

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 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Disanayake Mudiyansele Bisomanika,
No 4, Near Cooperative, Onagama,
Polonnaruwa.

Court of Appeal Revision Application No:
CA / PHC / (APN) 26 / 2020

High Court of Polonnaruwa Case No: **(HC
122 / 13)**

Petitioner.

Wanigasinghe Mudiyansele Seneviratne
Bandara,
No 4, Near Cooperative, Onagama,
Polonnaruwa.

Accused – Respondent

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

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shiral D. Wanniarachchi for the petitioner.

Erandi Dassanayaka SC for respondent.

Argued On: 15.02.2022

Decided on: 15.03.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the sentence pronounced on 31.10.2017 by the learned High Court Judge.

In the instant matter accused respondent (hereinafter referred to as the respondent) has been indicted under sections 354 and 365 of the Penal Code and the respondent had pleaded not guilty and the trial had commenced and upon the conclusion of the trial the learned High Court Judge had convicted the respondent for and had sentenced him as follows ,

- 1) Charge one ,2 years RI and fine and a default term,
- 2) Charge two and three 15 years RI each with fine, default term and compensation.

Being aggrieved by the above sentence the instant application for revision has been filed challenging only the sentence imposed as per the prayer to the petition.

This Court notes that the above sentence has been passed in October 2017 and the instant application for revision has been filed in September 2019 which is exactly after two years.

It is well settled law that when a party files an application for revision the party filling the same must satisfy this Court that there are matters which shocks the conscious of this Court in the impugned judgment.

But the party filling the same must come to Court by way of revision without delay and if they do so they must explain to the satisfaction of Court as to the reasons for the delay and this position has been discussed in the judgment by this Court in CA/PHC/APN/21/2021 where it has been held that delay if unexplained is fatal, and in the instant case the petition is silent in explaining the delay and furthermore the Counsel when making the submissions in Court adopted a very lopsided attitude in explaining the delay which this Court notes with much regret.

The Counsel appearing for the respondents also has taken up a preliminary objection to the unexplained delay by the petitioner and the noncompliance of Supreme Court Rule.

The position of delay has been very lengthily discussed in the judgment of Rajapakse vs. The State 2001 2 SLR 161, Camillus Ignatius's OIC of Uhana Police Station CA 907 /89, Herath Mudiyansele Ratnasiri vs. AG CA(PHC) APN 44/2016 Seylan Bank vs. Thangavelu (2004)2 SLR101, and in many others.

Therefore the delay in filling the instant application for revision is unexplained and this Court considers it to be a well-founded ground to dismiss the instant application.

Apart from the above, this Court also notes that there is no illegality in the sentence imposed by the learned High Court Judge, in fact he has considered the ingredients which should be considered as said by His Lordship S.N.Silva CJ in the judgment of AGvs J.S. Ulluwaduge and another BASL News 4/2/95 where it has said that " In deciding what sentence to be imposed the judge must necessarily consider the offence committed the gravity of the offence, the manner in which it has been committed, the mechanisms and the manipulation resorted to do the effect of the offence on the organization in respect of which it has been committed, the persons who have been effected by it, the ingenuity in which it has been committed and the trial judge who has the sole discretion in imposing

the sentenceshould not surrender the sacred right or duty to any other person or counsel”

Hence as stated by the Counsel for the respondents the trial judge has considered the gravity of the offence, the tender age of the victim and the matured age of the accused in passing the sentence.

It has been held in the case of SC Appeal No 115/2014 by His Lordship Aluvihare J that in revision “an accused would therefore be entitled to relief if it is shown that the irregularity complained of had in fact prejudiced the substantial rights of the parties or has occasioned a failure of justice. A mere statement to that effect would certainly not be sufficient but it must be shown as to how the failure has resulted”

But this Court sees no failure of justice nor has b this Court been shown so by the Counsel for the petitioner.

Hence this Court sees no illegality in the sentence imposed by the learned Judge, and the Counsel for the petitioner does not say so either, which is required to act in revision.

As such in view of the unexplained delay and the lack of circumstances which shocks the conscious of this Court, the instant application for revision is hereby dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.