

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

In the matter of an application
for Revision in terms of Article
138 of the Constitution of the
Democratic Socialist Republic
of Sri Lanka.

**CA (PHC) APN: 23/2015
High Court Rathnapura
Case No. HCR 39/2014**

Complainant

Vs.

1. Balangoda Ranaweera
Berti Chandrasena.
2. Weerasuriya Arachchilage
Anoja Indika Priyangani
Weerasuriya.

Accused

And Now

1. Balangoda Ranaweera
Berti Chandrasena,
"Thurusevana"
Iriyandaluwa,
Pelmadulla.

Presently at Kuruwita Prison
Kuruwita.

1st Accused – Petitioner

Vs.

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

Respondent

**Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J**

**Counsel : Anil Silva P.C with Nandana Perera for
Accused – Petitioner.
: V. Hettige for the AG.**

Argued on : 30.09.2015

Decided on : 22.01.2016

CASE-NO- CA (PHC)-APN- 23/2015- JUDGMENT-22/01/2016

P.R.Walgama, J

The instant Revision application lies against the order of the Learned High Court Judge dated 10.02.2015, wherein the custodial sentence was imposed on the 1st Accused – Petitioner.

The 1st Accused Petitioner, along with another (2nd Accused) was arraigned on the following counts in the High Court of Ratnapura.

1. On a date between 01.01.2012 and 31.01.2012 at Iriyandaluwa within the jurisdiction of this Court the 1st Accused having the custody or care of

Balangoda Ranaweera Dilshani Niroshima Chandrasena a child under eighteen years of age acted in a manner likely to cause the said child suffering or injury to health by wilfully assaulting, ill-treating, and neglecting the said child to wit assaulting and not providing food the said child did commit the offence of cruelty to children punishable under Section 308 A of the Penal Code as amended by Penal Code (Amendment) Act No. 22 of 1995.

The 2nd Accused too was charged with the same count, and both accused on a subsequent occasion pleaded guilty to the respective charges, and the Learned High Court Judge convicted the said accused and imposed the following sentence.

The 1st accused was sentenced to two years rigorous imprisonment, and a fine of Rs. 1000/ carrying a default sentence of 3 months.

The 2nd accused was sentenced to two years imprisonment suspended for 05 years. In addition State Cost Rs. 5000/ carrying a default sentence of 3 months and further a sum of Rs 100,000/ to be paid to the victim, carrying a default sentence of 1 year.

The above Section 308 A extracts thus;

(2) "Whoever commits the offence of cruelty to children shall on conviction be punished with imprisonment of either description for a term not less than two years and not extending ten years and may also be punished with fine and be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person."

Therefore it is abundantly clear that the Learned High Court Judge has used his discretion and imposed the minimum jail term in respect of the 1st Accused - Appellant.

Nevertheless it is the contention of the Counsel for the Appellant that for the reasons averred in the petition the said custodial sentence be commuted to a suspended sentence.

In pleading in mitigation it is said that the Appellant is the first offender, and in considering the afore said it is said that the sentence imposed on him is excessive, and to buttress the above position the Appellant has adverted this court to many decided cases, but it is worthy to note the court should always be cautious when releasing a wrongdoer to the society.

In the instant matter it is common ground that the Accused - Appellant has left his wife and was living

with the 2nd Accused, the victim and her brother. It is the position of the Appellant that his son is under a mental trauma due to his absence from home. In proof of the above condition the Appellant has produced two documents to this court, which should not be taken in to consideration at this stage.

It is intensely relevant to note that Accused-Appellant has failed to exercise the right of appeal but decided to come by way of Revision.

The Counsel for Respondent has submitted that the Petitioner to invoke the Revisionary jurisdiction of this Court he should establish the existence of exceptional circumstances, which warrants the exercise of the same. Therefore it is contended by the counsel for the Respondent that the Petitioner has not given a valid reason for the failure to exercise his statutory right of appeal. In the above setting it is contended for the Respondent the instant revision application should necessarily fail. Further it is asserted by the counsel for the Respondent that there had not been a substantial miscarriage of justice caused to the Accused - Appellant.

To cap it all, the Appellant has not assailed the said, sentence, but only has stated about his sons condition as a reason for mitigation.

In arriving at determination this Court is mindful of the fact that Appellant was a father who was living with 2nd Accused, the mistress, and while the victim was under his care has ill-treated the victim.

Therefore considering the factual and legal matrix stated herein before this court is of the view that there is no reason to vary the sentence which was imposed by the Learned High Court Judge, thus the Petitioner's application is dismissed without costs.

Accordingly the petition is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL