

**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**

Court of Appeal Case No: **CA / CPA/  
115 / 2020**

Vs.

High Court of Kegalle Case No: **HC  
3726/2017**

Manannalage Sirisena

**Accused**

Magistrate's Court of Kagalle Case  
No: **B / 2473 / 4**

**AND NOW BETWEEN**

Manannalage Sirisena

**Accused – Petitioner**

Vs.

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

**Complainant – Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Duminda De Alwis with Lakmini Amarasinghe for the Accused –  
Petitioner.

Priyani Abeygunawardena, SC for the State.

Argued on: 21.03.2022

Decided on: 24.05.2022

**MENAKA WIJESUNDERA J.**

The instant application has been filed to set aside the judgment dated 28.02.2020 of the High Court.

The accused petitioner (hereinafter referred to as the petitioner) has been indicted under Sections 354 and 365 of the Penal Code. The petitioner has pleaded not guilty to the indictment and the trial has begun. The victim in the instant matter has given evidence and has alleged that he was sexually abused by the petitioner and it was around five days later that he had told his mother. In the evidence of the prosecution three contradictions were marked by the defense and the honorable High Court Judge has decided that they do not go to the root of the case. At the end of the trial the petitioner had been convicted for both charges and for the first charge he had been sentenced to two years imprisonment with fine and compensation, for the second charge he has been sentenced to six months imprisonment with a fine.

This Court observes that the petitioner has not exercised his right of appeal. But he has explained as to why he has failed to do so. Furthermore, there is a delay in filling the revision application of around six months but that too he has explained.

The difference between revision and appeal has been well set out in the case of CA(PHC)APN 17/2006 where full bench of this Court has gone into this matter and has held “ 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 the case of Browns Engineering Private Ltd. v Commissioner of Labor and others 98 SLR vol 1 pg 88 FND Jayasuriya J. has held that “On an appeal the question is right or wrong? On review the question is lawful or unlawful”

In Nissanka v the State vol.3 page No.78 it was held that,

The power of revision can be exercised for any of the following purposes viz:

- 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 the right of appeal within the specific 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.” It has also been held HAM Casim v GA Batticaloa (NLR vol.69 pg 403) “An application in revision must be made promptly if it is to be entertained by the SC. There must be finality in litigation, even if incorrect orders have to go reversed.”

According to the counsel of the petitioner, the complainant has lodged a complaint in the police Station after around seventeen days. Furthermore, he says that the evidence in the prosecution is contradictory.

But in the judgment of the learned High Court judge he has considered the evidence of the victim at length and other witnesses along with the contradictions and the omissions. He has very correctly said that a witness cannot be expected to be having a photographic memory and he has cited some decided cases on the same line.

The High Court Judge has observed the fact that the petitioner going to the house of the victim on the date of offence is admitted, the only questionable thing is the alleged offence. But upon considering the evidence of the victim the High Court judge has observed, although there is a delay in lodging the complaint the version of the victim remains consistent throughout the evidence except for a few contradictions and omissions which the court has decided to be not very important.

This Court too observes that the victim had been consistent in his narration of facts, the only shortcoming in the prosecution's story is the delay in the story being told by the victim to the mother, which in the opinion of this Court would have been due to the immaturity of the victim who has not understood the gravity of the incident. The prosecution evidence, or rather the evidence of the victim, has been corroborated by the other witnesses of the prosecution.

The position taken up by the defense or rather the petitioner in the High Court has been that the incident was fabricated by the victim's mother due to a monetary transaction. This fact, the prosecution witnesses have denied and more over it is very hard to believe that parents would put through their own child through a situation of this nature for mere Rs. 2000 as alleged by the petitioner. Therefore, the decision of the learned High Court Judge to disregard the defense is justifiable.

Hence, it is the considered view of this Court that the learned High Court Judge is justified in finding the accused petitioner guilty for both offences and the sentences imposed is reasonable in view of the evidence adduced at the trial.

Therefore, this Court sees no exceptional illegalities in the judgment of the Learned High Court Judge which shocks the conscious of this Court. 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.**