

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

In the matter of an Appeal made
under Section 331 of the Code of
Criminal Procedure Act No.15 of
1979.

**Court of Appeal Case No.
CA/HCC/0011/2023**

Abdul Kareem Nasheer

**High Court of Ampara
Case No. HC-AMP 896/2004**

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Sasika Perera with Mubeen Rahuman for
the Appellant.
Shanaka Wijesinghe, PC, ASG for the
Respondent.**

ARGUED ON : **12/03/2026**

DECIDED ON : **18/06/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted along with another person by the Attorney General in the High Court of Ampara for committing murder of Mohammed Ibrahim Riyaz on 10.11.2001.

The Appellant and the other person were present in court on 19.10.2004. The indictment was dully served on them and both pleaded not guilty and elected a non-jury trial.

As the Appellant and the other person continued to absent to court, an inquiry was held as per Section 241(1) of the Code of Criminal Procedure Act No.15 of 1979 and conducted the trial in absentia of them. At the conclusion of the trial, the learned High Court Judge found the Appellant and the other

person guilty to the charge and sentenced them to death on 31.07.2009 and open warrant issued against them.

After about twelve years, the Appellant was arrested and produced before the High Court of Ampara on 27.05.2022.

On the same day, an application was made under Section 241(3) of the Code of Criminal Procedure Act No.15 of 1979. An inquiry was held by the Learned High Court Judge. The Appellant gave evidence under oath and he was subjected to a lengthy cross examination by the State. The Learned High Court Judge, pronounced his order on 31.08.2022, and arrived at the conclusion that the Appellant had wilfully absconded the Court.

The Appellant now appealed against the conviction and sentence imposed on 31.07.2009, after 12 years. It is very clear from his Petition of Appeal filed on 31.08.2022, that he appealed against the sentence and not against the order delivered on 31.08.2022 by the learned High Court Judge in respect of the application made under 241(3) of the Code of Criminal Procedure Act No.15 of 1979.

In Sri Lanka, the period of time taken for a criminal appeal would depend on the court the original case was heard in and the court the appeal is being made to. The general time limits for the respective Courts are as follows:

- From a Magistrate's Court to the High Court: The appeal must be filed within 14 days of the date of judgment.
- From a High Court exercising original criminal jurisdiction to the Court of Appeal: The appeal must be filed within 14 days of the date of conviction/judgment.
- Appeals by the Attorney-General: The time limit is generally longer, such as 28 days for appeals from the Magistrate's Court or High Court.

In **Rajapaksha v The State** [2001] 2 SLR 161 the court held that:

- (i) *The journal entries indicate that the accused - appellant did not give any reasons for his absence from court and it was only then that the trial Judge had proceeded to enforce the sentence imposed on him on 22.7.98 to be operative from 2.9.99. In terms of S. 241 (3) the accused person if he appears before Court and satisfies court that his absence at the trial was bona fide, the court shall set aside the conviction/sentence/order and the trial then would be fixed de - novo.*
- (ii) *The essence of a judgment consists in the reason for conviction of acquittal of an accused person. The judgment in this case is a well-reasoned out judgment.*
- (iii) *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.*
- (iv) *An application in Revision should not be entertained save in exceptional circumstances. When considering this issue court must necessarily have regard to the contumacious conduct of the accused in jumping bail and thereafter his conduct in a manner to circumvent and subvert the process of the law and judicial institutions. In addition, the party should come before Court without unreasonable delay.*

In the case of **Padmasiri v Attorney General** 2012(1) SLR 24, it was held:

“....if we are to allow this application it would amount to condescending or, the court lending its hands to a person who is guilty of contumacious conduct and thereby assisting him. Therefore, we hold that the petition of appeal is not properly constituted and is out of time.”

In the case of **Opatha Mudiyansele Nimal Perera v Attorney-General** [2002] 3 SLR 101 it was held that:

"These matters must be considered in limine before the Court decides to hear the accused-petitioner on the merits of his application. Before he could pass the gateway to relief his aforesaid contumacious conduct and his unreasonable and undue delay in filing the application must be considered and determination made upon those matters before he is heard on the merits of the application."

In the case of **Attorney General v Podisingho 51 NLR 385**, it was held that:

"the powers of revision 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 in revision should not be entertained save in exceptional circumstances, such as, (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of the Supreme Court has been made out by the petitioner, or (c) where the applicant was unaware of the order made by the Court of trial"

In the case of **Ediriweera v Attorney-General** (2006 1 SLR 25) it was held:

"If the High Court Judge's order is correct, that there are no exceptional circumstances the order cannot be revised. Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice."

In this case as stated earlier, the Appellant lodged an appeal against the judgment. Considering the provisions of law, his appeal is out of time. He could not succeed in the inquiry held under Section 241(3) of the Code of Criminal Procedure Act. Had he been successful in the inquiry he could have had the benefit of a trial in *de-novo*. In this case, the learned High Court Judge had considered the evidence presented by both parties to arrive at his

decision. He has properly analysed the evidence given by both sides in his judgment.

Therefore, I dismiss the Appeal of the Appellant as it is out of time.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL