

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

In the matter of an application for
revision under and in terms of Article
138 of the Constitution of the Democratic
socialist republic of Sri Lanka.

Court of Appeal No:

CA/PHC/APN/CPA- NO: 21/2025

MC Matara Case No: 585/2018

Officer-in-Charge

Police Station

Mawarala

Complainant

V.

Thotagamuwa Kankanamge Gunethilake

Near Public Market

Mawarala

Accused

AND BETWEEN

Thotagamuwa Kankanamge Gunethilake

Near Public Market

Mawarala

Accused –Appellant

Vs.

Officer-in-Charge

Police Station

Mawarala

Complainant- Respondent

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Respondent

AND NOW BETWEEN

Thotagamuwa kankanamge Gunethilake

Near Public Market

Mawarala

Accused –Appellant-Petitioner

Vs.

Officer-in-Charge

Police Station

Mawarala

Complainant- Respondent-Respondent

The Attorney General

Attorney general's Department

Colombo 12.

Respondent-Respondent

Before : **B. Sasi Mahendran, J.**
 Amal Ranaraja, J

Counsel: Sarinda jayawardena for the Accused- Appellant-Petitioner

Supported On: 12.03.2025

Order On: 01.04.2025

B. Sasi Mahendran, J.

The Petitioner instituted this revision application seeking inter alia to revise and set aside the sentence imposed on the Accused-Appellant- Petitioner by judgment dated 11.11.2021 delivered by the Provincial High Court of Southern Province holden in Matara in the appeal bearing No. HC/Appeal/206/2019.

The Petitioner states that he was charged on 13.02.2019 in the Magistrate's Court of Deiyandara for causing grievous hurt to Hettiarachchige Nilantha on 30.09.2018 at Mawarala, an offence punishable under Section 316 of the Penal Code.

The Petitioner avers that the prosecution led the evidence of the victim as PW1 and PC Agalaka Arachchige Chinthaka Priyadarshana, the investigating officer. The Prosecution also marked the Medico-Legal Report as 2 and a wooden rod

as ෧-1 and closed the case for the prosecution. Thereafter, the Petitioner gave a dock statement.

At the conclusion of the trial, the Learned Magistrate by judgment dated 21.08.2019 convicted the Petitioner of the offence of voluntarily causing grievous hurt and sentenced a fine of Rs. 1,000/- and a compensation of Rs. 10,000/- to be paid to PW1, the victim.

The Petitioner being aggrieved by the said judgment of the Learned Magistrate of Deiyandara, preferred an appeal to the Provincial High Court of Southern Province holden in Matara on 09.09.2019 on the following grounds;

- a. The Learned Magistrate had failed to consider the contradictions in the evidence in prosecution witnesses.
- b. The Learned Magistrate had failed to consider that the prosecution had failed to prove the case beyond reasonable doubt
- c. The Learned Magistrate had imposed an excessive sentence on the Petitioner.

Nevertheless, the Learned Judge of the Provincial High Court delivered the judgment on 11.11.2021 affirming the judgment of the Learned Magistrate. The Learned Provincial High Court Judge enhanced the sentence imposed by the Learned Magistrate in the following manner;

1. One year of rigorous imprisonment
2. A fine of Rs.1000/- and a default sentence of three months imprisonment
3. A compensation of Rs.100,000/- to be paid to PW1.

The Petitioner being aggrieved by the said judgment of the Learned Provincial High Court Judge, invokes the revisionary jurisdiction of this Court on the following grounds which give exceptional circumstances;

1. Whether the Honourable Provincial High Court Judge of Matara erred in law when enhancing the sentence imposed on the Petitioner by the Learned Magistrate of Deiyandara, without permitting the Petitioner a show cause relating to the said enhancement of the sentence?

2. Whether the decision of the Honourable Provincial High Court Judge of Matara violates the rules of Natural Justice by failing to afford an opportunity to the Accused-Appellant-Petitioner in enhancing the sentence imposed on him, especially where neither the Complainant nor the aggrieved party has preferred an appeal seeking the said sentence to be enhanced?
3. Whether the sentence imposed on the Petitioner by the Honourable Provincial High Court Judge of Matara is excessive?

The Petitioner states that he has filed an appeal in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 199 in case bearing No. CA PHC 11/2022.

However, upon receiving advice that the said appeal is in contravention of law, the Petitioner withdrew the said application on 21.02.2025. The Petitioner states that therefore, there is no inordinate delay in filing the present application.

When we peruse the judgment of the Learned High Court Judge delivered on 11.11.2021, he has given reason for such enhancement applying the provisions from the Criminal Procedure Code.

For the purpose of convenience, I reproduce an excerpt of the said judgment.

On Page 162 of the brief;

“අභියාචක වෙනුවෙන් අභියාචනා පෙන්සමෙහි මෙන්ම ලිඛිත දේශනයන්හිද සඳහන් කර ඇත්තේ උගත් මහේස්ත්‍රාත්තුමිය අධික දඬුවමක් අභියාචකට නියම කර ඇති බවටය. උගත් මහේස්ත්‍රාත්තුමිය වූදින අභියාචකට නියම කර ඇත්තේ රු. 100/- ක දඩ මුදලක් හා රු. 10,000/- ක වන්දි මුදලක් පමණි. ලංකා දණ්ඩ නීති සංග්‍රහයේ 316 වගන්තියට අනුව බරපතල තුවාල සිදු කිරීමේ චෝදනාවකට වරදකරු කරනු ලැබූ විට වසර 07 දක්වා වන කාලයකට දෙයාකාරයකින් එක ආකාරයකට බන්ධනාගාර ගත කිරීමකින් දඬුවම් කල යුතුය. එමෙන්ම ඔහු දඩයකටද යටත් විය යුතුයි. එයට අමතරම අපරාධ නඩු විධාන සංග්‍රහයේ 17 වන වගන්තියට අනුව වන්දි මුදලකට ද හිමිකම් ලැබේ. එකී ව්‍යවස්ථාපිත නීතියේ සඳහන් දඬුවම කෙරෙහි අවධානය යොමුකිරීමේදී බන්ධනාගාර ගත කිරීම ව්‍යවස්ථාපායකය අපේක්ෂා කර ඇති බව පෙනී යයි. ඒ අනුව උගත් මහේස්ත්‍රාත්තුමිය දඬුවම් නිරිතේදී ව්‍යවස්ථාපිත නීතියේ සඳහන් සීමාවන්ටද අඩුවෙන් දඬුවම් නියම කර ඇති බව පැහැදිලි වේ.”

This Court is mindful of the relevant provisions from the Criminal Procedure Code relating to the appeals to this Court.

328. “At the hearing of the appeal the court may if it considers that there is no sufficient ground for interfering dismiss the appeal or may

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made or that the accused be re-tried or committed for trial as the case may be or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction -

(i) reverse the verdict and sentence and acquit or discharge the accused or order him to be re tried by a court of competent jurisdiction or committed for trial, or

(ii) alter the verdict maintaining the sentence, or with or without altering the verdict increase or reduce the amount of the sentence or the nature thereof;

(c) in an appeal from any other order, alter or reverse such order;

Provided always that the sentence awarded on an appeal shall not exceed the sentence which might have been awarded by the court of first instance.”

336. “On an appeal against the sentence whether passed after trial by jury or without a jury, the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence, and pass other sentence warranted in law by the verdict (whether more or less severe) in

substitution therefor as it thinks ought to have been passed and in any other case shall dismiss the appeal.”

Section 336 of the Criminal Procedure Code relating to enhancing the sentence was discussed by His Lordship Amaratunga, J in Bandara V. Republic of Sri Lanka, 2000 (2) SLR 277 at page 27;

“Having considered the evidence available in the case and the submissions of counsel, it is our considered view that this is a fit case for us to use the power conferred on this Court by the Legislature to enhance the sentence in appropriate cases. Section 336 of the Code of Criminal Procedure Act uses the words "a sentence . . . passed after trial". The accused-appellant was convicted and sentenced on his own plea, but he had tendered his plea in the course of his trial. Therefore, we are satisfied that this case falls within section 336 which deals with sentences passed after trial.

On the evidence available in this case the accused-appellant could have been indicted even for murder on the basis of the 4th limb of section 294 of the Penal Code. Therefore, in this case he deserves a longer period of imprisonment.

However, I am of the view that it is sufficient to impose a period of 60 months imprisonment on the accused-appellant to deliver a message to all those who have no respect for other persons right to life and property that this Court will never hesitate to use its powers under section 336 in appropriate cases.”

In the instant case, the Learned High Court Judge, after evaluating the evidence led before the Learned Magistrate has come to the conclusion that although the particular charge falls under Section 316 of the Penal Code, the Learned Magistrate has failed to impose the sentence which is prescribed by the said Section.

For easy reference, Section 316 is reproduced below;

“316. Whoever, except in the case provided for by section 326, voluntarily causes grievous hurt shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the person to whom the grievous hurt is caused shall be a woman or a child, may in addition be punished with whipping.”

Therefore, there is no reason for us to intervene with the judgment of the Learned High Court Judge as he has applied the law and the legal principles correctly.

Application dismissed with state costs of Rs. 25,000/-

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

JUDGE OF THE COURT OF APPEAL