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.

The Officer – in – Charge

Police Station

Homagama.

Complainant.

Vs.

1. Gambadu Arachchige Thushara Rukmal De Silva.
2. Gambadu Archchige John Pedrick De Silva

Both Of

No. 51/1C, Wimana Road, Homagama.

Accused

AND BETWEEN

Ramya Keerthilatha Abeygunawardena

No.335, Dewala Road, Katuwana, Homagama.

Aggrieved Party Petitioner

Vs.

1. Gambadu Arachchige Thushara Rukmal De Silva.
2. Gambadu Archchige John Pedrick De Silva.

Case No. **CA/PHC/APN/ 68/2017**

H.C Avissawella Case No:

02/2015 (Revision)

M.C Homagama Case No:

87896

Both Of

No. 51/1C, Wimana Road, Homagama.

Accused – Respondents

The Officer – in – Charge

Police Station

Homagama.

Complainant – Respondents

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent

AND NOW BETWEEN

1. Gambadu Arachchige Thushara Rukmal De Silva.
2. Gambadu Archchige John Pedric De Silva

Both Of

No. 51/1C, Wimana Road, Homagama.

Accused – Respondent – Petitioners.

Vs.

Ramya Keerthilatha Abeygunawardena

No.335, Dewala Road, Katuwana, Hoamagama.

Aggrieved Party Petitioner – Respondent

The Officer – in – Charge

Police Station

Homagama.

Complainant – Respondent – Respondent.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Anil Silva, PC with Isuru Jayawardena for the petitioner.

Seevali Amitirigala, PC with Pathum Wijepala for the Aggrieved Party Petitioner Respondent.

Azard Navari DSA for the Respondents.

Argued On – 17.11.2021

Decided On – 07.12.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 29.3.2017 of the learned High Court Judge of Homagama.

The accused respondents petitioners (hereinafter referred to as petitioners) were charged in the Magistrates Court of Homagama for allegedly causing grievous hurt to the wife of the 1st petitioner by throwing acid. The petitioners had pleaded not guilty and the trial had been held and at the trial the victim the wife of the 1st petitioner had given evidence and she had been corroborated by the sister and the brother of the victim.

According to the evidence of the victim, on 30th October 2006 when she was returning from home around6.30 pm a cycle had approached her and had thrown a substance which had burnt her and she had run to her sisters place and had narrated the story and she had been rushed to the police. Upon entry to the hospital the police state ,that the victim had made a short statement on 30 the of October in which she had said that she, suspects that the assailants were her estranged husband and the father in law. But in her evidence to Court she had very categorically stated that she identified the petitioners. The said statement had been marked as V1, and the police have said that there was a statement of that nature available in the information books. The defense had further challenged the availability of light at that time. The police contradict on the issue of availability of light and the police sergeant Abewickrama have said that there was light and the Inspector Bandara has said that he could not recall of any illumination being available.

As the statement of the victim marked as V1 had become an issue the doctor who gave evidence had said that the victim could have made a statement soon after the incident. But the victim denies of making such statement and the most unfortunate thing is that it had not been sent to the Examiner of Questioned Documents who could have solved the doubts once and for all. But as it had not been done there is a very prominent doubt as with regard to the consistency of the victim's narration of the incident.

Nevertheless the Magistrate had considered the evidence and had acquitted the petitioners.

The victim having been aggrieved of the said order had filed a revision application in the High Court having failed to obtain the sanction of the Attorney General to lodge an appeal.

The learned High Court Judge having considered the application have held that the Magistrate has acted ultra vires by considering a charge under section 317 of the Penal Code, and has set aside the order of the Magistrate. Hence the instant application is filed against the order of the of the learned High Court Judge.

The petitioners have been charged in the Magistrates Court under section 317 of the Penal Code, and according to section 10 of the Criminal Procedure Code (hereinafter referred to as the CPC) which reads as follows,

"Subject to the other provisions of this Code any offence under the Penal Code…..may be tried save as otherwise specially provided for in any law,

a) By the High Court,
b) By a Magistrates Court where that offence is shown in the eight Colum of the first schedule to be triable by a Magistrates Court.

The said first schedule, eight Colum, has defined an offence falling under section 317 of the penal code to be tried either by the High Court or the Magistrates Court.

Therefore there is clear provision for the Magistrate to hear and conclude a charge under section 317 of the Penal Code.

Therefore the order of the learned High Court Judge that the Magistrate has acted ultra vires by adjudicating a charge under 317 of the penal code is in contravention of the provisions of the CPC. Hence the said statement of the learned High Court judge actually shocks the conscious of this Court as defined by our legal fraternity.

Furthermore this Court observes that the learned High Court Judge has failed to analyze the document marked as V1 by the petitioners, in which the victim has not identified the petitioners as the assailants with certainty and clarity, which creates a reasonable doubt in the consistency of the evidence of the victim, which the magistrates has analyzed properly with appropriate value to it. Therefore although the victim has suffered a very brutal act of arson, the Court when evaluating the evidence cannot allow the emotions to be the guiding principle in adjudication, but the prevailing law and may be common sense.

Hence upon considering the above mentioned facts and the submissions of both parties this Court is unable to agree with the reasoning's of the learned High Court Judge, hence

we hold that the order of the learned High Court Judge dated 29.3.2017 should be set aside and the instant application for revision should be allowed.

Judge of the Court Of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.