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

In the matter of an application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka from the Judgment of the Provincial High Court of the North Central Province Holden in Anuradhapura dated 19.09.2019.

CA (PHC) REV No:

CPA / 82/2021

High Court Anuradhapura

Case No: **79/2002**

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant

Vs.

WijekoonAppuhamilageWijerthne,

39, RuhunuSewana,

Kuruduwatta,

Sulthanagoda.

Accused

AND NOW BETWEEN

WijekoonAppuhamilageWijeathne,

39, RuhunuSewana,

Kuruduwatta,

Sulthanagoda.

Accused – Petitioner

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant – Respondent

Before – MenakaWijesundera J.

Neil Iddawala J.

Counsel – Shavindra Fernando, PC

With Tharani Mayadunne

for appellant.

Argued on – 24.01.2022

Decided on – 22.02.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order of the learned **High Court Judgeof Anuradhapura dated 19.9.2019**.

In the said order the accused petitioner (hereinafter referred to as the accused) had been convicted and sentenced for offences under section 367 of the Penal Code to be read with section 5(1) of the Public Property Act.

The indictment has been received by the High Court of Anuradhapura **in 2002**, but Court had not been able to summon the accused for some time due to the non-availability of the address of the accused, but in **2002 .7.17 summons have been issued but accused had never appeared in Court**, from 2002.7.17 to 2003.4.30 he had not responded to the summons and as such on that day he had been warranted.

But on 2003.2.3an attorney at law had appeared and had asked for certified copies of the proceedings in Court.

As the accused had not responded to warrant as well proceedings under section 241 of the Criminal Procedure Code had been fixed and on 28th of June 2005 trial in absentia has been fixed and trial had concluded and it had been fixed for judgment on 2019.2.22.

But thereafter an attorney at law had appeared and had wanted Court to consider a short cut without judgment in the absence of the accused but it had not worked out and finally judgment had been pronounced and the accused had been convicted on the 19.9.2019.

Being aggrieved by the said judgment the accused had filed the instant application for revision in 2021 July 21st.

The accused has filed the instant application for revision after a lapse of 2 years and furthermore he has failed to exercise his right of appeal.

The reasons given by the Counsel for the accused is that he had been unaware of the proceedings in Court against him.

But as stated above as soon as the trial had concluded and it had been fixed for judgment a lawyer had appeared and had requested Court to consider a short cut in 2019, therefore although the accused had not been physically present, the lawyer could not have acted on his own, hence it is very clear that the accused had been aware of the pending judgment which was to be pronounced. Therefore his plea of ignorance at this stage is cloaked with falsity.

Furthermore it is a well-founded principle of law that if a party files a revision application the party filling the same has to satisfy Court that there is a very obvious miscarriage of justice which shocks the conscious of Court.

Hence especially if there is delay it is considered to be a fatal error unless the petitioner offers an explanation acceptable to Court. This has been held by this bench in the case of **CA/PHC/APN78/2021.**

Hence this Court is unable to agree with the explanation offered by the Counsel for the accused therefore the instant application for revision is dismissed without issuing notice to the respondents.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.