

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

In the matter of an Application for  
Revision under Article 138 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

**Court of Appeal**

**Revision Application No:**

**CA(PHC)APN/0095/2023**

The Officer-in-Charge

Police Station

Kolonne, Embilipitiya.

**COMPLAINANT**

**High Court of Embilipitiya**

**Case No. HCE/96/2021**

**Vs.**

Perumal Dinesh Kumar

Pahala Kota, Heswaththa,

Ulliduwawa

**MC Embilipitiya**

**Case No. BR/1706/2018**

**ACCUSED**

**AND NOW BETWEEN**

Perumal Dinesh Kumar

Pahala Kota, Heswaththa,

Ulliduwawa.

**ACCUSED-PETITIONER**

**Vs**

1. The Officer-in Charge,  
Police Station,  
Kolonne, Embilipitiya.

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

**COMPLAINANT-RESPONDENT**

**BEFORE** : **Sampath B. Abayakoon, J.**  
**P. Kumararatnam, J.**

**COUNSEL** : **Muneer Thoufeek with A.W.Rinoshan,**  
**Vishri Aaloka and N.Nawshad for the**  
**Petitioner.**  
**Maheshika de Silva, DSG for the**  
**Respondent.**

**SUPPORTED ON** : **24/11/2023.**

**DECIDED ON** : **02/04/2024.**

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## **JUDGMENT**

### **P.Kumararatnam,J.**

The Accused-Appellant-Petitioner (hereinafter referred to as 'the Petitioner') was indicted before the Provincial High Court of Embilipitiya by the Hon. Attorney General for one count of kidnapping the victim Balakrishnan Niroshani from lawful guardianship punishable under Section 354 of the Penal Code and two counts of rape charge punishable under Section 364(2) to be read with Section 364(2)(e) of the Penal Code.

When the indictment was read over to the Petitioner, he had pleaded guilty to the charges and was convicted on his own plea. After the sentencing submissions of both parties the Learned High Court Judge of Embilipitiya on 26.09.2022 sentenced the Petitioner as follows:

1. 1<sup>st</sup> Count- 2 years Rigorous imprisonment with a fine of Rs.5000/-. In default 12 months Simple Imprisonment.
2. 2<sup>nd</sup> Count- 10 years Rigorous Imprisonment with a fine of Rs.10,000/-. In default 12 months Simple Imprisonment.
3. 2<sup>nd</sup> Count- 10 years Rigorous Imprisonment with a fine of 10,000/-. In default 12 months Simple Imprisonment.

In addition, the Petitioner was ordered to pay a compensation of Rs.350,000/- with a default sentence of 12 months Simple Imprisonment. The Court further ordered that the sentence imposed on 2<sup>nd</sup> and 3<sup>rd</sup> charges to run concurrently.

Being aggrieved by the aforesaid judgment of the Learned High Court Judge of Embilipitiya, the Petitioner filed this revision application before this Court.

It is well settled law that when an application for revision is filed the Petitioner has to satisfy the court that there are exceptional circumstances which shocks the consciousness of the court in the impugned judgment.

According to the Section 364 of the Code of Criminal Procedure Act No.15 of 1979, there are three aspects which a court could consider in a revisionary proceeding have been considered. They are;

1. Legality of any order,
2. Propriety of any sentence or order and
3. Regularity of the proceedings of such court.

In **Hotel Galaxy Ltd & others v Mercantile Hotel Management Ltd** (1987) 1 SLR 5 Sharvananda C.J. reiterated that:

*“it is settled law that the exercise of revisionary powers of the Appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention”*

**The Petitioner has pleaded following exceptional circumstances in support of her Revision Application.**

1. The Learned High Court Judge of Embilipitiya has erred in law by not considering the fact that the Petitioner was a teenager at the time of commission of the offence.
2. The Learned High Court Judge of Embilipitiya erred in law by not appreciating the fact that the Petitioner is a first-time offender and pleaded guilty at the 1<sup>st</sup> instant without going for trial.
3. The Learned High Court Judge of Embilipitiya had failed to consider that the Petitioner has no previous conviction or pending case when imposing the sentence.

4. The Learned High Court Judge had failed to consider that the Petitioner in an uneducated and less understanding of gravity and the consequence of the offence committed by him.
5. The Learned High Court Judge was influenced by the submission of the State Counsel on a hypothetical and imaginative submission “that the accused wouldn’t have been pleaded guilty if the DNA report is not available” which rendered the Learned High Court Judge to make such excessive sentence to the Petitioner where the context is completely unlawful
6. The Learned High Court Judge failed appreciated the fact that the statement made to the victim to the police itself a good proof to the fact that there was a consent through it is not relevant since the victim is a under the age of 16, but the Learned High Court Judge has come to a conclusion that there was no consent which fact had been influenced the Learned High Court Judge to impose an excessive sentence.

Our Courts have repeatedly held that the revisionary power of Courts is an extraordinary power and that the Courts must exercise it only in exceptional circumstances. Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

*“the decision must in each case depend on its own peculiar facts and circumstances”.*

As the exceptional circumstances urged before this Court by the Petitioner are interrelated, all grounds will be considered together in this case.

The Counsel for the Petitioner mainly argued that the victim and the Petitioner have come to a good understanding and love affair as it was and, now victim and the Petitioner are willing to get married and live together with their child who is four years old. The victim has given an affidavit to that effect and marked as X5 to this application.

The victim in this case was only 13 years old when she encountered this bitter ordeal. According to the statement of the victim, she was forcibly raped by the Petitioner sans any consent.

The victim was become pregnant at the age of 13 years and became a child mother at an early age, without having any guardian after delivering her baby. She also lost her education and was in the Visaka Children's Home with her baby. She had remained in the said home with her baby until she become 17 years. The victim was produced from the Embilipitiya National Children's Home when the High Court case was taken up on 26.09.2022. At that time, she was 17 years and 10 months old.

As correctly pointed out by the Learned Deputy Solicitor General who represented the Attorney General, the proceedings of the High Court do not indicate that the Petitioner expressed any desire that he wish to marry the victim who was 17 years and 10 months old and extended interest in supporting his child who was born to the victim in any manner despite the DNA Report establishing that the Petitioner was the biological father of the child.

Further, when the victim and the child were living in children's homes, there was no action taken by the Petitioner or his family to support and care for them prior to his sentence being imposed on the Petitioner. These matters had been quite correctly considered by the Learned High Court Judge at the time of sentencing.

The Petitioner showed no remorse at the High Court stage, and his application to marry the victim at this stage, clearly shows his after thought to escape from the sentence imposed by the Learned High Court Judge.

Considering all the materials placed before this Court, I see no reason to disturb the findings of the Learned High Court Judge of Embilipitiya. But considering the present circumstances of the case, I order the sentence imposed on the 1<sup>st</sup> count also to run concurrent to the sentence imposed on 2<sup>nd</sup> and 3<sup>rd</sup> counts. Accordingly, the Petitioner will have to serve 10 years rigorous imprisonment from the date of conviction namely, 26.09.2022. Subject to above variation in the sentence, this revision application is dismissed.

The Registrar of this Court is directed to send this judgment to the High Court of Embilipitiya.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**