

**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 read together with Article 154P of the
Constitution of the Democratic Socialist Republic of
Sri Lanka

Court of Appeal case no. CA/PHC/52/13

H.C. Kegalla case no. 4570/Rev.

M.C. Kegalla case no. 7688/09

Nandanakumarage Sunil Karunarathne,

Kadigamuwa Pansala Asala,

Petitioner Appellant

Vs.

1. Padmakumara Wickramasinghe,
No.13, Hospital Road, Rambukkana
2. Ganegoda Ealalage Sunil Bandara,
Walkotuwa Watta, Rambukkana.
3. Guruge Sampath Caminda Udaya Kumara,
Paluwatta, Hewadiwela.
4. Poraka Muduyanselage Sumith Narendra
Nissanka,
Hettiyawatta, Rambukkana.

1st to 4th Accused Respondent Respondents

5. OIC, Police Station, Rambukkana.

6. Attorney General,

Attorney General's Office, Colombo 12

Complainant Respondent Respondents

Before : H.C.J.Madawala J.
 : L.T.B. Dehideniya J.

Counsel : Sunil Abeyrathne for the petitioner Appellant.
 : W.D.Weeraratne for the 1st to 4th Accused Respondent
 Respondents.

Argued on : 09.02.2017

Written submissions filed on 01st, 08th and 10th March 2017

Decided on : 29.05.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Kegalla.

On a complaint made by the informant Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant), the Officer in Charge of the Police Station, Rambukkana has filed an action in the Magistrate Court of Kegalla against 1st to 4th Accused Respondents Respondents (hereinafter sometimes called and referred to as the 1st to 4th Respondents) for committing offences punishable under sections 434 and 317 of the Penal Code read with section 32. After trial, the learned Magistrate acquitted the accused. Being aggrieved by the said order the Appellant moved in revision in the Provincial High Court of Sabaragamuwa Province holden in Kegalle after 14 ½ months. The learned High Court Judge refused notice and dismissed the revision application. Being dissatisfied with the order of the learned High Court Judge, this appeal was presented.

The 1st to 4th Respondents as well as the AG were of the view that the revision application was filed after a considerable delay and the revision being a discretionary remedy, this long delay is fatal. The Appellant's contention is that he made an application through the legal aid to the Hon.

Attorney General to appeal against the order but the AG replied only after 10 months indicating that the AG is not appealing against and informing the Appellant to consider a revision. This was communicated to him by the legal aid after two months and within 2 ½ months from the said communication the revision application was filed. The Appellant's contention is that there is no delay in his part.

The revision application was filed after 14 ½ months from the order of the learned Magistrate is a fact. We have to consider whether the delay is reasonable.

Under section 320 of the Criminal Procedure Code the Hon, Attorney General has to file the appeal within 28 days. The section reads thus:

320.

(1) Subject to the provisions of sections 317, 318 and 319 any person who shall be dissatisfied with any judgment or final order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in law, or in fact -

(a) by lodging within fourteen days from the time of such judgment or order being passed or made, with such Magistrate's Court a petition of appeal addressed to the Court of Appeal, or

(b) by stating within the time aforesaid to the Registrar of such court or to the jailer of the prison in which he is for the time being confined his desire to appeal and the grounds therefor, providing at the same time a stamp of the value of five rupees, and it shall thereupon be the duty of such Registrar or jailer as the case may be, to prepare a petition of appeal and lodge it

with the court by which such judgment or order was pronounced.

(2) Subject to the relevant provision of section 317 the Attorney-General may prefer an appeal to the Court of Appeal against any judgment or final order pronounced by a Magistrate's Court in any criminal case or matter, and where he so appeals, or where he sanctions an appeal, the time within which' the petition of appeal must be preferred shall be twenty-eight days.

After 28 days, even the AG is debarred from filing an appeal. Therefore there is no reason for the appellant to wait for 10 months to get a reply. He is ought to know that the appealable time has lapsed. Everybody is presumed know the law and the ignorance of law is not an excuse. Once the appealable period is over, the appellant should have considered a revision, without waiting for the AG to give a direction to consider a revision. The delay cannot be considered as reasonable. Revision being a discretionary remedy, the one who is seeking the assistance of Court must act promptly and one who is sleeping over his grievances cannot seek the assistance of Court by way of revision to remedy the injustice complained of. Inordinate delay is fatal to a revision application.

The learned Magistrate has considered the alibi of the 1st Respondent that he was in Colombo, attending a work shop during the period where the incident has taken place. The alibi was proved by the 1st respondent by submitting the relevant documents. It has raised a reasonable doubt as to the culpability of the 1st Respondent. I don't see any miscarriage of justice in coming to the conclusion that the 1st Respondent has raised a reasonable doubt. There is no reason to interfere with the finding of the learned Magistrate. It has been held in the case of *Attorney-General vs. Podisingho* 51 NLR 385 that:

The powers of revision of the Supreme Court are wide enough to embrace a case where an appeal lay but was not taken. In such a case, however, an application in revision should not be entertained save in exceptional circumstances, such as,

(a) where there has been a miscarriage of justice,

(b) where a strong case for the interference of the Supreme Court has been made out by the petitioner, or

(c) where the applicant was unaware of the order made by the Court of trial.

The learned High Court Judge has correctly refused notice.

I do not see any reason to interfere with the findings of the learned High Court Judge.

Accordingly the appeal is dismissed.

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal