

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

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

Democratic Socialist Republic of Sri
Lanka

COMPLAINANT

Vs.

Court of Appeal No:
CA/HCC/0141-142/2025
High Court of Ratnapura
Case No: HC/12/2008

1. Dolawattage Jagath Mahendra
Senaviratne alias Dolawattage Jagath
Mahinda Senaviratne
2. Allahapperumage Sunil Gamini
Fonseka
3. Dedigala Acharige Sanath
Chandralal

ACCUSED

AND NOW BETWEEN

1. Dolawattage Jagath Mahendra
Senaviratne alias Dolawattage
Jagath Mahinda Senaviratne
2. Dedigala Acharige Sanath
Chandralal

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Sandeevani Wijesooriya for the**
1st Appellant.
Anil Silva, PC, with Sarith Wadugedera for
2nd Appellant.
Janaka Bandara, DSG for the Respondent.

ARGUED ON : **27/07/2026**

DECIDED ON : **29/09/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) with the 2nd Accused were indicted jointly in the High Court of Ratnapura as follows:

1. On or about 05.05.1995 at Balangoda, within the jurisdiction of the Ratnapura High Court the Accused together with the now deceased persons namely R. M. Sunil Abeyranasinghe, A. A. Indika Gunasekara and U. P. Gunasiri, being armed with hand grenades, knife and firearms and having a common object of the prevention of the enforcement of law, were members of an unlawful assembly, and thereby committed an offence punishable under Section 141 of the Penal Code.
2. At the same time, place and in the course of the same transaction, one or more members of the said unlawful assembly fired at Police Constable No. 21415 Athukorala with a gun and caused injuries to him; and, if by such act the death of the said Police Constable No. 21415 Athukorala had been caused, the members of the said unlawful assembly would have been guilty of murder, therefore the Accused committed the offence of attempted murder, and the said offence was committed in prosecution of the common object of the unlawful

assembly, or was such as the members of that unlawful assembly knew to be likely to be committed in prosecution of that common object, and the Accused being a member of that unlawful assembly at that time, thereby committed an offence punishable under Section 300 read with Section 146 of the Penal Code.

3. At the same time, place and in the course of the same transaction, one or more members of the said unlawful assembly, with the intention of preventing a public servant from discharging his lawful duty, fired at the said public servant with a gun and caused injuries to him, namely, to Police Constable No. 21415 Athukorala, at the time when he was about to inspect the suspicious van bearing No. 54-9813 and the said offence was committed in prosecution of the common object of the unlawful assembly, or was such as the members of that unlawful assembly knew to be likely to be committed in prosecution of that common object, and the Accused being a member of that unlawful assembly at that time, thereby committed an offence punishable under Section 323 read with Section 146 of the Penal Code.
4. At the same time, place and in the course of the same transaction, one or more members of the said unlawful assembly abducted Police Constable No. 21415 Athukorala, with the intention of secretly and wrongfully confining him and the said offence was committed in prosecution of the common object of the unlawful assembly, or was such as the members of that unlawful assembly knew to be likely to be committed in prosecution of that common object, and the Accused being a member of that unlawful assembly at that time, thereby committed an offence punishable under Section 356 read with Section 146 of the Penal Code.
5. At the same time, place and in the course of the same transaction, the Accused together with the now deceased persons namely, R. M. Sunil Abeyranasinghe, A. A. Indika Gunasekara and U. P. Gunasiri, in

furtherance of the common intention, fired at Police Constable No. 21415 Athukorala with a gun and caused injuries to him, and if by such act the death of the said Police Constable No. 21415 Athukorala had been caused, the Accused would have been guilty of murder and thereby committed the offence of attempted murder, punishable under Section 300 read with Section 32 of the Penal Code.

6. At the same time, place and in the course of the same transaction, the Accused together with the now deceased persons namely, R. M. Sunil Abeyranasinghe, A. A. Indika Gunasekara and U. P. Gunasiri, in furtherance of the common intention and with the intention of preventing a public servant from discharging his lawful duty, fired at the said public servant with a gun and caused injuries to him, namely to Police Constable No. 21415 Athukorala, when he was about to inspect the van bearing No. 54-9813, and thereby committed an offence punishable under Section 323 read with Section 32 of the Penal Code.
7. At the same time, place and in the course of the same transaction, the Accused, together with the now deceased persons namely, R. M. Sunil Abeyranasinghe, A. A. Indika Gunasekara and U. P. Gunasiri, in furtherance of the common intention, abducted Police Constable No. 21415 Athukorala, with the intention of secretly and wrongfully confining him, and thereby committed an offence punishable under Section 356 read with Section 32 of the Penal Code.
8. At the same time, place and in the course of the same transaction, the Accused had in their possession, without a valid license, offensive weapons, namely two hand grenades, and thereby committed an offence punishable under Section 2(1)(b) of the Offensive Weapons Act No. 18 of 1966.
9. At the same time, place and in the course of the same transaction, the Accused had in their possession, without a valid license, a firearm, and thereby committed an offence punishable under Section 22(3) of

the Firearms Ordinance No. 33 of 1916, as amended by Act No. 22 of 1996.

10. At the same time, place and in the course of the same transaction, the Accused had in their possession, without lawful authority, two cartridges of ammunition, and thereby committed an offence punishable under Section 9(1) read with Section 27(1) of the Explosives Act No. 21 of 1956, as amended by Act No. 33 of 1969.

11. At the same time, place and in the course of the same transaction, knowing or having reason to believe the same to be stolen property, the Accused dishonestly retained in their possession stolen property, namely the van bearing No. 54-9813, and thereby committed an offence punishable under Section 394 of the Penal Code.

At the time of handing over the indictment, the 2nd Accused was absent. Hence, evidence was led under Section 241(1) of the Code of Criminal Procedure Act No. 15 of 1979 and the trial had commenced in absentia of him. The trial had commenced before the High Court Judge of Ratnapura as the Appellant had requested a non-jury trial.

The prosecution had called 09 witnesses and marked productions P1 to P10. At the conclusion of the prosecution case, the defence was called and the Appellants had given evidence from the witness box and closed their case.

The Learned High Court Judge, on 19.11.2024, delivered the judgment and convicted the Appellants and sentenced them as follows:

- For the 1st Count each of the Appellants were sentenced to 01-year rigorous imprisonment with a fine of Rs.5000/-. In default 03 months simple imprisonment.

- For the 3rd Count the Appellants were sentenced to 01 years rigorous imprisonment with a fine of Rs.5,000/-. In default 03 months simple imprisonment.
- For the 4th Count the Appellants were sentenced to 03 years rigorous imprisonment with a fine of Rs.5,000/-. In default 03 months simple imprisonment.

The 2nd Accused was sentenced as follows:

- For the 1st Count, the 2nd Accused was sentenced to 02-years rigorous imprisonment with a fine of Rs.10,000/-. In default 06 months simple imprisonment.
- For the 3rd Count, the 2nd Accused was sentenced to 02 years rigorous imprisonment with a fine of Rs.10,000/-. In default 06 months simple imprisonment.
- For the 4th Count, the 2nd Accused was sentenced to 06 years rigorous imprisonment with a fine of Rs.10,000/-. In default 06 months simple imprisonment.

The Appellants and the 2nd Accused had been discharged from counts number 02, 05, 06, 07, 08, 09,10 and 11.

Being aggrieved by the aforesaid conviction and the sentence, the Appellants preferred this appeal to this court.

Although, the 2nd Accused was sentenced, he did not appeal against his sentence.

The Appellants were present in court as they are on bail pending appeal.

Background of the Case.

According to PW1, SI/Karunaratna, when he was at a road barrier with other police officers, a van bearing the number 54-9813 had arrived to pass the barrier. When PW1 had signalled to stop, the van had defied his order and had proceeded. The PW1 told PW2 PC 21415 Athukorala to stop the van as he was standing away from the barrier. Obeying the signal of PW2 they had slowed the van; however, the inmates had dragged PW2 into the van and had driven off from the scene. PW1 had passed the message to the Balangoda Police and they had stopped the said van near the Balangoda clock tower. While approaching the van, the inmates of the van had opened fire at the police and the police had retaliated by firing at the van. Two persons in the van had received serious injuries and died of their injuries. The 1st Appellant who was in the front seat had surrendered to the police. PW2, who was kidnapped, had also received injuries. The 2nd Accused and 2nd Appellant had been arrested by the police. The driver of the van had fled from the scene.

According to PW2, PC Athukorala, the Appellants had not done anything while he was in the van.

The 1st Appellant giving evidence from witness box denied the charges levelled against him. The 2nd Appellant also denied the charges when giving evidence from the witness box.

Before the commencement of the argument, the learned President's Counsel and the Counsel for the 1st Appellant submitted to court that the Appellants are only contesting the sentence. Considering the circumstances under which the incident happened, the learned Counsel submits that this is an appropriate case to impose a non-custodial sentence.

In this case, the Appellants and the other Accused were indicted for unlawful assembly and committing attempted murder punishable under Section 300, voluntarily causing hurt to deter a public servant from his duty punishable

under Section 323, Kidnapping with intent secretly and wrongfully to confine a person punishable under Section 356 of Penal Code and Possession of two hand grenades, possession of a gun, possession of ammunitions and retaining a stolen property. After trial the Learned High Court Judge found the Appellants and the 2nd Accused guilty only for the 1st, 3rd and 4th counts.

Since all the Appellants and the 2nd Accused had been found guilty after a full borne trial, the learned President's Counsel who appeared for the 2nd Appellant and the Counsel for the 1st Appellant submits to this court that non-custodial sentences should have been imposed equally in this case, for both Appellants.

The learned Deputy Solicitor General in keeping with the highest traditions of the Attorney General's Department too agreed that this is an appropriate case to re-consider the sentence imposed by the Learned High Court Judge. Both the Counsel jointly informed that the Appellants had been in remand custody before and after the conviction, before they were granted bail.

Considering the submissions made by both the Counsel, I set aside the sentence imposed on the 3rd count by the Learned High Court Judge and substitute it with 02 years rigorous imprisonment with a fine of Rs.5000/-, with a default sentence of 03 months simple imprisonment. I order the sentences imposed on count number 01 and 03 to remain the same. Further, I order the sentences imposed on count number 01, 03, and 04 to run concurrently. Considering the submissions made by both parties, I further order the 02 years rigorous imprisonment to be suspended for five years. The Appellants have to pay the fine imposed by the High Court and this court. The fines are subject to the default sentence.

Subject to the above variation in the sentences, the Appeal is dismissed.

The Learned High Court Judge of Ratnapura is hereby directed to issue notice on the Appellants to appear before the High Court, and to comply with this judgement.

The Registrar of this Court is directed to send this judgement to the High Court of Ratnapura along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL