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

*An application for Revision under and in terms of Article 138 and 145 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

The Honorable Attorney General,

Attorney General's Department,

Colombo 12.

**Complainant**

**Vs**

**Court of Appeal**

**Revision Application No:**

**CA/PHC/APN 44/2015**

**High Court of Tangalle**

**Case No: HC 40/2010**

1.Gunasena Weeraman

2.Priyantha Dahanayake

3.Premawathi Weeraman

(Now Deceased)

4.Rajagalgoda GamageSomasiri

Dharmarathna

Alias UrapolaMahaththaya

(Now Deceased)

**Accused**

**And Now Between**

WeeramangeSomawathie,

"Sampath", Pallewawuwa, Modarawana.

**Petitioner**

**Vs**

1. GunasenaWeeraman

2. PriyanthaDahanayake

**Accused - Respondents**

3. The Honorable Attorney General,

The Attorney Generals Department,

Colombo 12.

**Complainant-Respondent**

**Before** **:P.PadmanSurasena, J.**

**K.K.Wickramasinghe,J.**

**Counsel** **: Counsel AAL Saliya Peiris (PC) for the Petitioner**

**Counsel AAL B.Gamage for the 1st and 2nd Respondents**

**SC HimaliJayanetti for the 3rd Respondent**

**Arguments Concluded on: 31/08/2017**

**Written Submission of the Petitioner submitted on 16/10/2017**

**Written Submission of the 1st and 2nd Respondents submitted on 17/10/2017**

**Decided on :20.11.2017**

**Judgment**

**K.K.Wickramasinghe,J..**

The Petitioner filed this revision application seeking to enhance the sentence imposed on the 1st and the 2nd Accused Respondents in High Court of Tangalle case No.HC 40/2010 to an appropriate and commensurate custodial sentence.

When this case came up on 31.08.2017, the Learned DSG has informed court that she is not filing written submissions and she is abide by the order of this court.

The Accused Respondents and two others (now deceased) were indicted in the High Court of Tangalle for committing murder of the Petitioner's son, punishable under Sec.296 of the Penal Code. When the matter was taken up for trial in the High Court of Tangalle the Respondents had pleaded 'not guilty' to the indictment and accordingly the trial has commenced before the Learned High Court Judge. Subsequently the 1st and the 2nd Respondents pleaded guilty to the lesser charge of culpable homicide not amounting to murder under Sec.297 of the Penal Code, with the consent of the court and in concurrence with the Learned State Counsel. Having considering the submissions made by the 1st and 2nd Respondents and the deceased's widow, imposed the following sentence by judgement dated 30.03.2015.

- Two years rigorous imprisonment each suspended for a period of 10 years
- A fine of Rs.15,000/- each, in the alternative one year simple imprisonment
- Compensation of Rs.500,000/- by each Respondent (in total of One Million) to be paid to the widow of the deceased, in the alternative two years simple imprisonment

The Learned Counsel for the Petitioner has submitted that the Learned High Court Judge has failed to evaluate the relevant material facts before him correctly and that Sec.16 of the Judicature Act does not hold a bar against the Petitioner in filing an action in the Court of Appeal.

However the Learned Counsel for the 1st and the 2nd Respondents took up the position in his submission that

1. Petitioner has failed to exercise the right of appeal with leave of Court of Appeal first and obtained which is statutorily available to an aggrieved party under Sec.16 of the Judicature Act.

2. The Petitioner has no mandate to invoke revisionary jurisdiction as she cannot be considered an aggrieved party according to the circumstances of the case.
3. The Petitioner has failed to plead exceptional circumstances and therefore there is no appropriate case presented before this court.

The Learned Counsel for the 1st and the 2nd Respondents further submitted that the Petitioner, in her revision application has averred at the very outset that she is an aggrieved party within the meaning of the Judicature Act. The Sec.16(1) of the Judicature Act sets out a specific remedy to an aggrieved party in a criminal case, a right of appeal to the Court of Appeal with the leave of court first had an obtained. It was also submittedthe Petitioner without exercising the said right of appeal statutorily available to her, has filed this revision application seeking to invoke the revisionary jurisdiction under Article 138 and 145 of the Constitution.

The Article 138 of the Constitution provides that the

*court shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original Jurisdiction or by any other court of first instance, tribunal or other institutionand sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such high court, court of first instance, tribunal or other institution may have taken cognizance: provided that no judgment, decree or order of any court shall be reserved or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.*

The Learned Counsel of the 1st and the 2nd Respondents stated that the revision application of the Petitioner is misconceived in law and as an aggrieved party, the Petitioner has no locus standi to invoke Article 138 and 145 of the Constitution specially when she has failed to plead relief under Sec.16(1) of the Judicature Act. Failure to recourse to the proper remedy does not in any way warrant the Petitioner to invoke Article 138 of the Constitution.

As Set out in Sec 16(3) of the Judicature Act, the Court of Appeal will act by way of revision in an appropriate case, but in this instant case the Petitioner has neither placed an appropriate case before the Court of Appeal nor has pleaded any

exceptional circumstances to invoke the discretionary remedy for revision under Article 138 of the Constitution. Further the Petitioner has only misrepresented the facts of the case by failing to state the facts such as deceased has trespassed in to the plot of land of the Respondents and has plucked coconuts from the trees and that the deceased has acted in an aggressive manner by cutting the belt of the tractor.

In the case of **AmeenVsRasheed 3CLW 8** Abrahams, CJ observed that, *"It has been represented to us on the part of the petitioner that even if we find the order to be appealable, we still have discretion to act in revision. It has been said in this court often enough that revision of an appealable order is an exceptional proceeding and in the petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal. I can see no reason why the petitioner should expect us to exercise our revisionary powers in his favour when he might have appealed and I would allow the preliminary objection and dismiss the application with costs."*

In the case of **RustomVsHapangamaand Co. (1978-79-80(1) SLR)**, His Lordship Justice Ismail stated thus, *"The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this court to exercise these powers in revision. If the existence of special circumstances does not exist then this court will not exercise its powers in revision."*

The difference between revision and appeal was explained in **CA (PHC) APN 17/2006** decided by three judges of the Court of Appeal explained Revision and Appeal thus, *"Needless to state that in an application for revision, what is expected to be ascertained is whether there are real legal grounds for impugning the decision of the High Court in the field of law relating to revisionary powers and not whether the impugned decision is right or wrong. Hence, in such an application the question of a rehearing or the revaluation of evidence in order to arrive at the right decision does not arise."*

In the case of **Bank of Ceylon VsKaleel and others (2004) 1 SLR 284** it was held that, *"to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which is beyond an error or defect or irregularity that an ordinary person would instantly react to it .....the order complained of is of such a nature which would have* ***shocked the conscience of the court."***

In **Dharmaratnne and another V Palm Paradise cabanas Ltd and others 2003 (3) SLR 24** it washeld as follows:

*The legal submissions in the Petition do not indicate reasons why the court of Appeal should exercise revisionary powers.*

*Per Amaratunge J.*

*"Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in situations where the legislature has not given a right of appeal.*

*The practice of court is to insist in the exercise of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened rule which should not be lightly disturbed."*

In **Cadernmanpulle V Ceylon Paper Sacks Ltd (2001 (1) SLR 112)** too it was held that existence of the exceptional circumstances is a pre-condition for the exercise of the powers of Revision.

The Counsel of the Respondents has taken up the objection that the Petitioner cannot be considered as an aggrieved party according to the circumstances of the case. Further, the Respondent submits that the Petitioner neither made an application to the High Court as an aggrieved party nor objected to the application made on behalf of the deceased's widow and the minor children who were accepted as the aggrieved party at the trial stage by the learned Judge.

The immediate family of the deceased (the widow and the children) were compensated by the said respondents by payment of One Million Rupees and

there is no basis to consider Petitioner as an aggrieved party but merely a disappointed party.

In the case of **Lansage Basil V Officer in Charge of Piliyandala and Two others (CA (PHC) APN 20/2016 minutes dated 08.08.2016)** (at page 5)late Justice Madwala making reference to Sec.16 (2) of the Judicature Act lays down who is an aggrieved party by drawing attention to a judgment of supreme court of India in the case of **AdiPherozshah Gandhi V H.M.Seervi, Advocate General 1971 SCR(2) of 863** which held that*"it is apparent that any person who feels disappointed with the result of the case is not a person aggrieved. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievances and not grievances about material matters but his grievances must be a tendency to injure him.*

In consideration of the above facts, it is abundantly clear that the above mentioned facts do not constitute an exceptional circumstances to invoke the revisionary jurisdiction of this court nor does the Petitioner can be considered as an aggrieved party in the circumstances of the case. Therefore the revision application is hereby dismissed.

**Judge of the Court of Appeal**

**P.PadmanSurasena,J.**

**I agree**

**Judge of the Court of Appeal**