

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

**In the matter of an appeal under and  
in terms of the Article 138 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka.

**Complainant**

**Court of Appeal  
Case No. CA/144/2015**

**Vs,**

Jayasinghe Aeachshicge Rajitha Priyanka  
**Accused**

**And Now Between**

Jayasinghe Aeachshicge Rajitha Priyanka  
**Accused-Appellant**

**High Court Chilaw  
Case No. HC 68/99**

**Vs,**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka

**Complainant-Respondent**

**Before : S. Devika de L. Tennekoon, J &  
S. Thurairaja PC, J**

**Counsel : Amila Palliyage with Sandeepani Wijesooriya for the Accused  
Appellant  
Warunika Hettige DSG for the Complainant- Respondent**

**Order on : 31<sup>st</sup> October 2017**

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## ORDER

### **S. Thurairaja PC J**

The Petitioner, Jayasinghe Arachchige Rajitha Priyankara filed this petition, invoking the revisionary jurisdiction of this court under article 138 of the Constitution.

The Petitioner (hereinafter sometimes referred to as the accused) was indicted at the High Court of Chilaw for committing an offence of rape punishable under section 364 (2) (e) of the Penal Code. Initially the accused was enlarged on bail by the High Court and the trial commenced. The Accused participated in the trial at the beginning and absconded before the conclusion of the trial. High Court proceeded with the trial after complying with the requirements of section 241 of the Code of Criminal Procedure Act. After a full trial, the Court found the Accused guilty and convicted for the offence and sentenced him to 12 years Rigorous Imprisonment (RI) and imposed a fine of Rs. 25,000/- in default 6 months simple imprisonment. Additionally, the accused was ordered to pay compensation of Rs. 200,000/- to the Victim and in default 2 years RI.

As per the available High Court proceedings, it appears that the victim was 13 years and few months at the time of the incident. There is no relationship or friendship between the victim and the accused. Further the Medical examination report confirms a forceful penetration.

From the inception of the trial proceedings at the High Court, the accused was absent on many occasions. The Court tolerated the conduct of the accused and provided a reasonable and a fair trial to the accused. While enjoying his rights and privileges the accused neglected the Court proceedings and took the Law into his hands. Several warrants were issued on the accused and his sureties. After the trial, on the 10<sup>th</sup> May 2012, he was found guilty, convicted and sentenced as stated earlier. The court issued an open warrant on the accused as a result he was apprehended on the 8<sup>th</sup> November 2012, the Court provided legal assistance to the accused and the case was mentioned on the 15<sup>th</sup> instant. On that date the Judgment and the Sentence was pronounced in open court and the accused was handed over to the Prison authorities.

The Petitioner lodged an application to revise the said conviction and the sentence pronounced by the High Court on the 7<sup>th</sup> December 2015, after more than three years.

The learned Deputy Solicitor General (DSG) who is appearing on behalf of the Respondent Attorney General raised following preliminary objections;

- i) Undue delay in filing the revision application
- ii) No exceptional circumstances averred in the petition.

- iii) No illegality, irregular, malicious, capricious or arbitrary in the order of the High Court.
- iv) The Petitioner had not come to court with clean hands.

Both Counsels made oral submissions and the DSG filed written submissions. On perusing the materials before us, it is evident that the Petitioner was convicted after a full trial on the 10<sup>th</sup> May 2012, an open warrant was issued and he was apprehended on the 8<sup>th</sup> November 2012, after producing him to Court he was given legal assistance. Thereafter the case was called on the 15<sup>th</sup> instant and the judgment and sentence were pronounced in open court. The Accused petitioner did not exercise his right of appeal to prefer an appeal but he filed this Petition after three years namely 7<sup>th</sup> December 2015.

As per our Law, the Petitioner has a Right of appeal against his conviction and sentence, of which he not only exercised this right but did not explain in his revision application the reason for this long delay in his petition of revision.

In **H. A. M. Cassim vs. Government Agent of Batticaloa 69 NLR 403**. Sansoni CJ held that

“An application in revision must be made promptly if it is to be entertained by the Supreme Court. There must be a finality in litigation, even if incorrect orders have to go unreserved.”

According to Sorertsz ACJ in the case of **AG vs. Kunchihambu, 46 NLR 401**, delay of 3 months is a considerable delay in filing a revision.

In **Rajapakse vs. State (2001) 2 SLLR 161**, it was held that,

“Party should come before court without unreasonable delay.”

Considering line of authorities including the above, I find that the Petitioner had come to court after long undue and unexplained delay. This ground alone is sufficient to dismiss the petition *in limine*.

Anyhow in fairness to the Petitioner we consider the legality of the Judgment and the sentence. Carefully considering the materials before the court we find that the Petitioner had committed an offence of Statutory Rape on a child who was less than 14 years of age. The accused was given, all of his rights and privileges from the time of first arrest to pronouncement of Judgment. But he had not shown any respect to the law and the court system. He was arrested and brought before the court. The Indictment, trial, judgment and sentence are legal and proper. In my view the Petitioner does not attract any sympathy or leniency of the Court. If further any concession is granted it will discourage the law-abiding citizens.

Regarding the Sentence the learned trial judge has evaluated the entire case and imposed a reasonable sentence. Even in the absence of the accused the trial judge had not imposed the maximum sentence stipulated by the law.

It is not necessary to discuss about the exceptional circumstances, but for the completeness, I perused the petition and find that the Petitioner had not submitted any exceptional circumstances or any fact which shock the conscious of the court. This ground also held against the Petitioner.

Considering all, I conclude that the Petition fails on its own merit, hence the application for revision is dismissed and no cost ordered.

**Application for revision dismissed and no cost ordered.**

**JUDGE OF THE COURT OF APPEAL**

**S. Devika de L. Tennekoon, J**  
I agree,

**JUDGE OF THE COURT OF APPEAL**