

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

In the matter of an application for
revision under Article 138 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA (PHC) APN 141/2015
Colombo High Court
Case No. 3520/2006

The Democratic Socialist Republic of
Sri Lanka

Complainant

Vs.

01. Thammalage Bandula Fernando
02. Thombu Marakkalage Chandana
Sujith Kumara Fernando

Accused

And Now

01. Thammalage Bandula Fernando
02. Thombu Marakkalage Chandana
Sujith Kumara Fernando

Accused- Petitioners

Vs.

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

Complainant-Respondent

Before : **H.C.J. Madawala , J**
&
L.T.B. Dehideniya, J

Counsel : D. Obesekara with K. Palitha Perera for the Petitioner
V. Hettige DSG for the Respondent

Argued On : 06 /10 /2016

Written Submissions on: 07 /12 /2016

Decided On : 09 /02 /2017

H. C. J. Madawala , J

This revision application is filed by the Accused-Petitioners to revise the sentencing order of the learned High Court Judge dated 12/2/2015 and to impose a reasonable sentence operative from the date and the order of sentencing dated 12/02/2015.

The Petitioners case was that he was indicted by the High Court of Colombo in case No 3520/2006 together with another Accused under section 32 read with 296 of the Penal Code for committing the murder of Wijesekara Abeyratnage Siril Francis.

Secondly for committing the offence of voluntarily causing hurt to Wijesekara Abeysekarage Sirimal Francis under Sec 32 read with 314 of the Penal Code within the jurisdiction of this court.

The Petitioner pleaded not guilty and the prosecution led the evidence of several witnesses and closed the case on 18/12/2014. Thereafter the judgment was pronounced dated on 10/02/2015 convicting the Petitioners and sentencing them 10 year periods of rigorous imprisonment each for the charged of section 297 of the Penal Code with a fine of Rs5000/- in default 06 months rigorous imprisonment and compensation for Rs.80,000/- in default 01 year rigorous imprisonment. Further the Accused-Petitioners were convicted and sentenced for the 2nd charge section 314 of the Penal Code for 06 months rigorous imprisonment and fine of Rs.2500/- in default 03 months rigorous imprisonment and Rs.20,000/- compensation payable to පැ/ස 1 in default 6 months rigorous imprisonment.

Being aggrieved by the sentence given by the Learned High Court Judge the Petitioner has preferred this Revision application. When this matter came up for hearing on 06/10/2016, oral submissions by both parties were

made and argument were concluded. Written submissions by both parties has been tendered to court and thereafter judgment was reserved on 09/02/2017.

We have considered the oral and written submissions of both counsels. The Petitioners do not challenge their conviction made by the Learned High Court Judge. However they have preferred this revision application against the sentence order of the Learned High Court Judge.

It has been contended that the Learned High Court Judge's order is illegal irregular capricious or arbitrary. The object of revision is to correct procedural error. That objections raised by the Learned State Counsel was that there are no exceptional grounds to maintain this application as a revision application in law. The Learned High Court Judge was reduced 296 charge to 297 of Penal Code as two limbs; contrary to law, under section 294. That is sudden fight and also grave provocation which indicate that the Learned High Court Judge had thought it fit to treat facts and circumstances under which the offences were committed.

It was submitted that the Petitioners had not acted in cruel or inhuman and degrading manner to attribute the maximum sentence stipulated by law under said circumstances. Under section 297 of the Penal Code the Accused has been convicted alternative sentence has been made. The Medical evidence in page 361 and 362 of the brief that has been injuries 1,2,3 and 4 which were aberrations. The other three wounds were not fatal wounds, and they could be medically treated.

In the case of **Inspector of Police, Awissawella Vs. Fernando 30 NLR 483** it was observed by Akbar J, that in such cases an application in revision should not be entertained save in exceptional circumstances. Exceptional circumstances would be, (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of this court has been made by the petitioner, (c) where the applicant was unaware of the order made by the court of trial.

The Respondent took up the preliminary objections that there is a delay in filing the revision application made by the Petitioners and the Petitioners were there by guilty of laches. The order sought to be challenged dated

10/2/2015 and the revision application dated 24/11/2015. This revision application has been filed with the delay of 9 months.

In Camillus Ignatious Vs. Officer-In-Charge of Uhana Police Station CA 907/89 MC Ampara 2587 held, that a mere delay of 4 months in filing a revision application was fatal to the prosecution of the revision application.

In the case of **S.M.A.A.Priyantha Jayakodi Vs. Officer-In-Charge of Police Station Marawila in CA(PHC) 119/2004** it was held that a delay of 7 months is fatal to the exercise revisionary jurisdiction. A revision application after a delay of 8 months was also considered fatal and was dismiss in limine.

In the case of **Don. Chandra Maximus Illangakoon Vs. OIC of Police Station of Anuradhapura and the Hon. Attorney General in case No. CA(PHC) 28/2009, HC Anuradhapura case No. HC.Rev. 26/08** decided on 21.11.2014.

In the case of **Leslie Silva Vs. Perera 2005 2 SLR 184 Somawansa J**, at **page 190** of the judgment states thus,

“In this respect I would say it is settled law and our courts time and again have held that the revisionary jurisdiction of this court is wide enough to be exercised to avert any miscarriage of justice irrespective of availability of alternative remedy or inordinate delay”

Where there has been a delay in discretionary relief it is an essential that reasons for the delay should be set out in the petition. The Petitioner has not set out any reasons for the delay in his petition. We find that the Accused who has been sentenced to section 314 charge of the Penal Code has been convicted and sentenced 06 months rigorous imprisonment and fine Rs.2500/- in default 3 months rigorous imprisonment and Rs.20,000/- compensation payable to පැ/ස1 in default 06 months rigorous imprisonment. We find that this part of the sentence is excessive and illegal and there has been a miscarriage of justice. As such I hold that this sentenced is excessive and is illegal. According to section 314 of the Penal Code on conviction the Accused is confined to 06 months rigorous

imprisonment and fine Rs.1000/- in default 01 month simple imprisonment.

Accordingly, I set aside and vary that part of the sentence made by the Learned High Court Judge regarding 314 of the penal Code and order the sentence to read as 06 months rigorous imprisonment and fine of Rs.1000/- in default 01 month rigorous imprisonment and Rs.5000/- compensation in default 01 month rigorous imprisonment. As regards the 1st charge of Section 297 of the Penal Code, I do not think that the sentence is excessive as such I affirm the sentence in respect of same.

Accordingly we allow this Revision Application subject to the variation as aforesaid.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal