

**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.

Court of Appeal No:
CA/HCC/0299/2025
High Court of Kurunegala
Case No. HC/79/2019

The Democratic Socialist Republic of
Sri Lanka

COMPLAINANT

Vs.

Atapattu Mudiyanseelage Jayantha
Atapattu

ACCUSED

AND NOW BETWEEN

Atapattu Mudiyanseelage Jayantha
Atapattu

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Dharshana Kuruppu with Tharushi**
Gamage for the Appellant.
Suharshi Herath, DSG for the
Respondent.

ARGUED ON : **05/08/2026**

DECIDED ON : **02/10/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General on the following charge:

- On or about the 23rd June 2017 the accused committed the murder of Mudiyansele Lakmal Sanjeewa Kumara Dissanayake alias Sanka which is an offence punishable under Section 296 of the Penal Code.

As the Appellant opted for a non-jury trial, the trial commenced before a judge and the prosecution had led seven witnesses and marked productions P1-3 and closed the case. The Learned High Court Judge having been satisfied that the evidence presented by the prosecution warrants a case to answer, called for the defence and explained the rights of the accused. The Appellant made a dock statement and closed his case.

After considering the evidence presented by both the prosecution and the defence, the Learned High Court Judge had convicted the Appellant for culpable homicide not amounting to murder under Section 297 of the Penal Code and he was sentenced to 15 years rigorous imprisonment with a fine of Rs.100,000/-. In default, 02-years simple imprisonment was imposed. The Appellant was also ordered to pay a compensation of Rs.1,000,000/- to the dependants of the deceased. In default 01-year simple imprisonment imposed.

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

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. At the hearing the Appellant was connected via the Zoom platform from prison.

The following Grounds of Appeal were raised on behalf of the Appellant.

1. The Learned High Court Judge has failed to consider the absence of *mens rea* as a fundamental element of the alleged offence and thereby failed to consider the failure of the prosecution to prove the charge against the Appellant beyond any reasonable doubt.
2. The Learned High Court Judge has failed to appreciate the evidence on the inherent blind spots of the Wheel-Loading Machine and the duty of bystanders to maintain a safe distance and thereby caused a great prejudice to the Appellant.
3. The Learned High Court Judge has misdirected himself by drawing inferences against the Appellant on surmises and conjectures.

The background of the case *albeit* briefly is as follows:

According to PW1, Wijesinghe, they had raised objections with regard to the cleaning of a land called 'Gonumale Land' which has been a part of a land of the highway construction site. PW1 with some others had raised objections at the cleaning site, which was a prohibited area for outsiders other than the workers assigned in the construction site. The Appellant was a Wheel-Loader Operator who was assigned by his employer to clean the said area. PW1 with others, had been agitated, stating that they had not been paid the compensation due to them. As stated, the area in which the incident happened had been declared as a restricted area at the time of the incident.

The defence's position is that the Appellant, as a Wheel-Loader Operator, was lawfully engaged in construction work within a restricted area where unauthorised persons were not permitted to enter. PW1 had entered the said

area and engaged in an altercation with the Appellant, objecting to the ongoing construction work. As a tense situation arose when PW1 and others agitated for cleaning the said land, the Appellant had tried to calm them down, however, the crowd including PW1 had behaved in a disturbing and provoking manner and had assaulted the Appellant. Fearing his safety, as the only option available to him was to leave the site, he had moved the machine in order to move away from the site. In the meantime, PW1 and his son PW2 had climbed onto the machine and begun to strike the windows of the machine which were closed at that time. In the course of the melee, when the Appellant moved the machine, the deceased, who was allegedly positioned recklessly within the vehicle's blind spot, was run over and, as a result, had died at the scene. The defence consistently took up the position that the Appellant had only made an attempt to leave the scene upon observing the aggressive conduct of PW1 and PW2 along with others. Therefore, the defence had argued that this was not a case of murder but an accident beyond the control of the Appellant.

The evidence led by the prosecution clearly demonstrates that the Appellant had no intention of causing the death of the deceased at that time. His intention was only to leave the place for his own safety and to safeguard the machine which had been entrusted to him. The evidence further revealed that the deceased was a bystander who had no enmity with the Appellant. He was standing without any knowledge of the danger of a heavy machine in operation within a restricted area.

According to the submissions made by the defence, the model of the machine is Dosan SD300 Wheel-Loader, which is classified as a heavy and inherently dangerous construction vehicle. An operator controlling the machine from within the cabin is unable to see individuals who enter the specified blind-spot areas, thereby posing a serious risk to anyone who approaches the vehicle while it is in operation.

The learned Counsel for the Appellant, by submitting a diagram, submitted that a blind spot is an area around a vehicle or piece of construction equipment that is not visible to the operator, either through their direct line of sight or indirectly through the use of internal or external mirrors. The presence of such blind spots creates a substantial risk, as an operator may inadvertently run over persons, strike materials, or collide with other vehicles or equipment without being aware of their presence.

The prosecution witnesses in their evidence admitted that a person who stands in a blind spot is not visible to an operator of a machine of this nature.

