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/0101/2024

High Court of Hambantota
Case No. HC/48/2014

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

COMPLAINANT

Vs.

Wijeweera Patabendige Ananda

ACCUSED

NOW AND BETWEEN

Wijeweera Patabendige Ananda

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE	:	**P. Kumararatnam, J.** **R. P. Hettiarachchi, J.**
COUNSEL	:	**U. R. De Silva, PC with Thilini Atapattu for the Appellant.** **Sudharshana De Silva, ASG for the Respondent.**
ARGUED ON	:	**23/09/2025**
DECIDED ON	:	**17/10/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the murder of Devage Danushka Gayan Keerthiratne and committing attempted murder on Mahakumarage Danushka Randeer on 02.04.2011, which are offences punishable under Sections 296 and 300 of the Penal Code respectively.

As the Accused had opted for a non-jury trial, the trial commenced before a judge and the prosecution had led 09 witnesses and marked productions P1 to P5, and closed the case. The learned High Court Judge being satisfied that

the evidence presented by the prosecution warrants a case to be answered, called for the defence and explained the rights of the Appellant.

The Appellant had made a dock statement and closed his case.

After considering the evidence presented by both sides, the learned High Court Judge had found the Appellant guilty under Section 297 of the Penal Code in respect of the 1st count and sentenced him to 13 years of rigorous imprisonment with a fine of Rs.10,000/ and with a default sentence of 12 months rigorous imprisonment.

He has been acquitted from the 2nd count.

Being aggrieved by the aforesaid conviction and sentence, the Appellant had preferred this appeal.

The learned President's Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. At the time of argument, the Appellant was connected via zoom from prison.

Background of the case albeit briefly is as follows:

In this case, the Appellant and the deceased were neighbours. As the deceased used to have liquor with others and make noise frequently, the Appellant had not liked this attitude of the deceased. On several occasions he had warned the deceased not to do this.

On the day of the incident too, the deceased had started drinking and singing which was not liked by the Appellant. When the Appellant scolded them to stop shouting, the deceased and the others moved to go another place. When the deceased and the others were about to get into their vehicle, the Appellant had first driven his tipper lorry out of his gate, and had come back very fast knocking down the deceased. As per the evidence given by the Scene of Crime Officer, the Appellant had only applied brakes after running over the deceased.

According to the JMO who held the post mortem examination, the deceased had suffered multiple injuries to his head, chest, and abdomen.

The learned President's Counsel submitted to this court that he is only contesting the sentence, as the given circumstances of the case does not warrant the imposition of a long custodial sentence.

The evidence led by the prosecution revealed that the Appellant was constantly disturbed by the activities of the deceased. As per the evidence presented by both parties, it was revealed that the Appellant who was under provocation, had driven his vehicle, and as a result of losing his self-control, had driven his vehicle carelessly. Therefore, the learned High Court Judge had very correctly held the Appellant responsible under Section 297 of the Penal Code.

The learned President's Counsel submitted to Court that although the learned High Court Judge had correctly held the Appellant responsible under Section 297 of the Penal Code, he had failed to consider the mitigating factors in favour of the Appellant when he passed the sentence.

Next, the learned President's Counsel contended that the conviction against the Appellant was entered into, only after 13 years of the incident. As such, it was submitted that he has been carrying the mental agony of the instant incident on his shoulders for nearly 13 years. At present, the Appellant is 51 years of age and unlikely to commit any offence if he re-enters the society.

It is trite law, that when a long delay has occurred in passing the judgment from the date of the offence, without any lapse on the part of the Appellant, then it should be considered in favour of the Appellant. The learned President's Counsel for the Appellant submits that the learned High Court Judge had failed to consider this when he passed the sentence on the Appellant.

In **Anura Herath v CIABOC** CA-HCC 0089-090/18 dated 05.07.2023 the court held:

> *"In this matter we observe that the incident had taken place in 2013 and the trial had concluded in 2018. Therefore, from the date of incident 10 years have lapsed. This Court also notes that if the remorsefulness expressed by the Accused –Appellants at this stage had been expressed at the time when the trial was taken up, the long process of a trial could have been avoided and it would have saved the time of the Judge, the Counsel and all parties. Nevertheless, having considered submissions of all parties, this Court is of the view that since both the Accused –Appellants are first time offenders and the time duration, since the date of offence and the conclusion of the trial that the sentences imposed on the Accused – Appellants should be reviewed."*

In **AG v Devapriya Walgamage and Others** [1990] 2 SLR 212 the court held:

> *"A term of imprisonment is not warranted because, (i) thirteen years have lapsed since the commission of the offence, (ii) the accused will lose his employment and related benefits, (iii) a substantial fine had been imposed, which would meet the ends of justice."*

Before recording evidence of PW1, on 29.01.2018 the Appellant, expressing remorse wanted to conclude the case early, but the trial dragged on and concluded only on 10.07.2023. Had the prosecution taken up a progressive approach after considering the evidence available, it could have saved the valuable time of the court as well as all the parties.

In **Illakotulena Gamaralalage Thilakerathna v The Attorney General SC Appeal No. 173/2017** the Supreme Court held:

> *"Consideration of aggravating or mitigatory circumstances generally, has relevance to the assessment of the seriousness of the offence. The appropriate effect on such consideration in sentence would depend on the circumstances of each case, in which the Court can take note of any factor*

it considers to aggravate or mitigate the imposed sentence. As such, the consideration of proportionality of the sentence to the gravity of the convicted offence, must be well reasoned.

"*As held in the case of* ***Alister Anthoney Pereira vs. State of Maharashta***[1]*, Sentencing is an important task in the matters of crime. One of the prime objectives of criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straight-jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: Twin objectives of sentencing policy is deterrence and correction. What sentence would meet the ends of Justice depends on the fact and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offense and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears mostly relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the Society for award of appropriate sentence."*

Considering the facts of the case and the submissions made by both counsels I conclude that this is not an appropriate case in which to order a long custodial sentence against the Appellant.

Therefore, I set aside the sentence of 13 years rigorous imprisonment imposed on the Appellant by the learned High Court Judge of Hambantota and substitute a sentence of five years rigorous imprisonment operative from the date of sentence which is 15.02.2024. The fine imposed by the High Court will remain unchanged. Considering all the circumstances of the case,

[1] [2012] AIR 3820 (SC)

I order a compensation of Rs.250,000/- payable to the deceased's family, with a default sentence of 01-year simple imprisonment.

Subject to the above variations, the appeal is hereby dismissed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL