

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

**In the matter of an Appeal in terms of
Section 320 of the Code of Criminal
Procedure Act No. 16 of 1979.**

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

Court of Appeal
Case No. CA HCC 18/2022

Complainant

Vs.

High Court of Anuradhapura
Case No. HC 100/2012

Yaddahige Chandrarathne,
No.15,
Ambathalagama,
Mihinthale.

Accused

AND NOW BETWEEN

Yaddahige Chandrarathne,
No.15,
Ambathalagama,
Mihinthale.

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Thanuka Nandasiri with Wasala Bandara for the Accused-Appellant.

Riyaz Bary, D.S.G. for the Respondent.

Argued on: 21.10.2025

Judgment on: 06.11.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Anuradhapura* in High Court case number HC 100/2012.

The charges in the indictment are as follows:

Charge 01

That on or about October 19, 2008 at *Mihintale* in the district of *Anuradhapura* within the jurisdiction of this Court, the appellant caused the death of *Mohomed Razak Mohomed Arshad*, by way of a road traffic accident not amounting to culpable homicide; and have thereby committed an offence punishable under section 298 of the Penal Code.

Charge 02

In the same course of transaction as above, the appellant caused the death of *Suleiman Thaibu Manseer*, by way of a road traffic accident not

amounting to culpable homicide; and have thereby committed an offence punishable under section 298 of the Penal Code.

Charge 03

In the same course of transaction as above, the appellant caused the death of *Gutthila Kaviraja Mudiyansele Prageeth Niluka Kaviraja*, by way of a road traffic accident not amounting to culpable homicide; and have thereby committed an offence punishable under section 298 of the Penal Code.

Charge 04

In the same course of transaction as above, the appellant caused the death of *Abdul Gafoor Nishad*, by way of a road traffic accident not amounting to culpable homicide; and have thereby committed an offence punishable under section 298 of the Penal Code.

Charge 05

In the same course of transaction as above, the appellant caused hurt to *Mohammed Kaleel Ilbudeen*, endangering their life or personal safety by way of a road traffic accident; and have thereby committed an offence punishable under section 328 of the Penal Code.

Charge 06

In the same course of transaction as above, the appellant caused hurt to *Abdul Cader Mohomed Rumaiz*, endangering their life or personal safety by way of a road traffic accident; and have thereby committed an offence punishable under section 328 of the Penal Code.

Charge 07

In the same course of transaction as above, the appellant caused hurt to *Gunanayagam Partha Saradeen*, endangering their life or personal safety by way of a road traffic accident; and have thereby committed an offence punishable under section 328 of the Penal Code.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charges and sentenced the appellant as follows:

- i. Imposed a fine of Rs. 1000.00 with a term of 3 months simple imprisonment each in default in respect of the first, second, third and fourth charges and a substantial term of 5 years rigorous imprisonment each in respect of each of those charges.
- ii. Imposed a fine of Rs.100.00 in respect of the fifth charge.
- iii. Imposed a fine of Rs.100.00 in respect of the sixth charge.
- iv. Imposed a fine of Rs. 100.00 in respect of the seventh charge.
- v. Further, the appellant has also been directed to pay a sum of 100000.000 each as compensation to the next of kin of the deceased named in the first, second, third and fourth charges, with a term of 6 months simple imprisonment each in default.
- vi. The appellant has been directed to pay a sum of Rs. 25000.00 each as compensation to the injured named in the fifth, sixth and seventh charges with a term of 1 month simple imprisonment each in default.

3. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.
4. When the matter was taken up for argument, the Counsel for the appellant informed this Court that the appellant was not disputing the convictions but only the sentencing order.
5. The Counsel for the appellant has, in that regard, argued that the appellant was 63 years old and a first-time offender. The Counsel has highlighted that the appellant is suffering from health issues and would face significant challenges in receiving proper medical care if incarcerated.
6. Furthermore, it has been noted that the appellant intends to pay an additional sum of Rs. 1000000.00 each to the next of kin of the four individuals who tragically lost their lives in the motor accident involving the bus the appellant was driving as detailed in the charges outlined in the indictment. This gesture, it is argued reflects the appellant's remorse regarding the incident. Accordingly, moved that a non-custodial sentence be imposed on the appellant.
7. The learned Deputy Solicitor General has argued that motor traffic accidents resulting from violation of road rules have reached epidemic proportions in contemporary society. One significant contributing factor to this crisis is driver negligence.
8. In such circumstances, it has also been argued that it is imperative for the Court to consider these aspects when sentencing the appellant accused of causing a fatal motor accident due to negligence.

9. In *Asan Mohammed Rizwan v Attorney General*, MC Pelamadulla Case No. 33332, HC Ratnapura Case No. HC 25/2010, Court of Appeal Revision No. CA [PHC] APN 141/2013 decided on March 25, 2015, Chitrasiri, J. has discussed a gamut of issues regarding sentencing, stating the following:

“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.....”

“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.”

“I will now advert to the other aspects that are necessary to consider before a sentence is determined. Those can be categorized as follows:

- (a) The maximum and the minimum (if any) penalty prescribed for the offence;*
- (b) The nature and gravity/ seriousness of the particular offence.*
- (c) The offender's culpability and degree of his/her responsibility for the offence;*
- (d) Mental state of the accused at the time the offence was committed;*
- (e) Evidence as to pre-arrangement for the commission of the offence;*
- (f) The impact of the offence on any victim and the injury, loss or damage caused as a result of the offence committed;*
- (g) Whether the offender pleaded guilty to the offence and if so, the stage in the proceedings at which the offender did so or the stage at which it was indicated;*
- (h) The conduct of the offender during the trial as an indication of remorse or the lack of remorse;*
- (i) Any action taken by the offender to make restitution of the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider.*
- (j) The offender's previous character, good or bad;*
- (k) Imprisonment should be used when no other sentence is adequate;*
- (l) Proportionality between the crime and the sentence;*
- (m) Possibility of reforming the offender;*
- (n) To ensure consistency in deciding sentences;*

(o) Presence of any aggravating or mitigating factors concerning the offender or any other circumstance relevant to the commission of the offence.”

10. At the same time, there are statutory provisions that govern the sentencing of a convicted individual. One such provision is section 303 of the Criminal Procedure Code Act No. 15 of 1979 which allows for the possibility of suspending a custodial sentence.

Matters that are to be considered prior to suspending a custodial sentence are stipulated as follows:

- (a) The maximum penalty prescribed for the offence in respect of which the sentence is imposed*
- (b) The nature and gravity of the offence*
- (c) The offender's culpability and degree of responsibility for the offence*
- (d) The offender's previous character*
- (e) Any injury, loss or damage resulting directly from the commission of the offence*
- (f) The presence of any aggravating or mitigating factor concerning the offender*
- (g) The need to punish the offender to an extent in a manner, which is just in all circumstances*
- (h) The need to deter the offender or other persons from committing offences of the same or of a similar character*
- (i) The need to manifest the denunciation by the court of the type of conduct in which the offender was engaged in*
- (j) The need to protect the victim or the community from the offender*
- (k) The fact that the person accused of the offence pleaded guilty to the offence and such person is sincerely and truly repentant; or*

(l) A combination of two or more of the above

The instances where a custodial sentence cannot be suspended are also stipulated as follows,

- (a) A mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed; or*
- (b) The offender is serving, or is yet to serve, a term of imprisonment that has not been suspended; or*
- (c) The offence was committed when the offender was subject to a probation order or a conditional release or discharge; or*
- (d) The term of imprisonment imposed, or the aggregate terms of imprisonment where the offender is convicted for more than one offence in the same proceedings, exceeds two years.*

11. First, it is essential to recognize the circumstances surrounding the appellant. The appellant is 63 years old, a first-time offender with no prior convictions or pending cases. He is suffering from health issues and he would have faced significant challenges in receiving proper medical care if incarcerated.

12. Further, the gesture on the part of the appellant referred to earlier i.e. the proposal to pay a substantial sum of money as compensation to the next of kin of the four individuals who lost their lives in the motor accident involving the bus driven by the appellant, over and above the sum directed to be paid as compensation by the learned High Court Judge reflects the appellant's remorse regarding the incident.

13. Second, imposing a non-custodial sentence would serve the interest of justice and rehabilitation. Non-custodial measures are effective in reducing relapsing and allowing individuals to maintain their ties to family, employment and community.
14. By facilitating the appellant's reintegration into society, this Court can promote accountability and encourage positive behavioral changes.
15. Furthermore, the imposition of a non-custodial sentence will also alleviate the burden on the correctional facilities, which are overcrowded and under-resourced.
16. As the Counsel for the appellant has argued, the offences in question have occurred in 2008, a staggering seventeen years ago. Thereafter, the charges have been hanging over the head of the appellant another thirteen years, which is a substantial amount of time.
17. Taking all these matters into consideration, this Court is of the view that a custodial sentence should not be imposed on the appellant for an offence committed seventeen years ago.
18. Ends of justice will be met by substituting the substantial terms of imprisonment of 5 years each, imposed on the appellant in respect of first, second, third and fourth charges with a term of 6 months rigorous imprisonment each, which shall run consecutively and suspended for a period of 5 years.
19. The fines imposed, the sums ordered to be paid as compensation to the injured named in the fifth, sixth and seventh charges together with the terms of imprisonment in default shall remain unchanged. The appellant is also directed to pay a sum of Rs. 1100000.00 (one million one hundred thousand) each to the next of kin of the deceased name in the first, second, third and fourth charges.

In the event the appellant defaults in the payment of compensation, the appellant will be liable to a term of 2 years rigorous imprisonment each in default and such terms of imprisonment shall run consecutively.

Subject to the above variations, the appeal is dismissed.

20. The Registrar of this Court is directed to send this judgment to the *High Court of Anuradhapura* together with the original case record for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal