

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an application for Revision made under Article 138 of the Constitution read with Section 364 of the Code of Criminal Procedure Act No. 15 of 1979.

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

Court of Appeal Application No:

**CA (PHC) APN 31 /16**

Colombo High Court Case No:

**HC 4656 / 2009**

Magistrate's Court Colombo Case No:  
**B/6535/5**

**Petitioner**

Vs.

1. Amsa Nilar Nawas

No: 167 / 88,

Wickramasinghepura,

Battaramulla.

**1<sup>st</sup> Accused Respondent**

2. Raveendra Upul Dhammika,

No. 229/2,

Ward Place,

Borella.

**2<sup>nd</sup> Accused Respondent**

3. Karawita Arachchilage Nalaka  
Dushmantha,

No. 285/08,

Ward Place,

Borella,

Colombo 08.

**3<sup>rd</sup> Accused Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Indika Nelumini SC for the State.

Argued on – 02.02.2022

Decided On – 08.03.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision was taken up for argument ,the respondents were not in Court but the Counsel for the petitioner was present, but this Court makes a note that the respondents had been absent from Court from time to time and it had been postponed on many occasions, as such it was taken up for argument.

**The instant application has been filed to set aside the judgment dated 3.9.2015 of the learned High Court Judge of Colombo.**

**The accused respondents (hereinafter referred to as the respondents) were indicted for the offences of 380 and 383 of the Penal Code.**

The accused respondents had pleaded not guilty and trial had commenced and half way through the respondents had tendered a plea of guilty and the Learned High Court Judge had proceeded to accept the plea and had sentenced the respondents as follows,

**1<sup>st</sup> respondent, 1<sup>st</sup> charge 12 months RI suspended for 10 years and a fine of Rs 2500 with no default term,**

**2<sup>nd</sup> charge 12 months RI suspended for 10 years with a fine of Rs 2500 with no default term and with Rs 100000 compensation for the 1<sup>st</sup> witness with a default term,**

**2<sup>nd</sup> and 3<sup>rd</sup> respondents 1<sup>st</sup> charge 2 years RI suspended for 10 years, no fine but with compensation to be paid to the 1<sup>st</sup> witness of the prosecution.**

The petitioner being aggrieved by the said sentencing had lodged the instant application for revision.

It is a well understood principle of law that if a party files a revision application the party filling the same must satisfy this Court that there are instances of grave miscarriage of justice which shocks the conscience of this Court.

The main contention of the petitioner is that the sentence imposed by the learned High Court Judge is grossly inadequate.

The learned High Court Judge in her judgment has considered the age the previous convictions of the 1<sup>st</sup> and the 3<sup>rd</sup> accused and the fact that some of the robbed items have been recovered and returned to the owners.

According to the facts of the case the respondents had been armed with firearms and had entered the place of business and had tied the sales girls and had robbed the electronic items belonging to the place around 3 in the afternoon.

On perusing the evidence adduced it is very clear that lay witnesses and the evidence of the police had been led but the lay witnesses only refer to an identification of the accused at a parade and not in Court. Hence the identification of the accused is solely based on the identification at the parade. ***Hence the question arises whether that is sufficient to find an accused person guilty of an offence***

***Hence at this juncture this Court refers to a judgment by His Lordship S.N.Silva CJ The Attorney General vs. Joseph Aloysius and others Sri Lanka Law Reports 1992 PAGE 264 where it was held that the evidence at an identification parade “...is a means by which evidence of identity is obtained. But it is certainly not the only means by which it could be established that a witness identified the accused as the person who committed the offence”***

***It has also been considered in the case of Keerthi Bandara vs. Attorney General 2000 2 Sri L.R. 266 that whether a witness at the trial could state before Court that he identified the accused at the parade, and it has been stated by Jayasuriya J that there has to be a distinction between the evidence at the trial identifying the accused and the evidence at the parade identifying the accused. In the same judgement Jayasuriya J had cited a *cursus curiae* emanating from the Supreme Court of India laying down the principle that the results of an identification parade do not constitute substantive evidence”***

**Hence in the instant matter the evidence led at the trial the witnesses had only mentioned about the accused being identified at the parade and not in Court.**

**Hence although the Counsel for the petitioner has averred strenuously that the sentence imposed by the learned High Court Judge is grossly inadequate in view of the gravity of the offence, this Court sees no reason to interfere with the sentence imposed by the trial judge in view of the non-identification of the accused in Court and the time period which has elapsed from the date of offence to up to date which is nearly 16 years and the period in remand of the accused leading up to the trial..**

**As such this Court sees no reason to interfere with the impugned judgment of the trial judge; as such the instant application for revision is dismissed.**

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal**