

**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/ 0377/2017
High Court of Kalutara
Case No. HC/873/2007**

Gamage Don Ajantha Kumara

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Indica Mallawarachchi for the Appellant.
Dileepa Pieris, ASG for the Respondent.**

ARGUED ON : **07/07/2025**

DECIDED ON : **28/08/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing two counts of murder - one of Meegahawattage Don Rathnawathi and another of Wanduraba Dewage Jinadasa on or about 30/05/2005 an offence punishable under Section 296 of the Penal Code.

Following a non-jury trial, the learned Trial Judge had convicted the Appellant on both counts of murder and sentenced him to death on 26/10/2017.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal seeking to set aside the conviction and sentence imposed on him by the Trial Judge.

The learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. During the argument he was connected via zoom from prison.

Before commencement of the argument, the learned Counsel for the Appellant, on 28/11/2023 brought to the notice of this Court certain materials which indicate that the Appellant would have been suffering from a mental disorder. The learned Counsel appearing for the Respondent conceded the fact that there is a record of unsound mind.

As such, this Court has directed the Prison Authorities to produce the Appellant before a Judicial Medical Psychiatrist with regard to his mental condition and submit a report to the Registry of the Court of Appeal.

Accordingly, Dr.C.T.K. Fernando, the Consultant Forensic Psychiatrist (Acting) of the Forensic Psychiatry Unit, National Institute of Mental Health,

in Mulleriyawa New Town has submitted a report of the mental condition of the Appellant. According to his opinion, the Appellant is suffering from a major mental illness called Schizophrenia with cognitive impairment due to long term mental illness. According to the Psychiatrist's opinion, the Appellant was not capable of knowing the nature of his actions and that his actions were contrary to law. That is, he was not able to understand that the act was wrong in fact and in law. According to available information, he would have been of unsound mind at the time of the alleged offence.

Hence, as per the report of the Consultant Forensic Psychiatrist (Acting) submitted to this Court, it is most probable that the Appellant was of unsound mind when he committed the act of which he was accused of and later sentenced by the Trial Courts as afore-mentioned.

Although, at the trial, the Appellant took up the defence of insanity by submitting his Diagnosis Ticket subject to proof, the learned High Court Judge had rejected the defence on the basis that the Appellant had failed to prove the said defence on a balance of probability, which is the required degree. As per his Diagnosis Ticket, the Appellant was admitted to Ward No.59 of the National Hospital on 30.03.2003 and was discharged on 10.08.2003.

In view of the Consultant Forensic Psychiatrist Report, the learned Additional Solicitor General submitted that this is an appropriate case to be considered under Section 338 of the Code of Criminal Procedure Act No.15 of 1979.

Section 338 of the CPC states:

“If on any appeal it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was, at the time the act was done or omission made incapable by reason of unsoundness of mind of knowing the nature of the act or that it was wrong or contrary to law, the court may quash the sentence passed at the trial and order that the appellant be kept in safe custody

in such place and manner as the court thinks fit, and shall report the case for the orders of the Minister. Upon such report, the appellant shall, for the purposes of Chapter XXXI, be deemed to be an accused whose case had been reported for the orders of the Minister under subsection (1) of section 381”.

Considering the above section of the Code of Criminal Procedure Act, this Court is of the view that this is an appropriate case to be considered under section 338 of the CPC.

Therefore, we quash the sentence passed at the trial, and order the Appellant be kept in the safe custody of the Director of the National Institute of Mental Health, Mulleriyawa New Town and report the case for the orders of the Minister of Justice and National Integration.

The Registrar is directed to send this judgement to the Minister of Justice and National Integration for necessary orders.

JUDGE OF THE COURT OF APPEAL

R.P.Hettiarachchi, J.

I agree

JUDGE OF THE COURT OF APPEAL