

**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.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

Court of Appeal Case No: **CA PHC
APN 26 / 19**

Gampaha High Court Case No: **HC 30
/ 2016**

1. Liyanage Manupriya Dammika
Somasiri alias Dammika

2. Sinhadipathilage Sepalika Saman
Kumara alias Udeni

3. Sinhadipathilage Nirosha Dilhani
alias Babi.

4. Shilpachchar iNakathige Udayani
Swaenalatha alias Sukiri

5. Sinhadipathige Nirosha Dilrukshi
alias Sepalika

6. Shilpachchari Nakathige Indra
Padmarani alias Rani

7.Sinhadipathige Madushanka

Hasitha Kumara alias Madushanka

8.Sakalachchari Nakathige Danushka

Ruwan Kumara

9. Sinnathamby Nalin Saman Kumara

alias Nalin

10. Wasantha Premathilake

11. Dasun Nalaka Jayasuriya alias

Dasun

12. Kasun Priyankara alias Jai

Accused

And Now

1. Liyanage Manupriya Dammika

Somasiri alias Dammika

2. Sinhadipathige Madushanka

Hasitha Kumara alias Madushanka

3. Sinnathamby Nalin Saman Kumara

alias Nalin

4. Wasantha Premathilake

Accused – Petitioners

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shehan De Silva with Hemal Senevirathna for the petitioner.

Maheshika Silva, SSC for the Complainant – Respondent

Argued On: 22.02.2022

Decided on: 29.03.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed by the accused petitioners (hereinafter referred to as petitioners) to set aside the judgment dated 29.11.2018 of the High Court.

At the very outset the Counsel appearing for the petitioners stated that he is not canvassing the conviction and the judgment but is only canvassing the sentence, as such submissions were limited to the same.

The petitioners in the High Court had been the 1st 7th 9th and the 10th accused in a case of 12 accused in which all had been indicted for murder and for unlawful assembly to commit murder.

The petitioners had pleaded not guilty to the indictment and trial had commenced and upon conclusion of the same the accused had been found guilty for the 1st and the second charges in the indictment and the petitioners had been sentenced to

- 1) For the 1st count 6 months RI and Rs 5000 fine and in default 3 months imprisonment,
- 2) 2nd count 10 years RI and Rs 10000 fine in default 6 months imprisonment with compensation.

Being aggrieved by the said sentence the instant application has been filed.

The contention of the Counsel for the petitioners is that,

- 1) The incident had taken place without premeditation,**
- 2) The incident is without motive**
- 3) The incident is after an act of consuming liquor.**

According to the facts of the case on the date of offence the deceased with witness nu 1 and 2 had gone to the boutique around 5 30 in the evening and had consumed 1 and half bottles of arrack and the 7th and the 11 petitioners had gone by on a motor cycle and the deceased had wanted them to bring a packet of cigarettes, but the petitioners had not obliged and the deceased had been irritated. Thereafter the deceased with the witnesses had gone to the boutique to purchase the cigarettes and afterwards they had stopped to chat to a friend when the 1st and the 12 accused had passed by and the deceased had restarted

the argument and there had been an exchange of fisticuffs, which had later developed to a brawl in which the deceased has sustained the fatal injury along with six other injuries.

According to the evidence the 1st accused had stabbed the deceased and the 7th and the 9th accused had come to the scene with clubs.

The deceased had sustained 7 injuries and the 3rd had been the fatal blow which had been caused to the chest and which had been classified as being necessarily fatal by the doctor, the others had been contusions and abrasions.

The Counsel appearing for the petitioners cited the case of Kumara vs. Attorney General 2003 1 SLR 139 where reduction of sentence has been considered.

The state counsel stated that the deceased had been isolated and assaulted by the accused, and furthermore he was assaulted and stabbed while being fallen. The state Counsel also submitted that the petitioners had come by way of revision when the right of appeal has been available and no reasons had been given.

Upon perusal of the petition of appeal this Court observes that the petitioners have given reasons for not filing an appeal although common it might be the reasons stated. But as the petitioners are not canvassing the conviction but only the sentence this Court would except those reasons to be exceptional and also since there is no obvious delay in filling the revision application.

In view of the submissions made by both parties this Court observes that the whole incident has commenced on the instigation of the deceased which both parties agree to, and in the said brawl the stabbing of the deceased had taken place.

The legality of the conclusion of the High Court Judge and the reasons given for it this Court would not go in to as only the sentence is being challenged at this point.

The High Court Judge had sentenced the petitioners for 10 years RI on the basis of knowledge which is the maximum sentence which the statute has specified, but in view of the fact that the deceased was the main contributory factor to the incident this Court thinks it is only fair to vary the sentence with regard to the second charge and reduce it to 5years RI and the rest of the sentence with regard to the 1st and the 2nd charge remains along with the compensation.

Subject to the above variation the instant application for revision is dismissed.

Judge of the Court of Appeal.

I agree

Neil Iddawala J.

Judge of the Court of Appeal.