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.

Court of Appeal No:

CA/PHC/APN 0043/23

The Officer-In-Charge

Police Station, Kottawa.

COMPLAINANT

HC Homagama

Case No. 10/2020

MC Homagama

Case No. 801

Vs.

Ganegodage Supun Lakshan,

No.405/D,

Samagi Mawatha,

Panagoda, Homagama.

ACCUSED

AND BETWEEN

Ganegodage Supun Lakshan,

No.405/D,

Samagi Mawatha,

Panagoda, Homagama.

ACCUSED-APPELLANT

Vs.

1. The Officer-In-Charge
Police Station, Kottawa.
COMPLAINANT-RESPONDENT

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

AND NOW BETWEEN

Ganegodage Supun Lakshan,

No.405/D,

Samagi Mawatha,

Panagoda, Homagama.

ACCUSED-APPELLANT-PETITIONER

Vs.

1. The Officer-In-Charge
Police Station, Kottawa.
COMPLAINANT-RESPONDENT-RESPONDENT

2. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.
RESPONDENT- RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Sachira Andrahannadi for the Petitioner

Supported on : 12-05-2023

Order on : 19-06-2023

Sampath B. Abayakoon, J.

This is an application by the accused-appellant-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction of this Court in terms of Article 138 of The Constitution.

We heard the submissions of the learned Counsel for the petitioner for notice to the respondents mentioned in the application.

The petitioner has been charged before the Magistrate Court of Homagama for the offence of robbery where he is alleged to have robbed the gold chain of a female on 3rd March 2016, and thereby committing an offence punishable in terms of section 380 of the Penal Code.

The gold chain has never been recovered. At the trial in this regard, Vidanapathirage Sudarma Kanthi who was the victim of this robbery has given evidence as PW-01. She has described the incident faced by her where the robber who came into her shop in the guise of customer, snatched the gold chain she was wearing and ran away. In her evidence, she has clearly stated that she was able to see the robber clearly as she struggled with him and even ran after him. Subsequently, she has been called for an identification parade where she has identified the petitioner as the person who robbed her.

When this matter was taken up for trial before the learned Magistrate of Homagama, the investigating officer who was the witness no. 03 named in the plaint was deceased, and an officer of the relevant police station has given evidence in terms of section 32 (2) of the Evidence Ordinance and produced

relevant investigation notes to the Court. The prosecution case has been closed after marking the identification parade as P-01. After calling for a defence, the learned Magistrate of Homagama had pronounced his judgement on 26th November 2019, convicting the petitioner for the charge. He has been sentenced to 1-year rigorous imprisonment and has been ordered to pay a fine of Rs. 1500/=.

Being aggrieved by the said conviction and the sentence, the petitioner has preferred an appeal to the High Court of Homagama. The learned High Court Judge of the High Court of Homagama, having considered the appeal has dismissed the same by his judgement dated 08th February 2021. The learned High Court Judge has considered the grounds of appeal urged by the petitioner and has determined that he has no basis to interfere with the said conviction and the sentence of the learned magistrate.

It is against the said judgement pronounced in appeal by the learned High Court Judge of Homagama, the petitioner has filed this application of revision before this Court.

Revision being a discretionary remedy granted in exceptional circumstances, it is essential for the petitioner to urge the exceptional circumstances which entitle him to come before this Court. In paragraph 9 of his petition, he has given the following reasons as exceptional circumstances for the consideration of this Court.

1. The learned High Court Judge has erred in law by failing to properly analyze the circumstances of the case.
2. The learned High Court Judge has erred in law by not considering the fact that the gold chain was not found in the possession of the appellant and no investigation had been conducted to that effect.
3. The has erred in failing to consider that the prosecution had not proved the case beyond reasonable doubt.

4. The learned High Court Judge has erred on facts by wrongly analyzing that the appellant was arrested on 07-03-2016.
5. The learned High Court Judge has erred in law by failing to analyze the evidence adduced by the witnesses according to what was stated in the identification parade marked X-3 and the evidence of witnesses as to the identification of the accused.

The plain reading of the above grounds reflects that these are challenges to the facts placed before the trial Court and are not circumstances that can be considered as exceptional circumstances which warrants the invoking of the revisionary powers of this Court.

Although the petitioner claims that the learned High Court Judge has failed to draw his attention to the above-mentioned grounds, it is clear from the judgment of the learned High Court Judge as well as the judgement of the learned Magistrate, the relevant facts had drawn attention of the learned High Court Judge, as well as the learned Magistrate.

For a party aggrieved by a judgement pronounced by a High Court in exercising its appellate jurisdiction in terms of Article 154P of The Constitution, the remedy available is to file an appeal before the Supreme Court with leave first had and obtained either from the relevant High Court or the Supreme Court itself. The petitioner has failed to exercise his right of appeal, but has filed this application some two years after the pronouncement of the High Court judgement.

It is essential for a person who is seeking the discretionary remedy of revision from this Court to explain his failure to file an appeal in the correct forum as required by law and the delay in coming by way of revision before this Court. Giving an explanation, the petitioner has stated in his petition that due to a default of his previously retained Attorney-at-Law, an appeal against the High Court judgement was filed in the Court of Appeal where it was dismissed for filing the appeal in the wrong Court. It is thereafter only the petitioner has sought the revisionary remedy from this Court by submitting this application.

The learned Counsel for the petitioner, while making submissions in support of getting the notices issued contended that the case has been decided only on the evidence of PW-01 and that of the police evidence. It was his submission that in view of the failure to recover the productions, there was no basis for a conviction based on the evidence of PW-01.

It needs to be mentioned that there exists no bar for a trial Court to admit the evidence of a single witness if the evidence is cogent and trustworthy and can be relied upon it for determining an action.

The relevant section 134 of the Evidence Ordinance reads as follows;

> **134. No particular number of witnesses shall in any case be required for the proof of any act.**

In the case of **Mulluwa Vs. The State of Madhya Predesh 1976 AIR 989** it was stated that,

> *"Testimony must always be weighed and not counted."*

As discussed by **E.R.S.R. Coomaraswamy** in his book **The Law of Evidence** Volume 1 at page 670, the Indian Supreme Court in the case of **Ramratan Vs**. **State of Rajasthan AIR (1962) S.C. 424** has laid down the following general rules governing the question whether the evidence of a single witness is sufficient as the basis of a conviction.

a. *The question whether corroboration of a testimony of a single witness is or is not necessary must depend upon the facts and circumstances of each case.*
b. *The Court should not, in the absence of a statutory requirement, insist on corroboration, except in cases where the nature of the testimony of the single witness itself requires, as a matter of prudence, that corroboration should be insisted upon.*

c. *Where the Court is convinced that the witness is speaking the truth, and his evidence rings to be true, as a general rule, the Court may act on the evidence of a single witness though uncorroborated.*

In this action, the evidence of PW-01 and that of the investigating officer has been evaluated in its correct perspective and the learned trial Judge has come to his findings accordingly. Although the petitioner has initially taken up the position stating that he was shown to the PW-01 before the identification parade was held, however, after PW-01 answered that position under cross-examination, has taken up the position that the PW-01 was shown a photograph of him and he was identified at the parade because of that.

The learned trial Judge as well as the learned High Court Judge has well considered these positions and had found no reasons to accept the said contentions and has determined that it had not created any doubt as to the evidence of PW-01.

The learned Counsel for the petitioner also pointed out that the identification parade notes had been marked through the Court interpreter without calling the relevant witnesses and affording the petitioner to confront them in that regard. However, it needs to be noted that in terms of section 414 (2) of the Code of Criminal Procedure Act No. 15 of 1979, the depositions regarding an identification parade held by a Magistrate or Justice of Peace can be marked without calling the relevant witnesses.

It appears that the identification parade notes had been marked in terms of the above provision of law. When this was done, at the Magistrate Court of Homagama, the petitioner had been represented by his Attorney-at-Law. There had been no application to call the relevant witnesses before the Court as required in terms of the proviso of section 414. Hence, this Court finds no irregularity in the procedure adopted by the learned Magistrate in that regard.

It was held in the case of **Wijesinghe Vs. Tharmaratnam (Srikantha Law Reports Vol. IV page 47)**,

> *"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court."*

In **Vanik Incorporation Ltd. Vs. Jayasekara (1997) 2 SLR 365**, it was held,

> *"Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice."*

As none of the grounds urged provides a basis for this Court to issue notice on the respondents mentioned in the petition, notice is refused. Accordingly, the application is dismissed.

The Registrar of the Court is directed to forward copies of this Order to the High Court of Homagama as well to the Magistrate Court of Homagama for information purposes.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal