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 (1) of the Code of Criminal Procedure Act No. 15 of 1979 and in terms of High Court of the Provinces (Special Provisions) Act Section 19 of 1990.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

CA Appeal No:

CA/HCC/0068/2021

Abeykoon Basnayake Mudiyanselage Kapila Preethi Bandara Darmasiri

Accused

High Court of Badulla

Case No: **HC 153/05**

AND NOW BETWEEN

Abeykoon Basnayake Mudiyanselage Kapila Preethi Bandara Darmasiri

Accused – Appellant

Vs

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

Respondent

Before : **P. Kumararatnam, J.**

Pradeep Hettiarachchi, J.

Counsel : Tenny Fernando with Himashi Silva for the Accused-Appellant

Maheshika de Silva DSG for the State

Argued on : 05.08.2025

Decided on : 31.10.2025

Pradeep Hettiarachchi, J

Judgment

1. This is an appeal by the accused–appellant (hereinafter referred to as "the Appellant") against the judgment dated 29.03.2012 delivered by the learned High Court Judge of Badulla. When the appeal was taken up for argument, the learned Deputy Solicitor General (DSG) appearing for the State raised a preliminary objection as to the maintainability of the appeal, on the ground that the petition of appeal had been lodged on 23.09.2021, almost nine years after the delivery of the judgment.

Background to the appeal:

2. The Appellant was indicted before the High Court of Badulla for committing the murder of W. M. Lalani Renuka on or about 14.05.2002. On 25.11.2005, the indictment was served on the Appellant, and upon it being read out, he pleaded not guilty to the charge. At the request of the Appellant, the trial was initially fixed to be heard without a jury before the High Court Judge.

3. However, on 11.07.2006, an application was made by the Appellant to have the case tried before a jury, which application was allowed by the learned High Court Judge. Accordingly, the trial was fixed for 05.02.2007. On that date, however, the trial was postponed as the learned High Court Judge was on leave.

4. The trial was rescheduled for 25.06.2007 but was postponed again due to the absence of the witnesses. The case was thereafter postponed on several occasions for various reasons, and finally, the trial was rescheduled for 12.02.2009.

5. However, on that date, the accused was not present, and accordingly, the Court issued a warrant for his arrest. Thereafter, the Appellant failed to appear before the Court, and after the necessary steps were taken under section 241 of the Code of Criminal Procedure Act, the Appellant was tried in absentia. At the conclusion of the prosecution's case, the learned Trial Judge convicted the Appellant and sentenced him to death.

6. Thereafter, an open warrant was issued as the Appellant continued to abscond. The Appellant never surrendered to the Court. He was later arrested by the police and produced before the Magistrate of Bandarawela, and subsequently produced before the High Court of Badulla on 09th September 2021. On that date, the learned High Court Judge read out the judgment to the Appellant, who was not represented by an Attorney-at-Law on that day.

7. It is section 331 of the Code of Criminal Procedure Act, which sets out the appeal procedure.

> *Section 331 of the Code of Criminal Procedure Act and section reads as follows:*
>
> *331 (1) An appeal under this Chapter may be lodged by presenting a petition of appeal, or application for leave to appeal to the Registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced: Provided that a person in prison may lodge an appeal by stating within the time aforesaid to the jailer of the prison in which he is for the time being confined his desire to appeal and the grounds therefore and it shall thereupon be the duty of such jailer to prepare a petition of appeal and lodge it with the High Court where the conviction, sentence or order sought to be appealed against was pronounced.*
>
> *(2) In computing the time within which an appeal may be preferred, the day on which the judgment or final order appealed against was pronounced shall be included, but all public holidays shall be excluded. In terms of the above provisions, the petition of appeal has to be lodged with the Registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced.*

8. In terms of the above provisions, the petition of appeal has to be lodged with the Registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced. The following authorities are of particular relevance to the manner in which the appeal period is calculated.

9. In the case of ***Haramanis Appuhamy vs Inspector of Police, Bandaragama, 66 NLR 526***, Sri Skandarajah J. held that

> *"where an accused is convicted and sentenced, the time within which an appeal should be preferred must be computed from the date on which the reasons for the decisions are given and not from the date of conviction and sentence."*

10. In the case of ***Solicitor General vs Nadarajah Muthurajah 79 NLR 63*** following the above case, Pathirana J. held that

> *"the period of the time within which an appeal should be referred must be calculated from the date on which the reasons of the decisions are given and not from the date of which the verdict was entered.*

11. In the case of ***Rajapakse vs The State [2001]2 Sri LR161***, Kulathilake J. followed the above decisions and held that:

> "the period of time within which an appeal should be preferred must be calculated from the date on which the reasons for the decision are given."

12. In the present appeal, it is clear that the appeal was filed out of time and therefore cannot be entertained. Nevertheless, in the interest of justice, the Court may exercise its revisionary jurisdiction when the circumstances so warrant. The Court would invoke this extraordinary power, vested in it under the law, particularly to prevent a miscarriage of justice or to ensure the due administration of justice. For such intervention, the Appellant must generally have no other avenue of appeal or relief. However, even where another remedy is available, revision may still be considered if special circumstances are established.

13. In the present case, the Appellant was well aware of the case pending before the High Court of Badulla. When the indictment was served on him, the Court assigned counsel

to represent him. Therefore, the right to be represented by an Attorney-at-Law, as guaranteed by the Constitution, was duly accorded to the Appellant.

14. Nevertheless, he deliberately absconded and did not even take steps, through his sureties, to inform the Court of any reason that prevented his appearance. Therefore, it is difficult, if not impossible, to infer that the Appellant had any genuine reason for absconding.

15. The learned Counsel for the Appellant submitted that even if this Court were to hold that the petition of appeal was out of time, it would not preclude the Appellant from inviting this Court to exercise its inherent revisionary powers in terms of section 364 of the Code of Criminal Procedure Act. It was further submitted that the revisionary powers of the Court of Appeal are sufficiently wide to encompass cases where a right of appeal was not exercised.

16. If this Court is to exercise its revisionary powers, it must first be satisfied that there exist exceptional circumstances which shock the conscience of the Court and that a grave miscarriage of justice would otherwise be caused to the Appellant. Moreover, the Appellant must come before the Court with clean hands. The following judgments are of much relevance to the present appeal.

17. In the Case of ***Rajapakse v. The State (2001) 2 Sri LR 161,*** it was held that,

> *" ... When considering this issue this Court must necessarily have regard to the contumacious conduct of the accused in jumping bail and thereafter conducted himself in such a manner to circumvent and subvert the process of the law and judicial institutions. In addition if this Court were to act in revision the party must come before Court without unreasonable delay. In the instant case there is a delay of 13 months ... "*

18. In the case of ***Seylan Bank V. Thangaveil (2004) 2 Sri L.R. 101,*** it was held that:

> *"Unexplained and unreasonable delay in seeking relief by way of revision, which is a discretionary remedy, is a factor which will disentitle the petitioner to it. An application for judicial review should be made promptly unless there are good reasons for the delay. The failure on the part of the petitioner to explain the delay satisfactorily is by itself fatal to the application.*

19. In the case of Rajapakshe vs State (Supra), Kulathilake J. held as follows: "However an application in revision should be entertained save in exceptional circumstances.."

20. In the case of ***Ossen vs Exercise Officer 34 NLR 50***, Dolton J. held,

> *"the Supreme Court will hear a case in revision, if the appellant makes out a strong case, amounting to a positive miscarriage of justice, in regard to the law or the judge's appreciation of facts."*

21. In the case of ***Attorney General vs Podi Singho,51 NLR 385,*** Dias J. held that:

> *"the powers of the Supreme Court are wide enough to embrace a case where an appeal lay but was not taken in such a case. However, an application of revision should not entertain save in exceptional circumstances such as there has been a miscarriage of justice."*

22. These revisionary powers, therefore, will be exercised only in rare and exceptional circumstances where the Court is satisfied that there exists a reason justifying a departure from the normal appellate procedure. The discretion of the Court will not be exercised unless the Appellant provides a full and honest explanation for the non-compliance. If such explanation satisfies the Court that there was a valid excuse for the default, and that a grave miscarriage of justice has occurred which shocks the conscience of the Court, only then will the Court be inclined to exercise its revisionary jurisdiction. Thus, the questions that must be addressed by the Appellate Court on an application for revision, in place of an appeal, are as follows:

(a) What is the explanation for the default?

(b) Does it provide a good excuse for the default?

(c) Are there any exceptional circumstances which justify the court taking the exceptional step of exercising its revisionary jurisdiction?

23. It was submitted on behalf of the Appellant that mere procedural technicalities should not be allowed to overshadow the fundamental right of the Appellant to seek justice and a fair evaluation of his case. It was further submitted that dismissing an appeal on purely technical grounds could result in grave injustice and undermine public confidence in the legal system.

24. However, it is pertinent to emphasize that in the present case, the Appellant was convicted and sentenced to death on 09.03.2012, whereas the petition of appeal was filed on 23.09.2021, almost nine years after the judgment. Thus, the appeal is not only out of time but the delay is inordinate and inexcusable.

25. Furthermore, it is worth noting that at no stage were the fundamental rights of the Appellant denied or violated, nor was any grave prejudice caused to him during the trial. When the indictment was served on the Appellant, the Court assigned a counsel to represent him. Nevertheless, without any plausible reason, the Appellant failed to appear for the trial and did not provide any instructions to his counsel. Moreover, the Appellant made no effort to surrender himself to Court and was eventually arrested by the Police and produced before the High Court, nine years after the date of conviction.

26. The learned High Court Judge has duly taken steps under Section 241 of the Code of Criminal Procedure Act and led the evidence of the two sureties of the Appellant before proceeding to hold the trial in absentia. Hence, I find no illegality or procedural irregularity in the conduct of the trial before the High Court.

27. Accordingly, I see no exceptional circumstances warranting the exercise of the revisionary powers of this Court, especially when the contumacious conduct of the Appellant is clearly evident. It is true that the Appellant has been sentenced to capital punishment; however, a careful examination of the judgment of the learned High Court Judge reveals that there are no irrational or illogical findings therein. The evidence of the prosecution witnesses, particularly PW1 and PW9, clearly established the charge against the Appellant. The nature and extent of the injuries, as explained by PW9, demonstrate that the act committed by the Appellant falls within the ambit of Section 294 of the Penal Code.

28. Although PW9 stated that the injuries were not necessarily fatal, his evidence clearly established that they were sufficient in the ordinary course of nature to cause death, thereby bringing the act within the ambit of the third limb of Section 294 of the Penal Code, which reads as follows:

> *If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;*

29. The manner in which the Appellant acted during and after stabbing the deceased, together with the weapon used, and when considered alongside the number and severity of the injuries, would certainly satisfy the ingredients of the third limb of Section 294 of the Penal Code.

30. The learned High Court Judge has also clearly observed that there was no evidence to infer that the death was caused as a result of sudden and grave provocation, mistake, or accident on the part of the Appellant. Hence, I find no reason to conclude that the Appellant could have availed himself of any of the exceptions stipulated in Section 294 of the Penal Code.

31. Another important fact that deserves emphasis is that the alleged incident occurred in 2002, whereas the trial against the Appellant was concluded in 2012. If the present appeal is permitted to be argued, what message would it convey to society? Can an Appellant who has been sentenced to death and has deliberately absconded for a long period be allowed to be heard, completely disregarding the existing legal provisions? Surely, this could not have been the intention of the Legislature when specific time limits were set out in the Code of Criminal Procedure Act.

32. Another important fact that requires consideration is that the Appellant has failed to provide any valid reason for his prolonged absence. What prompted him to abscond for nine years until he was arrested and produced before Court by the Police? Was he unaware of the case pending against him? The answer to all these questions must undoubtedly be in the negative.

33. The delay in filing the appeal is not a matter of several days, weeks, or even months, but several years. In this context, can it reasonably be regarded as a mere technicality when the appeal is refused on account of such inordinate and inexcusable delay? The answer is no. It is also significant to note that if such applications are allowed, especially where the Appellant's contumacious conduct is evident, it would lead to an absurdity and a mockery of justice.

34. It is also desirable to emphasize that it was the Appellant's own conduct that necessitated the trial being held in absentia. The findings of the learned Trial Judge are manifestly consistent with the evidence led at the trial. Therefore, it cannot

reasonably be contended that the dismissal of the appeal would, in any manner, undermine the principles of justice as submitted by the Appellant.

35. For the reasons stated above, I find no merits on the submissions made on behalf of the Appellant. Accordingly, I uphold the objection raised on behalf of the State and dismiss the appeal.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal