

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

In the matter of an appeal in terms of 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.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA - HCC 487/2017

Vs.

High Court of Colombo
Case No: HC 4922/2009

1) Lishantha Kumara Siriwardhana alias
Mangala

Accused

And Now Between

1) Lishantha Kumara Siriwardhana alias
Mangala

Accused-Appellant

Vs.

The Honourable Attorney General,
Attorney General's Department,
Colombo 12

Complainant-Respondent

BEFORE : N. Bandula Karunarathna, J.
: R. Gurusinghe, J.

COUNSEL : I.B.S. Harshana

Assigned Counsel for the Accused-Appellant

Sudharshana De Silva DSG

for the Respondent

ARGUED ON : 10/06/2022

DECIDED ON : 14/09/2022

R. Gurusinghe, J.

The accused-appellant (the appellant) was indicted in the High Court of Colombo for possessing and trafficking 35.3 grams of heroin, the offences punishable under Section 54 A of the Poisons Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

The appellant made a dock statement after the prosecution case was closed. Thereafter, the appellant absconded court. The judgment was pronounced in the absence of the appellant on 29th April 2015, after the court was satisfied with the evidence adduced under Section 241 of the Code of Criminal Procedure Act. The appellant was sentenced to life imprisonment for both counts. The appellant was arrested and produced before the High Court on the

2nd of August 2017. The appellant filed the appeal on the 8th of November 2017 against the judgment that was delivered on the 29th of April 2015.

The Learned Counsel for the appellant relied on two grounds of appeal:

1. The Learned High Court Judge has failed to take into consideration the suspicious inference arising out of the productions marked by the prosecution.
2. The prosecution failed to establish the production chain in the instant case.

Counsel for the respondent took up a preliminary objection to the appeal on the basis that the appeal was not filed within the time period stipulated in the Code of Criminal Procedure Act.

In terms of section 331 (1) of the Code of Criminal Procedure Act No. 15 of 1979, an appeal should be filed within 14 days of the conviction.

“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 :

Provided that a person in prison may lodge an appeal by stating within the time aforesaid to the jailer of the prison in which he is for the time being confined his desire to appeal and the grounds therefor and it shall thereupon be the duty of such jailer to prepare a petition of appeal and lodge it with the High Court where the conviction, sentence or order sought to be appealed against was pronounced.”

In the case of Rajapakse vs The State [2001] 2 SRI LR 161, the Court of Appeal held that the period of time within which an appeal should be preferred must be calculated from the date on which the reasons are given.

In the instant case, the judgement was pronounced and the reasons were given on the 29th of April 2015. The appeal was filed on the 8th of November 2017, which was more than two and a half years after the pronouncement of the judgment. Therefore, the submission made by the Learned Deputy Solicitor General to the effect that the appeal is out of time should succeed.

In the case of Padmasiri v Attorney General 2012(1) SLR 24, it was held, “...if we 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”

The delay in filing the appeal for more than 2 years and 6 months and the contumacious conduct of the appellant would preclude the appellant from inviting this court to act in revision. No explanation was given for the appellant’s evasion of the court for more than two and a half years. (vide Rajapakshe vs State [2001] 2 Sri LR 161, Wijeratne vs Attorney General [2010] 2 SRI LR408).

The first ground of appeal is that PW1 had stated at the proceedings (on page 108) the name of the accused as Ishan Lakmal Siriwardene. It was submitted in the written submissions of the appellant that the above-stated name is totally different from the appellant’s name and therefore, there can be a confusion regarding the productions. However, these proceedings were subsequently corrected by the appellant without any objections. Therefore, this ground of appeal has no merit.

The second ground of appeal, in this case, is regarding the chain of productions. This argument is based on the premise that PW5 handed over the

productions to Mrs Navaratne, Assistant Government Analyst. PW 7, Assistant Government Analyst stated that Mrs Navaratne, Assistant Government Analyst, issued the receipt. PW 7 received the productions marked M1, M2, M3, M4 and M5, with the seals on the same day, that is on 14th June 2014. This evidence was not challenged in the cross-examination; therefore, the second ground of appeal lacks substance and merit.

The appeal is clearly out of time and the appellant had absconded court proceedings. Even considering carefully the facts of this case, we can see that there is no merit in the appeal.

Considering the above there is no reason to interfere with the findings of the learned High Court judge.

We affirm the conviction and the sentence dated 29.04.2015.

Therefore, the appeal is dismissed.

Judge of the Court of Appeal

N. Bandula Karunaratna, J.

I agree.

Judge of the Court of Appeal