IN THE COURT OF APPEAL OF THE DEMOCTRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for an appeal in terms of Section 15 (a) and 15 (b) of the Judicature Act No. 2 of 1978 read with Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

CA/HCC/110/2024

HC Ampara Case No:
HC/AMP/2134/2020

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

Kande Pun Shri Samantha
No. 23/01, Mihindupura,
Ampara

Accused

And now between

The Attorney General
Attorney General's Department
Colombo 12.

Complainant -Appellant

Vs.

Kande Pun Shri Samantha
No. 23/01, Mihindupura,
Ampara

Accused -Respondent

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

Counsel: Shanaka Wijesinghe, PC for the Complainant-Appellant
Lakshan Dias with Hasini Hettiarachchi for the Accused-Respondent
Anuja Premarathne, PC with Nishadi Thanthreege for the 2nd Accused-Appellant

Written Submission: 26.09.2025 (by the Complainant Appellant)
On 17.09.2025 (by the Accused Respondent)

Argued On : 02.09.2025

Judgment On: 30.09.2025

JUDGMENT

B. Sasi Mahendran, J.

The Complainant-Appellant (hereinafter referred to as the "Appellant") has filed this appeal challenging the order issued by the High Court of Ampara on 23rd January 2023.

The Accused-Appellant, Kande Punshri Samantha, was indicted for the alleged murder of Ahalagahawaththe Gedara Thusitha Pradeep Rajapakshe, an offence punishable under Section 296 of the Penal Code.

In support of its case, the prosecution presented evidence from witnesses PW01, PW03, PW05, PW11, PW14, PW15, PW16, PW18, and PW20, following which the prosecution concluded its case. Subsequently, the Accused-Appellant testified from the witness stand and thereafter closed the case for the defence.

The learned High Court Judge delivered the judgment on 23rd November 2023, acquitting the Accused-Appellant of both counts in the indictment. However, the Accused-Appellant was found guilty under Section 298 of the Penal Code, on the grounds that the death resulted from negligent driving. He was sentenced to 18 months rigorous imprisonment

and suspended for 7 years, and also imposed a fine of Rs. 10000/- and compensation of Rs. 100,000/-.

It is against the conviction and the sentence that this appeal was filed.

The learned Counsel for the Accused-Respondent contended that the Complainant-Appellant had failed to lodge the appeal within the statutory period stipulated under Section 15(b) of the Judicature Act, in conjunction with Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, as amended. It was noted that although the judgment of the learned High Court Judge was delivered on 23rd November 2023, the petition of appeal was not filed until 21st December 2023, exceeding the prescribed time limit by 14 days, thereby contravening the provisions of Section 331 of the Code of Criminal Procedure.

For easy reference, I reproduce the relevant Section.

> *"331. (1) An appeal under this Chapter may be lodged by presenting a petition of appeal or application for leave to appeal to the Registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced:*

Accordingly, the petition of appeal is evidently time-barred. Nonetheless, learned Counsel for the appellant contended that, in the event this Court determines the appeal was filed out of time, such a finding would not preclude him from requesting the Court to invoke its revisionary jurisdiction under section 364 of the Code of Criminal Procedure Act.

To substantiate his proposition, he invited the opinion expressed by **Justice Kulathilaka J. in Nissanka v. The State, 2001 (3) SLR 78** held that,

"The learned Senior State Counsel submitted that the accused-appellant had failed to exercise the right of appeal provided in terms of Section 14(b) of the Judicature Act read with Section 331 of the Code of Criminal Procedure Act No. 15 of 1979. The learned High Court Judge had pronounced his judgment on the 19 January 1998 and the petition of appeal was filed on 11 June 1998 after a lapse of 4 months and 22 days. Thus the petition of appeal is clearly out of time. The learned counsel who appeared for the accused -

appellant conceded that the appeal was out of time but pleaded with Court to treat it as a revision application.

Further held that;

The fact that the accused-appellant has not exercised his right of appeal within the specified time by itself does not preclude him from inviting the Court to exercise its revisionary jurisdiction in terms of Section 364 of the Code of Criminal Procedure Act No. 15 of 1979. Court.

Hence, we have decided to convert this appeal one of a revision. We also concur that this court possesses broad revisionary jurisdiction, specifically conferred to enable it to examine the legality or propriety of any sentence or order issued by the High Court or Magistrate's Court. This grants the court extensive powers of review in matters of revision."

The question that arises is whether this Court has the authority to treat the present appeal as a revision, particularly in light of our conclusion that the appeal lacks legal merit. We have already determined that the appeal is time-barred. Consequently, there is no valid appeal before us in terms of the law. In the absence of a legally recognized appeal, this Court is of the view that it lacks jurisdiction to convert the appeal into a revision.

It is pertinent to refer to the dicta of Lord Denning in **Macfoy v. United Africa Co. Ltd. ,1961 volume 3 Weekly Law Report, page 1405; at 1409, Lord Denning held that**;

"*The defendant here sought to say therefore that the delivery of the statement of claim in the long vacation was a nullity and not a mere irregularity. This is the same as saying that it was void and not merely voidable. The distinction between the two has been repeatedly drawn. If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."*

The above judgment was considered by His Lordship Samayawardhana J in, SC/MISL/4/2014, Decided on 07.02.2025 after considering the above authority he held that;

*"*This passage was referred to with approval by Justice G.P.S. de Silva (as he then was) in Rajakulendran v. Wijesundera (1982) 1 Sri Kantha LR 164 at 168-169, Justice Sharvananda (as he then was) in Sirisena v.Kobbekaduwa, Minister of Agriculture and Lands (1978) 80 NLR 1 at 182, and Justice Sripavan (as he then was) in Leelawathie v. Commissioner of National Housing [2004] 3 Sri LR 175 at 178 and in many more judgments.

Accordingly, we conclude that, in the absence of a valid appeal, this Court lacks the jurisdiction to convert the matter to a revision application.

It is observed that the application seeking to invoke the Court's revisionary jurisdiction was made on 31.08.2025, approximately fourteen months after the appeal was initially lodged on 21.12.2023. It is a well-established principle that a party seeking revision must do so without undue delay. In the present matter, the delay remains unexplained. Our Courts have consistently held that such inordinate and unjustified delay constitutes a bar to the exercise of revisionary powers under Section 364 of the Criminal Procedure Code.

This concept was considered by Justice Kulathilaka, J. in Rajapakse v. The State, 2001 (2) SLR 161 held that;

"The learned counsel for the accused-appellant also submitted that if this Court were to hold that the petition of appeal is out of time it would not preclude him from inviting this Court to exercise the revisionary powers in terms of Section 364 of the Code of Criminal Procedure Act. We agree that the powers of revision of the Court of Appeal are wide enough to embrace a case where an appeal lay was not taken. However, an application in revision should not be entertained save in exceptional circumstances.

Further held that;

In addition, if this Court were to act in revision, the party must come before the Court without unreasonable delay. In the instant case, there is a delay of 13 months. In this regard, vide Justice Ismail's judgment in *Camillus Ignatious vs. OIC of Uhana Police Stations* (Application in revision), where His Lordship was of the view that a mere delay

of 4 months in filing a revision application was fatal to the prosecution of the revision application before the Court of Appeal."

In these circumstances, we are not inclined to convert this appeal to revision. We proceed to dismiss this appeal.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL