forged document or had reason to believe was a forged document, to wit, a Deed of Sale bearing No. 630 dated 1978.02.15 signed by Attorney-At-Law and Notary Public Stanley D.P. Wijesinghe by whom or by whose authority it was not signed and presented it to *Abubakar Padhmani Mohommed Illiyas*; and that you have thereby committed an offence punishable under section 454 read with section 459 of the Penal Code

08. That in the time, course of action mentioned in the first charge above, in Colombo, you the first accused, did fraudulently use as a genuine document purporting to be a valuable security which you knew to be a forged document or had reason to believe was a forged, to wit, a Deed of Sale bearing No. 447 dated 1999.01.09 signed by Attorney-At-Law and Notary

Public, Amaradasa A. Kodikara, by whom or by whose authority it was not signed and presented it to *Abubakar Padhmani Mohommed Illiyas*; and that you have thereby committed an offence punishable under section 454 read with section 459 of the Penal Code

09. That in the time, course of action mentioned in the first charge above, in Colombo, you the first accused, did fraudulently use as a genuine document purporting to be a valuable security which you knew to be a forged document or had reason to believe was a forged, to wit, a Deed of Sale bearing No. 456 dated 1999.08.25, signed by Attorney-At-Law and Notary Public, Amaradasa A. Kodikara, by whom or by whose authority it was not signed and presented it to *Abubakar Padhmani Mohommed Illiyas*; and that you have thereby committed an offence punishable under section 454 read with section 459 of the Penal Code.

10. That in the course of action of the first charge above, you, the first accused, did deceive a Public Notary named *Kandayya Neelakandan*, by falsely representing to him that you are the owner of the above property, and did thereby intentionally induce him to attest a Deed of Transfer bearing the No. 2151 dated 2013.10.23, which he would not have done if he had not been deceived. Thereby you have committed an offence punishable under Section 400 of the Penal Code.

11. That in the location, time, and course of action mentioned in the first charge above, you, the second accused, did abet the commission of said offence in the tenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

12. That in the location, time, and course of action mentioned in the first charge above, you, the third accused, did abet the commission of said offence in the tenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

13. That in the location, time, and course of action mentioned in the first charge above, you, the fourth accused, did abet the commission of said offence in the tenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

14. That in the location, time, and course of action mentioned in the first charge above, you, the fifth accused, did abet the commission of said offence in the tenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

15. That on or about 2013.10.23, in the course of action of the first charge above, within the jurisdiction of this Court, in *Deel Place, Colombo 02*, you, the first accused did, sell the premises bearing *Assessment No. 18/2, Aloe Avenue, Colombo 03* by virtue of the fraudulent Deed document bearing No. 456 dated 1999.01.09 signed by Attorney-At-Law and Notary Public, Amaradasa Kodikara and the fraudulent Deed document bearing No. 2151, dated 2013.20.23 and signed by Attorney-At-Law and Public Notary Kandayya Neelakandan, thereby deceiving the Director of Lucky Industries, *Abubakar Padhmani Mohommed Illiyas*, dishonestly inducing them to deliver a sum of Rs.30,000,000/- to you; and thereby you have

committed an offence punishable under Section 403 of the Penal Code.

16. That in the location, time, and course of action mentioned in the fifteenth charge above, you, the second accused, did abet the commission of said offence in the fifteenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

17. That in the location, time, and course of action mentioned in the fifteenth charge above, you, the third accused, did abet the commission of said offence in the fifteenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

18. That in the location, time, and course of action mentioned in the fifteenth charge above, you, the fourth accused, did abet the commission of said offence in the fifteenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

19. That in the location, time, and course of action mentioned in the fifteenth charge above, you, the fifth accused, did abet the commission of said offence in the fifteenth charge above which said offence was committed in consequence of such abetment; and that thereby you have committed an offence under Section 400 read with Section 102 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has convicted and sentenced the appellants as follows;

- i. The first appellant has been convicted of the first, eighth, ninth, tenth, and fifteenth charges.
- ii. The third appellant has been convicted of the first and seventeenth charges.
- iii. The fourth appellant has been convicted of the first and eighteenth charges.
- iv. The fifth appellant has been convicted of the first, seventh, and nineteenth charges

i. First appellant, first charge;

Has been sentenced to five years rigorous imprisonment and fined Rs.10,000/- with a term of one year rigorous imprisonment, in default.

Further, the first appellant has been directed to pay a sum of Rs. 3 million as compensation to PW12, with a term of one year rigorous imprisonment in default.

First appellant, eighth and ninth charges;

Has been sentenced to five years rigorous imprisonment each, and fined Rs. 10,000/- each, with a term of one year rigorous imprisonment each in default.

Further, has been directed to pay a sum of Rs. 1 million each in respect of those charges as compensation to PW12 with a term of one year rigorous imprisonment each in default.

First appellant, tenth charge;

Has been sentenced to a term of one year rigorous imprisonment and fined Rs. 10,000/- with a term of three months rigorous imprisonment in default.

First appellant, fifteenth charge;

Has been sentenced to a term of five years rigorous imprisonment and fined Rs. 10,000/- with a term of one year rigorous imprisonment in default.

Further has been directed to pay a sum of Rs. 2 million as compensation to PW12 with a term of one year rigorous imprisonment in default.

Further, the learned High Court Judge has also directed that the substantial terms of rigorous imprisonment, imposed on the first appellant to run concurrently, and the terms of imprisonment in default to run consecutively.

ii. Third appellant, first charge;

Has been sentenced to five years rigorous imprisonment and fined Rs.10,000/- with a term of one year rigorous imprisonment in default,

Further has been directed to pay a sum of Rs. 3 million as compensation to PW12 with a term of one year rigorous imprisonment in default.

Third appellant, seventeenth charge;

Has been sentenced to five years rigorous imprisonment and fined Rs.10,000/- with a term of one year rigorous imprisonment in default.

Further has been directed to pay Rs. 3 million as compensation to PW12 with a term of 1 year rigorous imprisonment in default.

iii. Fourth appellant, first charge;

Has been sentenced to four years rigorous imprisonment and fined Rs.10,000/- with a term of one year rigorous imprisonment in default

Further has been directed to pay a sum of Rs. 3 million to PW12 as compensation, with a term of one year rigorous imprisonment in default.

Fourth appellant, eighteenth charge;

Has been sentenced to five years rigorous imprisonment and fined Rs. 10,000/- with a term of one year rigorous imprisonment in default.

Further has been directed to pay a sum of Rs. 3 million as compensation to PW12 with a term of one year rigorous imprisonment in default.

iv. Fifth appellant, first charge;

Has been sentenced to five years rigorous imprisonment and fined Rs. 10,000/- with a term of one year rigorous imprisonment in default.

Further has been directed to pay a sum of Rs. 3 million as compensation to PW12 with a term of 1 year in default.

Fifth appellant, seventh charge;

Has been sentenced to five years rigorous imprisonment and fined Rs. 10,000/- with a term of one year rigorous imprisonment in default.

Further has been directed to pay a sum of Rs. 2 million as compensation to PW1 with a term of one year rigorous imprisonment in default.

Fifth appellant, nineteenth charge;

Has been sentenced to five years rigorous imprisonment and fined Rs.10,000/- with a term of one year rigorous imprisonment in default.

Further has been directed to pay a sum of Rs. 2 million as compensation to PW12 with a term of one year rigorous imprisonment in default.

3. The learned High Court Judge has also further directed that, if the relevant appellants have already paid a sum of money to PW12, that those sums be deducted from the sum directed to be paid as compensation.
4. The first, third, fourth, and the fifth appellants aggrieved by the convictions, disputed judgements and the sentencing order have preferred the instant appeals to this court.
5. When the matter was taken up for argument, the counsel for the appellants including the learned President's Counsel, informed court

that the appellants would not be challenging the convictions, but only the sentencing order. Thereafter, submitted the following grounds for an adjustment to the imposed sentences;

- i. The advanced ages of the first, third and fifth appellants (eighty-nine, fifty-five and fifty-nine years old respectively).
 - ii. The appellants visible repentance evidenced by the decision to contest only the sentencing order, and not the convictions themselves.
 - iii. The appellants willingness to comply with the High Court's directive to pay sums as compensation to PW01 and PW12, further demonstrating their remorse.
 - iv. The nature of the offences which are not grave and did not involve the use, attempted use or threat of physical force against another person.
 - v. There being no minimum mandatory sentence prescribed for the offences of which the appellants have been convicted.
6. In light of these circumstances, it has been further contended that an adjustment be considered in the sentences imposed upon the appellants.
7. The learned Deputy Solicitor General has submitted that just and proportionate sentences be imposed on the appellants.
8. In *Asan Mohammed Rizwan vs. Attorney General*, M.C. Pelmadulla Case No. 33332, H.C. Ratnapura Case No. HC 25/2010, Court of Appeal Revision No. CA [PHC] APN 141/2013 decided on March 25, 2015,

Chitrasiri, J, has discussed a gamut of issues regarding sentencing, stating the following;

“Sentencing is an important aspect in the administration of criminal justice system. A sentence ranges from death penalty to the mere censure in the form of good behaviour bond or probation. There are multiple considerations relevant to the determination of a sentence. The most important consideration is the seriousness of the crime. Jurisprudentially, this position is persuasive despite pragmatic difficulties associated with matching the harshness of the sanction to the severity of the crime.”

“...Therefore, it is necessary for the judges to keep in mind the objectives of sentencing and also the sentencing guidelines, in order to arrive at the correct and appropriate decision.

Objectives of sentencing include the following:

- (i) To punish offenders to an extent and in a manner, which is just in all the circumstances;*
- (ii) To protect the community from offender;*
- (iii) To deter offenders or other persons from committing offences of the same or similar nature;*
- (iv) To establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
- (v) To signify that the court and the community denounce the commission of such offences;*

(vi) To maintain the required standards of societal expectations in making decisions;

(vii) To prevent overcrowding prisons also could be considered as one such objective particularly when it comes to developing countries such as ours.”

“...I will now advert to the other aspects that are necessary to consider before a sentence is determined. Those can be categorized as follows:

(a) The maximum and the minimum (if any) penalty prescribed for the offence;

(b) The nature and gravity/seriousness of the particular offence.

(c) The offender’s culpability and degree of his/her responsibility for the offence;

(d) Mental state of the accused at the time the offence was committed;

(e) Evidence as to pre-arrangement for the commission of the offence;

(f) The impact of the offence on any victim and the injury, loss or damage caused as a result of the offence committed;

(g) Whether the offender pleaded guilty to the offence and if so, the stage in the proceedings at which the offender did so or the stage at which it was indicted;

- (h) The conduct of the offender during the trial as an indication of remorse or the lack of remorse;*
- (i) Any action taken by the offender to make restitution of the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider.*
- (j) The offender's previous character, good or bad;*
- (k) Imprisonment should be used when no other sentence is adequate;*
- (l) Proportionality between the crime and the sentence;*
- (m) Possibility of reforming the offender;*
- (n) To ensure consistency in deciding sentences;*
- (o) Presence of any aggravating or mitigatory factors concerning the offender or any other circumstance relevant to the commission of the offence."*

9. Incarceration can protect the public, affirm society's moral boundaries and deter future crime. On the other hand, it is a costly, intrusive and an unequal sanction that can be imposed on a convicted person.
10. Deciding when a convicted person should be removed from the community, therefore, demands clear principles that go beyond anger or habit.
11. Incarceration is appropriate only when it satisfies two simultaneous tests;

- i. When it advances a legitimate penal purpose i.e. incapacitation (imprisoning offenders to prevent them from committing further offences), deterrence, rehabilitation or proportionate retribution (punishment), and it is better than any reasonably available alternative.
- ii. It does so without inflicting harm, i.e. financial, social or moral harm, that outweigh the benefits.

12. Offender and the offence characteristics warranting incarceration are

a. Crimes of violence and predation

Offences involving lethal weapons forcible sexual assaults or significant bodily injury nearly always justify incarceration. The combination of high harm, public fear and repetition risk, outweighs alternatives.

b. Chronic serious offending

Some offenders reoffend through lesser sanctions with escalating severity. When largescale drug trafficking etc. persists despite regular interventions, society is justified in concluding that only incarceration of the person involved will protect the community.

c. Threats to integrity of institutions

Public corruption, terrorism and major organised crime undermine the rule of law itself. The deterrent need here is acute. Fines alone would be perceived as licensing wrongdoing.

13. Incarceration is usually inappropriate in the following situations;

- a. Nonviolent, first time or low-level offence such as shoplifting, simple possession of controlled substances rarely require incarceration.
- b. Offences rooted in addiction, mental illness or poverty.
When the root cause is treatable, therapeutic or economic interventions are more effective, such alternatives are cheaper than incarceration.
- c. Youthful offenders.
Adolescents have an increased capacity for change. Community programmes, probation would better balance the accountability of theirs with growth.
- d. Collateral costs and equity considerations.
Incarceration's true expense goes far beyond a prison's budget line. Families lose wage earners, children suffer developmental setbacks and communities lose social capital due to incarceration. Further, it could deepen racial and economic disparities and feed mistrust in the justice system.

14. These matters must be taken into consideration when assessing whether incarceration is appropriate or not.

15. At the same time, there are statutory provisions that govern the sentencing of a convicted individual. One such provision is Section 303 of the Criminal Procedure Code Act No. 15 of 1979 which allows for the possibility of suspending a custodial sentence.

Matters that are to be considered prior to suspending a custodial sentence are stipulated as follows:

303. (1) *Subject to the provisions of this section, on sentencing an offender to a term of imprisonment, a court may make an order suspending the whole or part of the sentence if it is satisfied, for reasons to be stated in writing, that it is appropriate to do so in the circumstances, having regard to-*

- (a) the maximum penalty prescribed for the offence in respect of which the sentence is imposed;*
- (b) the nature and gravity of the offence;*
- (c) the offender's culpability and degree of responsibility for the offence;*
- (d) the offender's previous character;*
- (e) any injury, loss or damage resulting directly from the commission of the offence;*
- (f) the presence of any aggravating or mitigating factor concerning the offender;*
- (g) the need to punish the offender to an extent, and in a manner, which is just in all of the circumstances;*
- (h) the need to deter the offender or other persons from committing offences of the same or of a similar character;*
- (i) the need to manifest the denunciation by the court of the type of conduct in which the offender was engaged in;*
- (j) the need to protect the victim or the community from the offender;*

(k) the fact that the person accused of the offence pleaded guilty to the offence and such person is sincerely and truly repentant; or

(l) a combination of two or more of the above.

(2) A court shall not make an order suspending a sentence of imprisonment if-

(a) a mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed; or

(b) the offender is serving, or is yet to serve, a term of imprisonment that has not been suspended; or

(c) the offence was committed when the offender was subject to a probation order or a conditional release or discharge; or

(d) the term of imprisonment the aggregate terms Where the offender is imposed, or of imprisonment Where the offender is convicted for more than one offence in the same proceedings exceeds two years.

16. When considering the personal circumstances of the appellants, it is important to note that the first, third, and the fifth appellants are aged 89, 55 and 59 years respectively. Notably, none of the appellants have been convicted of any violent offences or offences involving predation. Furthermore, they have not caused any physical harm to individuals as their convictions are solely for nonviolent offences.

17. The first third and the fifth appellants are first-time offenders which underscore the lack of criminal history. In addition, the fourth

appellant does not have any pending cases against him further, emphasizing his compliance with the law.

18. Importantly, none of the appellants are currently subject to a probation order or conditional release, indicating that they are not considered a risk to society.
19. The appellants have chosen to challenge only the sentencing order, demonstrating their willingness to engage with the legal process and address the implications of their actions. It also reflects the sense of remorse regarding the charges laid against them.
20. In a further demonstration of their understanding of the seriousness of their actions the appellants are committed to compensating the victims, PW1 and PW12 with substantial sums of money. This act of restitution not only exemplifies their acknowledgement of the impact of their actions but also their desire to make amends.
21. In summary, the personal circumstances of the appellants along with their non-violent backgrounds first time offender status and commitment to restitution should be taken into careful consideration when assessing their cases. Their actions indicate a genuine desire to rectify past mistakes and a recognition of the gravity of the offences they have committed.
22. Second, imposing a non-custodial sentence would serve the interest of justice and rehabilitation. Non-custodial measures are effective in reducing relapsing and allowing individuals to maintain their ties to family, employment and community.
23. By facilitating the appellant's reintegration into society, this Court can promote accountability and encourage positive behavioral changes.

24. Furthermore, the imposition of a non-custodial sentence will also alleviate the burden on the correctional facilities, which are overcrowded and under-resourced.

25. Accordingly, I set aside,

the terms of five years rigorous imprisonment each, imposed on, the first appellant upon the conviction of the first, eighth, ninth, and fifteenth,

the terms of five years rigorous imprisonment, each imposed on the third appellant upon conviction of the first and seventh,

the terms of five years rigorous imprisonment each imposed on the fourth appellant upon conviction of the first and eighteenth,

the terms of five years rigorous imprisonment each imposed on the fifth appellant upon conviction of the first, seventh, and nineteenth charges and,

substitute them with two years rigorous imprisonment each.

Such substantial terms of two years rigorous imprisonment each, together with the term of one year rigorous imprisonment imposed on the first appellant, in respect of the tenth charge shall run concurrently.

I further suspend for five years those substantial terms of imprisonment directed to run concurrently.

The fines together with the terms of imprisonment in default will remain unchanged.

26. The appellants are also ordered to pay compensation to PW01 and PW12, as directed by the learned High Court Judge, subject to the deduction of any amounts already paid to either of those victims. The terms of imprisonment in default, shall remain unchanged if the appellants fail to pay such compensation.

27. *Appeal partly allowed.*

I make no order regarding costs.

28. The registrar of this Court is directed to send a copy of this judgement to the High Court in Colombo for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran, J.

Judge of the Court of Appeal