

**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/0037/2023**

Sandanam Rajah

**High Court of Negombo
Case No. HC 132/2005**

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

**COUNSEL : Delan de Silva for Appellant.
Shanaka Wijesinghe, PC, ASG for the
Respondent.**

ARGUED ON : **25/02/2026**

DECIDED ON : **12/05/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Negombo as follows:

1. The Appellant was indicted for being in possession of 148.3 grams of Heroin punishable under Section 54(A) (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.
2. In the course of the same transaction, the Appellant was indicted for importing 148.3 grams of Heroin punishable under Section 54(A) (c) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.
3. In the course of the same transaction, the Appellant was indicted for trafficking 148.3 grams of Heroin punishable under Section 54(A) (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

The date of the offence depicted in the indictment is 09.03.2003. The indictment is dated 17.03.2005 and the Appellant was noticed to appear

before the High Court of Negombo as per the journal entries dated 24.08.2005.

As he had not appeared before court even after notices were duly served to his given address and to the sureties several times, evidence was led under Section 241(1) of the Code of Criminal Procedure Act No.15 of 1979 and fixed the *trial in absentia* of the Appellant.

After leading all necessary witnesses, the prosecution had closed their case on 18.12.2012. The Learned High Court Judge after considering the evidence presented, convicted the Appellant for all 03 counts as charged and sentenced him to death on 04.06.2013 and an open warrant was issued against him on the same day.

After about six years, the Appellant was arrested and produced before the High Court of Negombo on 14.03.2019. On that day, the judgment was read over to him and the death sentence was pronounced against him.

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's wife gave evidence under oath on 01.12.2021 and she was subjected to a lengthy cross examination by the State. The Learned High Court Judge, pronounced his order on 17.06.2022, and arrived at the conclusion that the Appellant had wilfully absconded the Court.

The Appellant now appealed against the conviction and sentence imposed on 04.06.2013, after 06 years. It is very clear from his Petition of Appeal, that he appealed against the sentence and not against the order delivered on 17.06.2022 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 Mudiyanseelage 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, (6) 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 Negombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL