

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.

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

Complainant

Vs

CA (PHC) APN 124/2014

HCPanaduraCase No: 2168/2006

(1) Iswarage Don Ranjith alias
IlibayRanjith

(2) T. Caminda Jagath Kumara

Accused

And Now between

Iswarage Don Ranjith alias
IlibayRanjith

(Presently at Welikada Prison)

Accused-Petitioner

Vs

Hon. Attorney General,
Attorney General's Department,
Colombo12.

Respondent

**BEFORE : P.Padman Surasena, J (P/CA) &
K. K. Wickramasinghe, J**

**COUNSEL : AAL Sharon Serasinghe for the accused Petitioner
SDSG Haripriya Jayasundera for the Respondent**

ARGUED ON : 02nd October 2017

WRITTEN SUBMISSIONS OF BOTH PARTIES: 27th October 2017 and 30th October 2017

DECIDED ON : 06th February 2018

JUDGEMENT

K. K. WICKRAMASINGHE, J.

Both parties made their respective submissions and filed written submissions.

The Accused Petitioner (herein after referred to as the Petitioner) in this Revision Application was indicted in the High Court of Panadura along with another accused for committing offences under following charges:-

(1) On or about 16.01.2002 you committed the murder of Asilin Nona and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.

(2) In the course of the same transaction, date and time as above, you attempted to commit murder of Weerakoon Mulhamilage Wijaya Gunasiri by firing and thereby committed an offence punishable under section 300 read with section 32 of the Penal Code.

When the indictment was read over to the Accused Petitioner and the other accused both had pleaded 'not guilty' to the charge of murder and pleaded guilty to the charge under section 297 of the Penal Code. Accordingly they were sentenced as follows:-

Charge (1):- punishable under section 297 of the Penal Code

1 Accused Petitioner- 15 years RI and he was ordered to pay a Fine of Rs. 5,000/= with a default sentence of 3 months SI.

2nd Accused- 7 years RI and he was ordered to pay a Fine of Rs. 5,000/= with a default sentence of 3 months SI.

Charge (2):- Punishable under section 300 of the Penal Code

Each Accused were sentenced to 1 year RI and ordered to pay a fine of Rs. 1000 with a default sentence of 1 month SI and compensation of Rs. 50,000 payable to the injured with a default sentence of 12 months SI.

Being aggrieved by the above mentioned conviction and sentence, the aforementioned Accused Petitioner preferred this revision application to this court. He has not appealed against the said order but seeks to invoke the revisionary jurisdiction of this court to revise the sentence imposed by the learned trial Judge.

Learned Counsel for the Accused Petitioner invited this court to consider the ground that the sentence imposed by the Learned High Court Judge is excessive and illegal since he in the custody for nine years and he had no previous convictions. The Learned Counsel further submitted that facts of mitigations were not considered and evaluated by the Learned High Court Judge.

The learned counsel for the Petitioner submitted that though there were nine pending cases against the Petitioner there were no convictions and he was acquitted in almost in all cases and no other prison sentences other than this instant case.

The learned counsel for the petitioner admitted that he had filed another case CA (PHC) APN 12/2014 and as the nature of cases (without submitting the list of cases) against the petitioner were not mentioned in that case, a fresh application is filed.

The learned SDSG for the respondent has brought a preliminary objection of inordinate delay since the revision application had filed after 10 months. She further submitted that the petitioner has not demonstrated any exceptional circumstances to invoke the revisionary jurisdiction of this court and submitted that the judgement of the Learned Trial Judge is not illegal, irregular, malicious capricious or arbitrary to revoke the revisionary jurisdiction of this court.

The learned SDSG for the respondent submitted that as per the proceedings dated 29.03.2012, according to submissions of the learned counsel who represented the petitioner at the High Court, the petitioner had been in remand only for 3 1/2 years in respect of this case. The Learned High Court Judge has observed that the petitioner had been absconding for about a year after he was enlarged on bail in HC Case No.1822/2004, where it was alleged that he committed double murder.

Further it was observed that he has committed three murders as per the material revealed at the bail inquiry. At that time the petitioner had 9 pending cases out of which four were murder cases.

Any way this court is mind full of the fact that this petitioner is father of three children and eldest girl is an epileptic patient, the son (18 years) is married and the youngest is still schooling. Also we are well aware the fact that their finances are exhausted.

The petitioner states that the police has animosity against the family of the petitioner, but does not state any reason. He further claimed that the brother of the petitioner was killed in 1989 due to JVP activities by the police.

None of these facts amount to exceptional circumstances.

In the case of **H.A.M. Cassim Vs GA Batticaloa (NLR Vol. 69 pg.403)** Sansoni CJ held that "*An application in revision must be made promptly if it is to be*

entertained by the SC. There must be finality in litigation, even if incorrect orders have to go unreversed."

The power of revision vested in the Court of Appeal is a discretionary remedy.

In the case of **AG Vs Kunchihambu (46 NLR 401)**, it was held that the delay of three months was to disentitle the Petitioner for relief. The Supreme Court, when considering whether it should exercise its powers of revision under sec.357 of the CPC, would regard with disapproval delay on the part of the Petitioner. *"Mr. Curties asks in tones of rhetorical indignation if this court is going to be a party to an illegal sentence remaining upon the record of a case. It is a very disturbing question to have to answer but the answer I would venture is that however much it may offend one's aesthetic sense to have an illegal sentence left upon the record, there are cases in which one must put up with that grievance lest one inflicts a great hardship on a man who had every reason to think that there had been dealt with and punished for the offence with which he had been charged and of which he had been convicted and that his troubles were over. In matters of this kind too interest reipublicae ut finis sit litium.*

For these reasons I refuse to exercise my discretion and I reject the application for an alteration of the sentence."

In **Camillus Ignatious Vs Officer in Charge of Uhana Police Station (Rev) ca 907/89 MC Ampara 2587** , it was held that a mere delay of 4 months in filing a Revision Application was fatal to the prosecution of the revision application before the Court of Appeal.

In the case of **Rajapakshe Vs The State (2001- Volume 2, page No-161)** it was held that, *"an Application in revision should not be entertained save an exceptional circumstances. When considering this issue court must necessarily have regard to the contumacious conduct of the accused in jumping bail and thereafter his conduct in a manner to circumvent and subvert the process of the law and judicial institutions. In addition, the party should come before Court without unreasonable delay."*

In this instant case, the revision application has been filed with a delay of 10 months.

In Colombo Apothecaries Ltd. Vs Commissioner of Labour (1993 3 Sri LR 320) Rasheed Ali Vs Mohamed Ali (Supra) (SLR-1981 Vol.1 pg. 262) *“On a consideration of the above judicial decisions, I hold that revision being a discretionary remedy is not available to those who sleep over their rights. I further hold that it is not the function of the Court of Appeal, in the exercise of its revisionary jurisdiction, to relieve parties of the consequences of their own folly, negligence and laches.”*

In the case of **Ameen Vs Rasheed (3CLW 8)** Abraham, 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 **Rustom Vs Hapangama (1978-1979 SLR Vol. 2 page225)** 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.”*

In **Rasheed Ali Vs Mohamed Ali (1936, 6 CLW)** Soza J. remarked thus: *“The powers of revision conferred on the Court of Appeal are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However, this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the Court.”*

In the case of **Caderamanpule Vs Ceylon Paper Sacks Ltd. 2001 (3) SLR 112**, It was held that *“the existence of exceptional circumstances is pre-condition for the exercise of the powers of 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.”*

Justice F.N.D.Jayasuriya, in the case of **Browns Engineering (pvt) Ltd.Vs Commissioner of Labour and others (1998- SLR Vol' 1 page 88)** held that, *“On an appeal the question is right or wrong? On review the question is lawful or unlawful”*

In **Nissanka Vs The State (2001 Vol. 3, page No. 78)**, it was held,

The power of Revision can be exercised for any of the following purposes viz:

- (1) to satisfy the Appellate Court as to the legality of any sentence/order,*
- (2) to satisfy the Appellate Court as to the propriety of nay sentence/order*
- (3) to satisfy the appellate Court as to the regularity of the proceedings of such Court*
- (4) Revisionary jurisdiction is not fettered by the fact that the accused appellant has not availed of the right of appeal within the specified time.*

Considering above it is abundantly clear that there is a delay in filing the petition, petitioner has not averred or demonstrated any exceptional circumstances to invoke the revisionary jurisdiction.

The Learned High Court Judge has considered the migratory circumstances under and also has given due consideration to all circumstances pointed out by the learned counsel for the petitioner given reasons and has made a sound and comprehensive Judgment.

Thus we are of the view that the sentence imposed by the Learned High Court Judge is not at all excessive.

Considering above, we have no reason to interfere with the findings of the Learned High Court Judge.

We affirm the Sentence imposed by the Learned High Court Judge.

Hereby the Revision Application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena J (P/CA)

I agree,

JUDGE OF THE COURT OF APPEAL