

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.

Democratic Socialist Republic of Sri
Lanka.

Complainant

Court of Appeal Case No:

CPA / 85/21

High Court Kandy Case No:

378 /2019

Vs.

1. Wijesinghe Arachchige Ashoka
Senarath Bandara.

2. Kodikara Gedara Nilanthi Manike.

Accused

AND NOW BETWEEN

3. Wijesinghe Aarchchige Ashoka
Senarath Banadara.

4. Kodikara Gedara Nilanthi Manike.

Accused – Petitioners

Vs.

The Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Udaya Bandara for the petitioner.

Argued On – 20/01/2022

Decide On – 15/02/2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to revise the order of the learned High Court Judge of Kandy **dated 18.2.2020**.

In the instant application the first and the second petitioners are the husband and wife. The two petitioners were indicted for several charges of **raping a minor of 14 years of age, the second petitioner who is the sister of the victim had been charged for aiding and abetting to commit the principle offence of rape of a minor**

Both the petitioners have pleaded guilty to the indictment and the first petitioner had been sentenced for 20 years imprisonment with fine and compensation and the 2nd petitioner had been sentenced to 10 years of imprisonment.

The facts of the case is that the victim and the 2nd petitioner had been sisters and the victim had been left in the care of the 2nd petitioner and she had been after delivery of a child and she had invited the sister to engage in sexual intercourse with the first petitioner, and she had facilitated the activities and finally the victim had been pregnant.

In the instant matter although the alleged order had been pronounced in the year 2020 February the instant application has been filed in 2021 March.

Hence there is a delay of one year.

It is a well-founded principle of law that a party filling a revision application must satisfy Court that there are exceptional circumstances which shocks the conscious of Court, to invoke the powers of revision of Court because revision is a discretionary power and not a right vested by a statute. This has been well founded and established in our legal decisions of the Superior Courts.

But another well founded principle is that the party filling the application of revision must be before Court without any delay. Delay has been considered to be a fatal error if the petitioner fails to explain to the satisfaction of Court the reasons for the delay. **This has been discussed in our previously concluded matters in our legal history and by the present bench also in the matter of CA /PHC/APN78/2021 and it was decided that the delay needs to be explained sufficiently to the satisfaction of the presiding Judges.**

In the instant matter the reason for delay has been explained to be due to the Covid-19 pandemic.

But what the petitioners have failed to be mindful is that although the pandemic broke out in 2020 March there were sporadic periods from 2020 March to 2021 March where the country functioned normally. Therefore the petitioners had ample opportunities to have obtained legal assistance. But the petitioners have failed to do so.

Therefore it is the well-considered view of this Court that the petitioners have not explained the delay sufficiently and as such this Court sees no reason to issue notice in this matter for the respondents.

Hence the instant application for revision is dismissed in limine.

Judge of the Court of Appeal.

I agree

Neil Iddawala J.

Judge of the Court of Appeal.