Further, the prosecution witnesses admitted that the area where the incident had happened was a restricted area which does not permit outsiders. Further, they also admitted that they attempted to break the glass door of the cabin of the Wheeler Loader while the Appellant was still inside.

PW6, the investigating officer also corroborated the fact that the people had come to attack the Appellant on that date at that time.

Considering all these factors, the learned Counsel for the Appellant submitted that he is only contesting the sentence, and contended that the Appellant should have been given a lenient sentence in this case.

The essence of criminal law is said to lie in the maxim “*actus non facit reum nisi mens sit rea*”. The essence of an offence is the wrongful intent, without which it cannot exist. In this case it is very clear from the evidence given by PW1 and PW2, that the Appellant had not acted with the intention of killing; rather, the incident had occurred when he had attempted to flee with the wheeler-Loader due to fear of assault and sabotage.

In **Alo Singho v. Attorney General** [1984] 1 SLR 30 the court held that:

“It is important to note that, in the instant case, the appellant had inflicted only a single stab injury in circumstances indicative of the fact that he had acted on the spur of the moment, without pre-meditation. No

motive was alleged by the prosecution against the appellant. Having regard to the above facts, it seems to me that the misdirection complained of, could well have caused prejudice to the appellant. In my view, it is unsafe to assume that the jury would have found a murderous intention to have been proved beyond reasonable doubt, had they been told that the presumption was one of fact which could be rebutted on a consideration of all the circumstances of the case. However, there could be no doubt that the appellant had the knowledge that the injury was likely to cause death, and was, therefore, guilty of the lesser offence of culpable homicide, not amounting to murder”.

In **King v. Kolonda** 5 NLR 236 the court held that:

“The extent of his guilt must be determined by his intention when he struck the blow, and not by its subsequent and possibly unforeseen effects”.

In the case of **Farook Vs. Attorney General** [2006] 3 SLR 174 it was held:

“As regards the attempt to bring the case to one of culpable homicide not amounting to murder mainly on the basis that there is no intention to cause death, the intention that is required is to cause the injury in fact inflicted. If the intended injury is sufficient to cause death in the ordinary course of nature, the offence is murder”

Considering this evidence, it clearly shows that the Appellant had not entertained a murderous intention, which is a pre-requisite to find him guilty of the murder charge.

At this stage, 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 upon consideration of the circumstances of the case.

After the conviction of an Accused person, the discretion in imposing the relevant sentence would lie with that particular Court, while being guided by a number of factors, such as the circumstances under which the offence was committed by the Accused. Where such specific sentencing guidelines would not be available, it would be necessary to discuss the principles that must be followed when imposing sentences.

In the case of **The Attorney General v H.N.de Silva** 57 NLR 121 Per BASNAYAKE, A.C.J.-

" A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective. If the offender held a position of trust or belonged to a service which enjoys the public confidence that must be taken into account in assessing the punishment. The incidence of crimes of the nature of which the offender has been found to be guilty and the difficulty of detection are also matters which should receive due consideration. The reformation of the criminal, though no doubt an important consideration, is subordinate to the others I have mentioned. Where the public interest or the welfare of the State (which are synonymous) outweighs the previous good character, antecedents and age of the offender, public interest must prevail. "

In the case of **Don Percy Nanayakkara v The Republic of Sri Lanka** [1993] 1 SLR 71 the Court held that:

"In assessing punishment, the Court has to consider the matter from the point of both the offender and the public. The accused had held high public office and exercised extensive statutory power in conducting public examinations in this country. These examinations have to be conducted

fairly and the results declared accurately. Thousands of students who face public examinations, every year, should have complete confidence in the fairness and accuracy of every process of the examinations. The accused has subverted the very basis of this confidence by his conduct in dishonestly showing favour to persons with whom he was acquainted. Therefore, public interest demands that he should be imposed a deterrent punishment.”

In the case of **Asan Mohammed Rizwan v Attorney General**, CA [PHC] APN 141/2013 decided on March 25, 2015 it was held:

“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 behavior 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.

The judges are to pass lawful and appropriate sentence upon the accused being convicted. In doing so, judges are to address their minds to the objective of sentencing particularly when exercising the discretion given to them under the law. Then only a correct sentence could be passed upon a convicted accused. If not, criticism on lack of uniformity, consistency and transparency in imposing sentences are bound to surface. 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.”*

In the case of **Bandage Sumindra Jayanthi v. Attorney General** (2015) 1 SLR 20 it was held:

“Sentencing belongs to the domain of the trial judge but that is no ground for the prosecuting counsel to be complacent about his role in responding to the mitigatory plea of a defense counsel.”

Considering all factors and the circumstances of the case, I set aside the sentence imposed by the Learned High Court Judge of Kurunegala and replace it with the following sentence.

The Appellant is sentenced to 02 years rigorous imprisonment with a fine of Rs.25,000/-. This carries a default sentence of 06 months simple imprisonment. A compensation of Rs.200,000/- is to be paid to the deceased’s dependants, which is subject to a default sentence of 01-year

simple imprisonment. The sentence is re-adjusted considering his rash and negligent act.

Further, the jail sentence imposed will be operative from the date of conviction, namely 03.03.2025.

Subject to the above variation the appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL