

CRIMINAL APPEAL ACT

Act 9 of 1954 – 1 January 1955

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CRIMINAL APPEAL ACT

1. Short title

This Act may be cited as the Criminal Appeal Act.

2. Interpretation

(1) In this Act—

“appellant” —

- (a) means a person who has been convicted by or before the Supreme Court and desires to appeal under this Act; and
- (b) includes, where appropriate, the Director of Public Prosecutions where he desires to appeal under section 5;

“Court” means the Court of Criminal Appeal established under section 3 (1);

“law officer” includes any Counsel deputed by the Director of Public Prosecutions to appear for the State;

“Registrar” means the Master or any other officer of the Supreme Court acting on behalf of the Master with the authority of the Chief Justice;

“sentence” includes any order of the Supreme Court made on conviction with reference to a person convicted;

“Supreme Court” means the Supreme Court in the exercise of its original jurisdiction in criminal matters.

(2) The power of the Court to pass any sentence includes a power to make any order that the Supreme Court could make on conviction with reference to the person convicted.

[S. 2 amended by Act 48 of 1991; s. 3 of Act 20 of 2013 w.e.f. 3 August 2013.]

3. Constitution of Court of Criminal Appeal

(1) There shall be a Court of Criminal Appeal, and the Chief Justice and the Puisne Judges shall be Judges of that Court.

(2) For the purpose of hearing and determining appeals and applications for review under this Act, the Court shall be duly constituted by 3 Judges.

(3) The Court shall sit in Port Louis in the building for the time being assigned as a Court House for the sittings of the Supreme Court, except in cases where the Chief Justice gives special directions that it shall sit at some other place.

(4) The Chief Justice, if present, and in his absence the Senior Puisne Judge of the Supreme Court for the time being, shall be president of the Court.

(5) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.

(6) The Court shall be a superior Court of record, and shall, for the purposes of and subject to this Act, have full power to determine any question necessary to be determined for the purpose of doing justice in the case before the Court.

(7) Any direction which may be given by the Chief Justice under this section may, in the event of any vacancy in that office or in the event of the incapacity of the Chief Justice to act for any reason, be given by the Senior Judge of the Court.

(8) Rules of Court shall provide for securing sittings of the Court, if necessary, during vacation.

[S. 3 amended by Act 29 of 1992; s. 4 of Act 20 of 2013 w.e.f. 3 August 2013.]

4. —

5. Right of appeal

(1) A person convicted before the Supreme Court may appeal under this Act against his conviction or sentence.

(2) The Director of Public Prosecutions may appeal to the Court against a final decision of the Supreme Court or a verdict of the jury where—

- (a) a charge has been dismissed or a person has been acquitted;
- (b) a person has been convicted of a lesser offence than the one with which he was charged; or
- (c) he is of opinion that the sentence passed is wrong in law or unduly lenient.

(3) No appeal shall lie against an acquittal following a verdict of not guilty except on the ground that—

- (a) the trial Judge gave a substantial misdirection in the course of his summing-up to the jury;
- (b) the verdict is unreasonable or cannot be supported having regard to the evidence; or
- (c) a serious irregularity occurred in the course of or in relation to the trial, or the acquittal is otherwise tainted.

[S. 5 amended by Act 15 of 1994; Act 15 of 2000; s. 5 of Act 20 of 2013 w.e.f. 3 August 2013.]

6. Determination of appeals in ordinary cases

(1) (a) The Court, on any appeal against conviction, shall allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal.

(b) The Court may, notwithstanding that it thinks that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(c) The Court may, where a serious irregularity has occurred, declare the trial to be a nullity and order a fresh hearing.

(2) Subject to the express provisions of this Act, the Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment of acquittal to be entered.

(2A) On appeal against—

- (a) the dismissal of a charge, the Court may—
 - (i) affirm or reverse the dismissal of the Supreme Court and substitute therefor the appropriate determination or order a new trial; or
 - (ii) declare the trial to be a nullity and order a fresh hearing where the Court is of opinion that a serious irregularity has occurred;
- (b) a conviction for a lesser offence than the one with which a person was charged, the Court may—
 - (i) affirm or reverse, amend or alter the conviction, order or sentence and substitute therefor the appropriate determination or order a new trial, and may, if the order made or sentence passed is one which the Supreme Court had no power to make or pass, as the case may be, amend the judgment by substituting for the order or sentence such order or sentence as the Supreme Court had power to make or pass, as the case may be; or
 - (ii) declare the trial to be a nullity and order a fresh hearing where the Court is of opinion that a serious irregularity has occurred.

(3) On appeal against sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence and substitute therefor such other sentence as it may determine.

[S. 6 amended by Act 15 of 1994; Act 15 of 2000; s. 6 of Act 20 of 2013 w.e.f. 3 August 2013.]

7. Powers of Court in special cases

(1) Where it appears to the Court that an appellant, though not properly convicted on some count or part of the information, has been properly convicted on some other count or part of the information, the Court may affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the information on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury, or the Judge, as the case may be, who tried him could on the information have found him guilty of some other offence, and on the finding of the jury or of the Judge as the case may be, it appears to the Court that the jury or the Judge, as the case may be, must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury or the Judge, as the case may be, a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury has found a special verdict, and the Court considers that a wrong conclusion has been arrived at by the Judge before whom the appellant has been convicted on the effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as it appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) Where, on any appeal, it appears to the Court that the appellant should have been acquitted on account of his insanity at the time he did the act or made the omission charged against him, the Court may quash the sentence passed at the trial and order the appellant to be kept in strict custody, in such place and in such manner as the Court may determine fit until the President's pleasure, and the President may then give such order for the safe custody of such person during his pleasure in such place and in such manner as he may determine.

[S. 7 amended by Act 48 of 1991.]

8. Revesting and restitution of property

(1) (a) The operation of any writ or order for the restitution of any property to any person made on a conviction before the Supreme Court under section 183 or 184 of the Criminal Procedure Act shall (unless the Court

before which the conviction takes place directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended—

- (i) in any case, until the expiration of 21 days after the date of the conviction; and
- (ii) in cases where notice of appeal is given within 21 days after the date of conviction, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(b) Provision may be made by Rules of Court for securing the safe custody of any property, pending the suspension of the operation of any such order.

(2) The Court may by order annul or vary any order made on a trial before the Supreme Court for the restitution of any property to any person, although the conviction is not quashed, and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

[S. 8 amended of Act 29 of 1992; Act 15 of 1994.]

9. Time for appealing

(1) Where a person convicted before the Supreme Court or the Director of Public Prosecutions desires to appeal under this Act to the Court, he shall give notice of appeal in accordance with Rules of Court, within 21 days of the date of conviction or dismissal of the charge, as the case may be.

(2) (a) Every appellant shall, not less than 45 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by Rules of Court, skeleton arguments and submissions on the grounds of appeal.

(b) Every other party to an appeal shall, not less than 30 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by Rules of Court, skeleton arguments and submissions on the grounds of appeal.

(c) Where any appellant or party to an appeal does not comply with paragraph (a) or (b), the Court may make—

- (i) such order as to costs as it thinks fit; or
- (ii) any wasted costs order.

(3) Any case or argument so presented shall be considered by the Court.

(4) The time within which notice of appeal may be given may be extended by the Court on application made in accordance with Rules of Court.

[S. 9 amended by Act 29 of 1990; Act 29 of 1992; Act 15 of 1994; Act 31 of 1995; Act 15 of 2000; s. 7 of Act 20 of 2013 w.e.f. 3 August 2013.]

10. Judge's notes and report

The presiding Judge at a trial at which, or in the case of an offence cognisable by a Judge sitting without a jury, the Judge or senior Judge before whom, a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence, furnish to the Registrar, in accordance with Rules of Court, his notes of the trial and shall also furnish to the Registrar in accordance with Rules of Court a report giving his opinion upon the case or upon any point arising in the case.

[S. 10 amended by Act 15 of 1994.]

11. Supplementary powers of Court

For the purposes of this Act, the Court may, if it thinks it necessary or expedient in the interest of justice—

- (a) order the production of any document, exhibit, or other thing connected with the proceedings (whether produced at the trial or not) where the production appears necessary for the determination of the case;
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the manner provided by Rules of Court before any Judge of the Court or before any officer of that Court or before any Magistrate or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court;
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application;
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in its opinion conveniently be conducted before the Court, order the reference of the question in the manner provided by rules of Court for inquiry and report to a special Commissioner appointed by them, and act upon the report of any such Commissioner so far as it thinks fit to adopt it; and
- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to it that such special knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the Court any other powers not inconsistent with this Act which may for the time being be exercised by the Supreme Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the Court.

12. – 13. –

14. Duty of Director of Public Prosecutions

(1) The Director of Public Prosecutions shall appear or cause some other law officer to appear for the State on every appeal to the Court, except so far as a private prosecutor in the case of a private prosecution undertakes the defence of the appeal.

(2) Provision shall be made by Rules of Court for the transmission to the Director of Public Prosecutions of all such documents, exhibits and other things connected with the proceedings as may be required by the law officer undertaking the defence of the appeal for the purpose of his duties under this section.

[S. 14 amended by Act 48 of 1991.]

15. Costs of appeal

(1) On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Act, no costs shall be allowed on either side.

(2) The expenses of any witness attending on the order of the Court or examined in any proceedings incidental to any examination of witnesses conducted by any person appointed by the Court for the purpose, or any reference of a question to a special Commissioner appointed by the Court, or of any person appointed as assessor to the Court shall be defrayed in accordance with the Witnesses' Attendance Allowances Act and the Legal Costs and Fees Rules 2000.

16. Bail and custody of appellant

(1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in like manner as prisoners awaiting trial.

(2) The Court may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal, in accordance with the Bail Act.

(3) The time during which an appellant, pending the determination of his appeal, is admitted to bail, and subject to any directions which the Court may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated under this section, shall not count as part of any term of imprisonment or penal servitude under his sentence, and, in the case of an appeal under this Act, any imprisonment or penal servitude under the sentence of the appellant, whether it is the sentence passed by the Court of trial or the sentence passed by the Court shall, subject to any directions which may be given by the Court, be deemed to be resumed, or to begin to run, as the case requires, if the appellant is in custody, from the day on which the appeal is determined, and, if he is not in custody, from the day on which he is received into prison under the sentence.

(4) Where a case is stated under section 168B of the Criminal Procedure Act, this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

(5) The President may make regulations to provide for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Court or any Judge of the Court may order him to be taken for the purpose of any proceedings of that Court, and for the manner in which he is to be kept in custody while absent from prison for the purpose and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

[S. 16 amended by Act 48 of 1991; s. 13 (1) of Act 34 of 2011 w.e.f. 1 January 2012.]

17. Duties of Registrar

(1) The Registrar shall take all necessary steps for obtaining a hearing under this Act of any appeal or application, notice of which is given to him under this Act, and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the Court before which the appellant or applicant was tried, which appear necessary for the proper determination of the appeal or application.

(2) Where it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Court for summary determination, and, where the case is so referred, the Court may, if it considers that the appeal is frivolous or vexatious, and can be determined without adjournment for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the State.

(3) Any document, exhibit, or other things connected with the proceedings on the trial of any person before the Supreme Court, who, if convicted, is entitled or may be authorised to appeal under this Act, shall be kept in the custody of the Supreme Court in accordance with Rules of Court made for the purpose, for such time as may be provided by the Rules, and subject to such power as may be given by the Rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal under this Act to any person who demands them and to the Commissioner of Prisons and such other persons as he may determine, and the Commissioner of Prisons shall cause those forms and instructions to be placed at the disposal of prisoners who desire to appeal under this Act, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Court or a Judge any case in which it appears to him that, although no application has been made for the purpose, an attorney and barrister, or barrister only, ought to be assigned to an appellant under the powers given to the Court by this Act.

[S. 17 amended by Act 48 of 1991; Act 15 of 1994.]

18. Shorthand notes of trial

(1) (a) Shorthand notes may, if the Judge so orders, be taken of the proceedings at the trial of any person before the Supreme Court who, if convicted, is entitled or may be authorised to appeal under this Act, and on any appeal, a transcript of the notes or any part of it shall be made if the Registrar so directs, and furnished to the Registrar for the use of the Court or any Judge.

(b) Additionally, a transcript shall be furnished to any interested party upon the payment of such charges as may be fixed under the Legal Fees and Costs Rules 2000.

(2) The President may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him for his use.

(3) The cost of taking any such shorthand notes, and of any transcript where a transcript is directed to be made by the Registrar or by the President, shall be defrayed, in accordance with scales of payment fixed under the Legal Costs and Fees Rules 2000, out of money provided by the Assembly, and Rules of Court may make such provision as is necessary for securing the accuracy of the notes to be taken and for the verification of the transcript.

[S. 18 amended by Act 48 of 1991; Act 29 of 1992; Act 15 of 1994.]

19. Powers exercisable by a Judge

(1) The powers of the Court to—

- (a) extend the time within which notice of appeal may be given;
- (b) grant legal aid to an appellant;
- (c) admit an appellant to bail,

may be exercised by the Chief Justice or by a Judge designated by him.

(2) Where the Judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determining of appeals under this Act.

[S. 19 of amended by Act 15 of 1994.]

19A. Application to Court for review and retrial

(1) (a) Where a person has been acquitted following a trial before the Supreme Court or appellate proceedings before the Court, the Director of Public Prosecutions may, subject to paragraph (b), apply to the Court for a review of the proceedings relating to the acquittal.

(b) Paragraph (a) shall not apply to a person who has been acquitted following a retrial ordered pursuant to subsection (5).

(2) Where a person has been convicted following a trial before the Supreme Court or appellate proceedings before the Court, the convicted person may apply to the Court for a review of the proceedings relating to the conviction.

(3) (a) Subject to paragraph (b), an application under subsection (1) or (2) shall be made in accordance with Rules of Court.

(b) Sections 10, 11, 14, 15, 16, 17 and 18 shall apply *mutatis mutandis* to an application for review under this section.

(4) (a) Notwithstanding subsection (2), where a person, who has been convicted following a trial before the Supreme Court, makes an application to the Human Rights Division under section 4A of the Protection of Human Rights Act, the Human Rights Division may, subject to paragraph (b), refer the conviction to the Court for a review of the proceedings relating to the conviction.

(b) The Human Rights Division shall not refer a conviction to the Court unless it is satisfied, having regard to any fresh and compelling evidence, that there is a real possibility that the conviction will not be upheld if the reference is made.

(c) Any reference by the Human Rights Division to the Court shall be made and determined in accordance with Rules of Court.

(5) Where the Court is satisfied that—

- (a) there is fresh evidence and compelling evidence in relation to the offence or a lesser offence; and
- (b) it is likely that the retrial will be fair, having regard to the circumstances, including the length of time since the offence is alleged to have been committed.

the Court—

- (i) shall, where an application has been made under subsection (1) or (2), grant the application;
- (ii) shall quash the conviction or acquittal, as the case may be;
- (iii) shall order that the person be retried for the offence with which he was originally charged or a lesser offence; and
- (iv) may make such other order as it considers appropriate.

(6) In this section—

“compelling evidence” means evidence which is—

- (a) reliable;
- (b) substantial; and
- (c) highly probative in the context of the issues in dispute at the trial;