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

**In the matter of an Appeal under and in terms of section 331 of the Code of Criminal Procedure Act No.15 of 1979 as amended.**

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

**Complainant**

Court of Appeal Case No.:
**CA HCC 0306-307/19**

Vs.

High Court of Kurunegala
Case No.:
**HC 03/2015**

1. Dhammika Prasanna Wijesinghe
2. Anura Jayathissa Wijesinghe

**Accused**

**AND NOW BETWEEN**

1. Dhammika Prasanna Wijesinghe,
   No.69, 5/B,420,
   Helamba Wewa,
   Thalawa.

2. Anura Jayathissa Wijesinghe,
   No.110/07,
   Suhada Mawatha,
   Maraluwewa,
   Kurunegala.

(Presently at the Bogambara
Prison, Dumbara, Pallekalle)

**Accused-Appellant**

**Vs.**

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

**Complainant-Respondent**

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

**Counsel**: Darshana Kuruppu with Tharushi Gamage and Anjana Adikaramge for the Accused-Appellant.

Suharshi Herath, D.S.G. for the Complainant-Respondent.

**Argued on**: 08.09.2025

**Judgment on**: 07.10.2025

# JUDGMENT

**AMAL RANARAJA, J.**

1. The Accused-Appellants (hereinafter referred to as the "Appellant") have been indicted in the *High Court of Kurunegala* in High Court case number HC 03/2015.

2. The charges in the indictment are as follows;

Charge 01

That on or about September 19, 2005, at *Kurunegala*, within the jurisdiction of this Court, the accused did agree to commit or abet or act together with a common purpose for, or, in committing or abetting an offence to wit, the murder of one *Rathnayake Mudiyanselage Anusha Hemanthi Rathnamali Rathnayake* and thereby committed the offence of conspiracy, in consequence of which conspiracy the said offence of murder was committed, and thereby committed an offence punishable under section 296 of the Penal Code read with section 113B and 102 of the Penal Code.

Charge 02

That on the same date, place, time and in the same course of transaction as in the first charge, the accused did commit the offence of murder by causing the death of one *Rathnayake Mudiyanselage Anusha Hemanthi Rathnamali Rathnayake* and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.

3. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charges and sentenced them to death.

4. Aggrieved by the conviction, the disputed judgment and the sentencing order, the appellants have preferred the instant appeal to this Court.

**Case of the prosecution**

5. PW01 has served as the *Manager*, while the deceased as a clerk, at the same fuel station located in *Gokarella*, on the *Kurunegala-Dambulla* road. On September 19, 2005, PW01 has accompanied the deceased to a bank in the city of *Kurunegala*, where the latter was to deposit the "collection" of the fuel station up until such time.

6. Prior to completing the deposit, the deceased has informed PW01 that she planned to visit a relative nearby and would return to the fuel station afterward. However, she has not returned as promised.

7. The management of the fuel station has later informed the deceased's family about her absence. The father of the deceased, along with PW20 a sibling have attempted to reach the deceased by phone. Although, the deceased had requested her father to pick her up from the bank, he has been unable to locate her there.

8. On September 20, 2005, following the information received from a third party, the lifeless body of the deceased has been discovered from the area, the fuel station where she has been employed was situated.

**Case of the Appellant**

9. The appellants have consistently maintained their innocence, firmly denying any involvement in the incident that led to the death of the deceased.

**Ground of Appeal**

10. When the matter was taken up for argument, the learned Counsel for the appellant urged the following ground of appeal;

    i) That the appellants were denied the right to a fair trial guaranteed to them under Article 13(3) of the Constitution.

        A. The learned Trial Judge has failed to call the defence and to explain the rights of the accused-appellants after the conclusion of the prosecution's case.

        B. The Counsel assigned to the 1st accused-appellant has not been afforded sufficient time for the preparation of the defence case.

11. Section 200(1) of the Code of Criminal Procedure Act No.15 of 1979 provides as follows;

> "*(1) When the case for the prosecution is closed, if the Judge wholly discredits the evidence on the part of the prosecution or is of opinion that such evidence fails to establish the commission of the offence charged against the accused in the indictment or of any offence of which he might be convicted on such indictment, he shall record verdict of acquittal; if, however the Judge considers that there are grounds for proceeding with the trial he shall call upon the accused for his defence."*

12. On July 25, 2019, the prosecution's case has been closed. Subsequently, the case has been scheduled for further trial to allow the appellants to present their defence.

*"පැමිණිල්ලේ නඩුව අවසන්.*

*විත්තිය විභාග 2019.07.29"*

13. The learned High Court Judge has therefore not formally called upon the appellants to present their defence.

14. This procedural discrepancy, it is contended, has deprived the appellants of their right to a fair trial.

15. The learned Counsel for the appellant's to support his contention has directed the Court's attention to the following judgments.

In *Mohamed Ali Sameed Smail vs. The Attorney General* CA/160/2015 decided on October 27, 2017, Thurairaja, J. has stated;

> "*We should be mindful when a person is charged with an offence, he is on one side and the all mighty the state is on the other side. That is why in many countries in world especially the countries which follow Common Law several safe guards are provided, such as legal aid and judicial review to the accused to uphold the Rule of Law which is very vital in protecting the rights of any citizen of a nation. When one considers law with criminal sanctions it can be observed that the law is with absolute certainty and more favourable towards the accused. Further, the Human Resource Developments of public servants including Police, Prosecution, Court staffs and the Judiciary is provided for not only serving the victim but also for the main objective of protecting the rights of the accused…Since the 1st ground of appeal is held in favour of the accused the 2nd ground of appeal may not be decided, but for academic purposes I hold that non-awarding of defence as per section 200(1) of the CCPA for the reason stated above also results vacation of trial. On these circumstances this Court will order a retrial."*

Further in *D.K.Lionel vs. The Republic of Sri Lanka* 79 NLR 553, Tennekoon, C.J. has stated,

> "*the duty of the Judge to inform the "accused" that he is entitled to give evidence must be addressed to the accused himself and the decision whether or not the accused is to give evidence must be that of the accused himself."*

16. On July 29, 2019, when the case was resumed for further trial, the Counsel representing the first appellant in the High Court has withdrawn from the proceedings. Consequently, a new Counsel has been assigned to the first appellant and the trial continued on the same day.

17. However, the assigned Counsel has not been given adequate time to prepare for the case, by the trial being adjourned to another day. As a result, the assigned Counsel has been required to conduct the case of the first appellant without proper preparation. This situation, it is argued by the learned Counsel for the appellants has compromised the fairness of the trial of his client.

In *Murugaiya Sharmila Devi vs. Hon. Attorney General* CA 262/09, decided on October 03, 2012, Rohini Marasinghe, J. has stated,

> "*The Counsel for the Appellant contends that the appellant had been denied a fair trial. In this case as borne out by the case record, the assigned counsel of the appellant had been absent at the time the case was taken up for hearing. The Trial Judge had very rightly assigned another counsel. Having assigned a counsel, the Trial Judge had wrongly proceeded to hear the case on the same day at the same time."*

18. The learned Deputy Solicitor General appearing on behalf of the respondents has acknowledged that the procedural discrepancies mentioned earlier has deprived the appellants of their right to a fair trial in the High Court.

19. The offences with which the appellants have been charged are of a serious and grave nature. Acquitting the appellants solely on the basis of procedural

discrepancies from the trial Court would not be justifiable or in accordance with the principles of justice. Therefore, this court holds the view that this case warrants a retrial.

20. In light of the seriousness of the charges, it is imperative that justice is not only done but also seen to be done. While procedural fairness is essential in any judicial process, the gravity of the offences involved necessitates a thorough examination of the evidence presented. A re-trial in this context, presents an opportunity to reassess the circumstances of the case and to make a fair determination based on the merits of the evidence.

    This Court also believes that a retrial will provide the appellants with a chance to defend themselves properly against the charges.

21. In those circumstances, I am inclined to set aside the conviction and the disputed judgment, together with the sentencing order and order a retrial.

    *Retrial ordered.*
    I make no order regarding costs.

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

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree.

**Judge of the Court of Appeal**