

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

**REPUBLIC OF SRI LANKA.**

In the matter of an application for revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

**Complainant**

Court of Appeal Case No:  
**CPA/ 15/ 2021**

High Court of Chilaw Case No:  
**HC 67 / 16**

Magistrate's Court of Maarawila  
Case No: **B 1310 / 2009**

Vs.

Abeynayakage Sumith Priyantha,  
No. 156, Ratnagiriyawattta,  
Weerakodiyana, Madampe.

**Accused**

**AND NOW**

Abeynayakage Sumith Priyantha,  
No. 156, Ratnagiriyawatta,  
Weerakodiyana, Madampe.

Presently at Welikada Prison

Prison no. W – 32180

**Accused – Petitioner**

Vs.

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

**Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Rushdhie Habeeb, AAL for the Accused – Petitioner.

Maheshika Silva, SSC for the Respondent.

Argued on: 10.03.2022

Decided on: 07.04.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the order dated 9.10.2018 of the High Court of Chilaw.

The accused petitioner (hereinafter referred to as the petitioner) has been indicted in the High Court under section 296 and 315 of the Penal Code.

The petitioner had pleaded not guilty to the indictment and the trial in the High Court had commenced, and halfway through the trial the petitioner had pleaded guilty to a lesser offence under section 297 of the Penal Code based on sudden fight.

The person who sustained injury in the incident namely Sarath Kumara had been led in evidence and according to him on the day of the incident, he and the deceased who were working together had gone fishing and while doing so the deceased had received a call stating that the wife of the deceased had been assaulted by the accused. The witness and the deceased had gone to see the injured wife of the deceased and they had seen the wife of the deceased bleeding from the head. According to the witness the deceased had got very upset and angry and had gone in search of the accused, and when they found him the accused **had been clutching one child to his chest and the other child had been standing near him. The deceased and the witness had confronted him and the accused had warned them not to come forward but they had proceeded towards the accused when the accused had taken a knife and had stabbed the witness and the deceased both.**

**According to the submissions of the petitioner he is not contesting the conviction but only the sentence of 12 years which had been imposed for count number one.**

**The Counsel for the respondents stated that the instant application has been filed without exercising his right of appeal and the instant application has been filed after a lapse of two years.**

**But the Counsel for the petitioner contended that the petitioner had undergone many financial hardships and his two children are in the custody of an orphanage and on humanitarian grounds to overlook the delay in filling the application and to consider the excessive nature of the sentence imposed and reduce the same in view of the nature of the evidence adduced at the half concluded trial.**

It is a well understood and established norm in revision that if a party files a revision application the party filling the same must satisfy Court that there is an exceptional ground which shocks the conscious of Court and it must be filed without undue delay. If there is a delay it needs to be explained in a satisfactory manner. This Court too in a similar application has held the same. (CA/PHC/APN/21/2021.)

But nevertheless in view of the humanitarian grounds urged by the Counsel this Court will consider the instant application inspite of the delay in filling the instant application and inspite of the right of appeal not being explained. It has been held in the case of Rustom vs Hapangama (1978 SLRVol.2 Page No.225) Justice Ismail stated that, "The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this court to exercise these powers in revision. If the existence of special circumstances does not exist then this court will not exercise its powers in revision. The same has been held in the case of Rashid Ali vs. Mohammed Ali 1936 6CLW and Soza J. remarked thus, "The powers of revision conferred on the Court of Appeal are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However, this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the Court".

In view of the evidence of the Sarath Kumara led in the trial it is very evident that,

- 1) The deceased along with the witness had gone in search of the accused,
- 2) Accused had been clutching a child and holding a another,
- 3) The accused had pleaded with them not to come near him but the deceased had resisted and had proceeded towards the accused,
- 4) One stab injury on the deceased which had been the fatal injury.

Therefore it is very clear that it has ensued from the deceased quest to confront the accused and the accused had pleaded not to come near him, who had been with two children admitted by the injured in evidence. Therefore the question arises whether it was the result of a sudden fight or whether the accused had the knowledge of his actions.

According to the submissions of the petitioner the accused had no intention for the actions committed but only knowledge because he was with his two children.

The exception under Section 297 of the penal Code based on knowledge has been defined as an act which is imminently dangerous that, it must in all probability cause death or bodily injury which is likely to cause death. Therefore, Court must consider the act done by the accused and the circumstances surrounding the act to determine the existence of knowledge. In view of the evidence led at the trial this Court too sees some merit in the submission because the witness says that he was clutching one child to his chest. Therefore for him to be stabbing with intention is very remote

**Therefore this Court is of the view that it is an incident based on knowledge and not sudden fight and as such this Court varies the sentence imposed for the first Count and imposes a sentence of six years rigorous imprisonment from the date of conviction, and the rest of the sentence remains the same, subject the said 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.**