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

In the matter of a Revisionary Application under Article 138 of the Constitution.

Parana Manage Sidath Bidula
Thotupolagewatte, Boralukatiya,
Kahanda Andulugaha.

Suspect

Vs.

Officer – in – Charge,
Police Station,
Tangalle.

Plaintiff

AND BETWEEN

Parana Manage Sidath Bidula
Thotupolagewatte, Boralukatiya,
Kahanda Andulugaha.

Accused

Vs.

The Democratic Socialist Republic of Sri Lanka.

Court of Appeal Revisionary Application No: **CA / PHC/ APN / 121 / 20**

High Court of Tengalle Case No: **HC 81 /2017**

Plaintiff

AND NOW BETWEEN

Paranmanage Susiri Lakshan

Thotupolgewatte, Boralukatiya,

Kahanda Andulugaha.

Substituted Petitioner

Vs.

Parana Manage Sidath Bidula

Thotupolagewatte, Boralukatiya,

Kahanda Andulugaha.

Convited 1st Respondent

The Democratic Socialist Republic of Sri Lanka.

2nd Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shirol D. lalanniarachchi for the Petitioner.

Maheshika Silva, SSC for the State.

Argued on: 22.03.2022

Decided on: 24.05.2022

MENAKA WIJESUNDERA J.

The instant application has been filed to set aside the sentence pronounced on the accused namely Parana Manage Sidath Bidula dated 02.04.2019.

The accused in this matter has been indicted under Section 364 and 365 of the Penal Code and the accused had pleaded guilty to the two charges. The accused had been sentenced to for the first charge five years imprisonment and with a fine. Second charge fifteen years imprisonment, fine and compensation to the victim. The two sentences to operate consecutively.

The accused had not filed this petition; instead, it is the substituted petitioner who has filed the application of revision. The prayer to the petition does not content the conviction, but only the sentence. The counsel appearing for the respondents have taken up preliminary objections as follows.

1) The delay in filing the petition
2) The substituted petitioner has no locus standi to file the petitioner and even he has the right he has not explained as to how he was aggrieved
3) The accused has the right of appeal, but he has not exercised the same

The impugned sentencing of the accused had taken place on 02.04.2019 and the instant application for the revision has been filed on 12.09.2020 which is after one year and five months.

It is a well-founded principle that if a revision application is filled, the party filling the same must do so without delay. In the case of

Ellangakoon v OIC Eppawala Police Station and another (2007) 1 SLR 398, it has been held that "the impugned order is ordered 16/03/2006 while the petition has been filled on 24/07/2006, entailing an unexplained delay of four months and eight days/ in the absence of explanation to the contrary this delay be considered unreasonable".

In a case decided by this bench, **CA/PHC/APN/21/2021** this court has decided that "delay is considered to be a fatal error if it's not explained to the satisfaction of Court, and it has been held by this bench in the case of **CA/PHC/APN/78/2021**. This Court notes that counsel for the petitioner could not explain as to why the delay in filing the instant application.

The counsel for the respondents raised the objection that the substituted petitioner does not have the locus standi to file the instant application.

As per **Merriam-Webster (since 1828) Dictionary**, locus standi is defined as a right to appear in a court or before anybody on a given question: a right to be heard. Furthermore **Sathe, Public Participation and Judicial Process** elaborated the definition of the locus standi as, **"Locus Stand rule is based on good policy. The principle is that court time as well as energy should not be wasted on hypothetical or abstract questions or on a professional trial or a busy institution."** Moreover, **United Nations and the Rule of Law: Access to Justice** declares that **"Access to justice is a principle of the rule of law. Without access to justice, people will not be able to raise their voices and exercise their rights. Therefore, fair, and equitable justice must be ensured for all members without discrimination."**

In the case of **Somnipathy v Weerasinghe (1980) 2 SLR 121**, the interpretation of the locus standi or the "standing to sue", found reads that even the spouse of a victim has no standing to file a fundamental rights petition on behalf of the victim. In long overdue, **Sriyani Silva v Iddamalgoda, Officer in Charge, Police Station, Payagala and Others (2003) SLR 14**, the Court's position on the locus standi is observed considerably changed, when the Supreme Court of Sri Lanka pronounces that **"anyone having a legitimate interest could prosecute…in terms of Article 126(2) of the Constitution"**. In this case, the detainee, Jagath Kumara (petitioner's husband) died while being held at the Remand Prison. S. Bandaranayake J, with S.N. Silva J agreeing, stated that "**The golden rule of plain, literal and grammatical construction has to be read subject to the qualification that the language of the statute is not always that which a grammarian would use**". Moreover, Bandaranayaka J brought to light the preposterous situation that can lead to a "mischief" if it is contended that the right [for remedy] would become ineffective due to the intervention of death".

Later in the cases such as **Sugathapala Mendis and Others v Chandrika Kumarathunga and Others (2008)2 SLR339, 391**(Water's Edge case), the scope of locus standi was further consolidated, bringing in the concepts of "public interest" and "public trust". In the case of **Gunasekara Hamini v Don Baron D.C. Colombo, 13,125**, the Court considered that, "**a donation by a minor unassisted by a guardian is null and void. On the death of the minor's father, the mother does not become the guardian except by the Court appointing her under**

Chapter 40 of the Civil Procedure Code. Such a donation cannot be ratified subsequently, when the minor comes of age."

As per the case of **Sello Hamy v Rapheal 1 SCR. 73**, it was generally stated that a conveyance by an infant was not void but voidable, but Clarence, J., points out that the defendant, who then attacked the deed, had no locus standi to do so. Because he in no sense represented the minor, and he expressly abstains from finding whether the grantor was or was not a minor, because such a finding would have no bearing on the decision of the case. Besides, that was the case of a sale which might or might not be beneficial to the minor making it. A donation certainly cannot possibly be beneficial to the donor. There is no doubt on the authorities that the first plaintiff could have obtained restitutio in integrum if she had applied in time, but that remedy is now barred.

In the case of **Helena Hamline et al v Nonahamy et al 60 DC Colombo , 33,943**, under the Roman-Dutch law a married woman has no locus standi in judicio, but where, rightly or wrongly, a wife is brought in, as a separate party, to a case along with the husband, and judgment is entered in favor of both, she has all the rights and privileges of a joint judgment-creditor, and it is not open to the husband to enter into a compromise with the judgment-debtor or receive payments from him to her prejudice.

In the case of **Deshpande v S (1971) 13 JILI 153**, highlights two key issues underlying the concept of locus standi. "The plaintiff **must have some grievance**. That is, **another person's grievance cannot be prosecuted**. But this does not apply to Habeas Corpus or Quo Warranto writ orders. This is due to public freedom and public attention to state

property. There is no room for purely academic disputes to come before the court. That is, **we should focus only on the grievances and attachments that are relevant to the person concerned**."

In another case of **M.C. Mehta v Union of India (AIR 1988 SC 1115)**, a petition filed by a third person for protecting the lives of people who drink from the river Ganga was considered in the interest of public therefore entertained by the court. The court further directed the concerned authorities to take measures for tackling the pollution of the river.

In the case of **Parmanand Katara v Union of India (AIR 1989 SC 2039)**, a petition filed by an advocate for the removal of prior technicalities of criminal procedure before treatment of the patient in case of a road or other accident was entertained by the court and appropriate directions were issued to the medical establishments.

In the case of **Dattaraj Nathuji Thawarev State of Maharashtra AIR2005 SC 540**,relaxation of the principle of locus standi has significantly helped in protection of fundamental rights of citizens effectively which otherwise would have been extremely difficult.

In the case of **CA (PHC) APN 144/2016 HC (Rev) 76/2016**, it was determined by the Court that **"the intervenient petitioners must show that they have a sufficient interest in the matters to which the revision application relates to. It is respectfully submitted that in the first place, the Intervenient-Petitioners must show that they have locus standi to make this revision application to this court with regards to the issue of locus standi."**Accordingly, in the same case, the judgement was supported by the following cases,

In the case of **Sonali Fernando v AG CA (PHC) APN 144/07**, His Lordship A.W.A Salam J, held that, **"In law locus standi is generally understood to be right to bring an action to be heard in court, or to address the court on a matter before it".**

In the case of **E.G. Roshan Fernando v AG CA(PHC) APN 101/13 His Lordship Dehideniya J**, in answering the question of who has the right to bring an action held as follows, **"Who has this right to bring an action or who the right to address the court? The answer is the person who was harmed or aggrieved by the decision of the court".** Additionally, in the aforesaid case, His Lordship Dehideniya J , discussed the obiter dictum of Lord Denning in **R v Paddington Valuation Office (1996) 1 QB 380 at 40**1 on locus standi which cited in **A.R Perera and Others v Central Freight Bureau of Sri Lanka and another (2006) 1 SLR 83** which reads as; **" The Court would not listen , of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done".**

The third ground of objection raised by the counsel for respondent is that the accused has failed to exercise his right of appeal and he has failed to explain the same.

The difference between revision and appeal was explained in **CA (PHC) APN 17/2006** decided by three judges of the Court of Appeal explained Revision and Appeals thus, **"Needless to state that in an application for revision, what is expected to be ascertained is whether there are real legal grounds for impugning the decision of the High Court in the field of law relating to revisionary powers and not whether the impugned**

decision is right or wrong. Hence such an application the question of a rehearing or the revaluation of evidence in order to arrive at the right decision does not arise."

In **Nissanka v The State 2001 Vol. 3, page no.78**, it was held, the power of revision can be exercised for any of the following purposes via;

1) To satisfy the Appellate Court as to the legality of any sentence/ order
2) To satisfy the Appellate Court as to the propriety of any sentence/order
3) To satisfy the Appellate Court as to the regularity of the proceedings of such Court
4) Revisionary jurisdiction is not fettered by the fact that the accused appellant has not availed of the right of appeal within the specified time.

Per Kulatillake J, **"if it appears that the trial judge has applied the law in arriving at his conclusions the Court of Appeal would not interfere with simply because he has failed to set out the law that he has applied in express terms."**

The counsel for the respondent has further stated that the accused has not expressly pleaded exceptional circumstances in the petition. In the case of **Amin v Rashid 3 CLW 8**, Abraham CJ has observed that, **"It has been said in this court often that revision…. Is an exceptional proceeding and in the petition if no reason is given why this method of rectification has been sort…. I can see no reason why the petitioner should expect us to exercise our revisionary powers in his favor…"**

It has been held in the case of bank of **Ceylon v Kalil and Others (2004) 1 SLR 284** states that, **"to exercise revisionary jurisdiction, the order**

challenged must have occasioned a failure of justice and be manifestly erroneous which is beyond an error or defect or irregularity… which shocked the conscious of the Court".

Therefore, it is very obvious that a petitioner has failed to aver an exceptional circumstance which shocks the conscious of the court in the impugned judgement. Furthermore, the undue delay in filing the petition the so called substituted petitioner has failed to explain. According to the above mentioned a judgement, the substituted petitioner has failed to state as to how he has been aggrieved by the impugned sentenced imposed by the High Court.

Therefore, in view of the above mentioned preliminary objections raised by the respondents, it is only fair and just and legal as per the law cited above to dismiss the instant application for revision without going into the merits of the case. But, even if this Court goes in to the merits of the case, this Court notes that the accused had been 43 years of age and the victim had been only 11 years of age at the time of the offence, and the victim had been in the habit of frequenting the house of the accused in order to play with his daughter who was of the same age. Hence the accused had in fact committed this grave offence to which he has pleaded guilty on a child who was of the same age as his own. The medico- legal report substantiates the injuries of the victim. Therefore, as the substituted petitioner has only canvassed the sentenced imposed on the accused, this court sees no reason to revise the same because it is neither illegal nor does it shocks the conscious of this Court.

Hence the instant revision application is dismissed.

Judge of the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.