

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 / 04 / 2020

Yasindu Udara Batuwatte Gamage.

Accused

High Court of Galle Case No:
HC 4341 /2016

AND NOW

Magistrate's Court of Baddegama
Case No: **85118**

Yasindu Udara Batuwatte Gamage

Accused – Petitioner

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant – Respondent

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: Shehan De Silva for the Petitioner.

Chathurangi Mahawaduge SC for the State.

Argued on: 19.05.2022

Decided on: 15.06.2022

MENAKA WIJESUNDERA J.

The instant application for revision has been filed by the accused petitioner (hereinafter referred to as the petitioner) to set aside the judgment dated 30.8.2019 of the High Court of Galle.

In the instant application the petitioner had been indicted in the High Court for causing the death of his Cousin.

The petitioner and the deceased had been neighbors and the deceased according to evidence had been addicted to narcotics and had been a habitual trouble maker in the neighborhood.

According to the submissions of the petitioner the deceased had been in the habit of always harassing his parents, and even on the day of the incident, the deceased had come to the house of the accused and had manhandled the accused mother and the said old lady had reacted to the onslaught in such a manner had excreted on the spot.

The above mentioned behavior of the deceased is not disputed by the respondents and the accused had informed the prosecution witness that the accused was lying in his house after being assaulted by him.

The High Court judge had considered the behavior of the deceased prior to the alleged incident borne out by the evidence of the prosecution and the accused admission to the prosecution witnesses of his actions of assaulting the deceased had convicted the petitioner, under section 297 of the Penal Code based on grave and sudden provocation.

The Counsel for petitioner contended that he is not contesting the conviction but only the sentence in view of the behavior of the deceased prior to his death,

The Counsel for the respondents stated that she is objection to the application in view of the delay in filling the instant application and the nature of the injuries on the deceased.

It is a well understood principle of law that if a party files a revision application the party filling the same must satisfy the Court that there are exceptional circumstances which shocks the conscious of Court and if that is fulfilled the party filling the same must come before Court without delay, and if there is a delay it has to be explained to the satisfaction of Court and this Court had held so in the case of CA (PHC) APN 106 /21 decided on 30.03.2022.

In the instant application the petitioner has come to this Court after a period of 4 months and he has wavered the right to file an appeal. In paragraph 12 of the petition the petitioner has explained the reason for not filing an appeal and the reason for the delay in filling the instant application.

The postmortem report of the deceased bears out several injuries which had been dealt to the hands and the legs mainly and to the head and the shoulder of the deceased.

But in view of the behavior of the deceased and the circumstances pertaining to the incident this Court is of the opinion that as the petitioner has already served a considerable period of the sentence that the eight years rigorous imprisonment imposed should be reduced to four years rigorous imprisonment to be operative from the date of the conviction, subject to 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.