

**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/0057/2024

High Court of Gampaha

Case No: HC/312/2004

1. Athige Ajith Dickson Silva

2. Athige Ajith Prasanna Kumara Silva

ACCUSED

Vs.

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

COMPLAINANT-RESPONDENT

NOW BETWEEN

Athige Ajith Dickson Silva

1st ACCUSED-APPELLANT

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Sandeepani Wijesooriya, for the Appellant.**
Wasantha Perera, DSG for the Respondent.

ARGUED ON : **25/11/2025**

DECIDED ON : **06/02/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) with 2nd Accused were indicted in the High Court of Gampaha under Section 296 of the Penal Code for committing the murder of Liyanadura Richard Patrick Fernando on or about 18.12. 2001.

The trial commenced before the High Court Judge of Gampaha. As the Appellant absconded the court and after leading evidence under Section 241(1) of the Code of Criminal Procedure Act No. 15 of 1979, fixed his case in absentia of the Appellant. As per the request of the 2nd Accused, the non-jury trial commenced against him. After the conclusion of the prosecution case, the learned High Court Judge had called for the defence and the 2nd Accused had given evidence from the witness box and closed his case. After considering the evidence presented by both parties, the learned High Court Judge had convicted the Appellant as charged and sentenced him to death on 03/08/2023.

The 2nd Accused was acquitted from this case.

Being aggrieved by the aforesaid conviction and 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. Also, at the time of argument the Appellant was connected via the Zoom platform from prison.

At the very outset, the learned Deputy Solicitor General brought to the notice of this case that this appeal is out of time about 11 years.

In this case, the judgement was pronounced on 10.05.2012. The Appellant was arrested and produced in court on 16.06.2023. Since the Appellant was not represented, a Counsel was assigned on 23.06.2023. An inquiry under Section 241(3) was held by the learned High Court Judge. On the very first day of the inquiry, the learned Assigned Counsel had made a lengthy submission to justify his absence to the Court. The Appellant also gave evidence under oath on 18.07.2023 and he was subjected to a lengthy cross examination by the State.

The learned High Court Judge, pronounced his order on 03.08.2023, and arrived at the conclusion that the Appellant had wilfully absconded the

Court, and therefore activated the death sentence already pronounced against the Appellant on 10.05.2012.

The Appellant now appealed against the sentence imposed on 10.05.2012, after 11 years. It is very clear from his Petition of Appeal, that he appealed against the sentence not against the order delivered on 03.08.2023 after the 241(3) of the Code of Criminal Procedure Act No.15 of 1979 by the learned High Court Judge.

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:

(1) 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 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. She has properly analyzed the evidence given by both sides in her judgment.

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

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree

JUDGE OF THE COURT OF APPEAL