

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

In the matter of a Revision Application
made in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal

Application No:

CA(PHC)APN 0168/2013

High Court of Badulla

No.45/2001

MC (Circuit) Thuppitiya

Case No.83058

The Officer-in-Charge

Police Station

Uva Paranagama.

Complainant

Vs.

1. Rohitha Jayasekera
2. Wijetunga Mudiyanse Ralahamilage
Prabath Bandara
3. Wijetunga Mudiyanse Ralahamilage
Ranjith Delumgahawaththa

All three, Karagahaulpatha, Madawela,
Udukinda.

4. Mapa Mudiyanseelage Premarathne
New Town, Karagahaulpatha.

Accused

AND

1. Rohitha Jayasekera
2. Wijetunga Mudiyanse Ralahamilage
Prabath Bandara
3. Wijetunga Mudiyanse Ralahamilage
Ranjith Delumgahawaththa

All three, Karagahaulpatha, Madawela,
Udukinda.

Accused-Appellants

Vs

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

Respondent

NOW AND BETWEEN

1. Rohitha Jayasekera
2. Wijetunga Mudiyanse Ralahamilage
Prabath Bandara
3. Wijetunga Mudiyanse Ralahamilage
Ranjith Delumgahawaththa

All three, Karagahaulpatha, Madawela,
Udukinda.

Accused-Appellants-Petitioners

1. The Officer -in-Charge
Police Station
Uva Paranagama.

Complainant-Respondent

2. The Attorney General

Attorney General's Department
Colombo-12.

Respondent-Respondent

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

COUNSEL : **Ranil Samarasooriya with Didula
Rajapakshe and R.Kandegedara for the
Appellants.**
**Maheshika Silva, DSG for the
Respondents.**

ARGUED ON : **22/09/2023.**

DECIDED ON : **08/01/2024.**

JUDGMENT

P. Kumararatnam, J.

The Complainant-Respondent (hereinafter referred to as the Complainant) instituted action in the Magistrate Court of Welimada citing in the circuit in Thuppitiya under MC (Circuit) Thuppitiya Case No. 83058 against the Accused-Appellants-Petitioners (Hereinafter referred to as the Petitioners) and another Accused (4th Accused), who was absent and unrepresented from the inception to the end of trial, alleging that on or about 09th November 1994 the Petitioners together with 4th accused committed offences punishable under Sections 140,434,419 and 410 of the Penal Code.

As the 4th Accused was absent to Court, an inquiry was held under Section 192 of the Code of Criminal Procedure Act No.15 of 1979 and fixed trial in absentia of 4th accused.

The prosecution had called four witnesses and closed their case. Having satisfied that there was a case to be answered, the Magistrate had called for the defence. Having chosen right to remain silence, the Petitioners filed their written submission.

On 14th of December 2000, the Learned Magistrate had pronounced the judgment and convicted the Petitioners on all the charges. On 25th January 2001, the Learned Magistrate imposed the following sentences to the Petitioners.

- 1st Charge Rs. 1000/- fine.
- 2nd Charge Rs. 1000/- fine.

- 3rd Charge Rs. 1000/ fine with 2-year rigorous imprisonment suspended for 5 years.
- 4th Charge Rs. 1500/ Fine.

Being aggrieved by the order of the Magistrate, the Petitioners filed an Appeal in the Provincial High Court of Uva Province holden in Badulla to set aside the judgment of the Learned Magistrate of Thuppitiya. After the inquiry, the Learned High Court Judge had affirmed the conviction against the Petitioners and enhanced the sentence in the following manner.

- 1st Charge – Rs. 2500/ fine.
- 2nd Charge Rs. 2500/ fine.
- 3rd Charge Rs. 2500/ fine with 02-years rigorous imprisonment.
- 4th Charge Rs.2500/ fine.

Now the Appellant had filed this appeal to set aside the judgment of the Learned High Court Judge of Badulla dated 25.01.2006.

The Counsel for the Appellant mainly argued that whether an appellate court can enhance the sentence, in the absence of an application by the prosecution.

In this case the Learned High Court Judge of Badulla on his own motion had increased the sentences imposed by the Learned Magistrate of Thuppitiya on 25.01.2000. The Learned State Counsel who appeared for the Complainant had not made any application to enhance the sentence imposed by the Learned Magistrate. The relevant portion is reproduced below:

Page 32 of document marked as “X”.

මෙසේ වුවද, චූදිතයින්ට දඬුවම් නියම කිරීමේදී උගත් මහේස්ත්‍රාත්තුමිය ඉතා සහන ශීලී ආකාරයකින් ක්‍රියා කර ඇති බැව් පෙනී යන හෙයින්, චූදිතයින්ට නියම කළ දඬුවම් ප්‍රමාණවත් නොවන බැව් මාගේ හැඟීමයි.

Even though the High Court is competent to increase the sentence originally passed by a Magistrate, the Appellant should have been asked to show cause why the sentence imposed on him by the Magistrate should not be enhanced. In absence of such an opportunity either afforded to the Appellant personally or through his pleader, no enhancement of sentence is justifiable as it prejudices the Appellant to a fair inquiry.

In **Bandara v Republic of Sri Lanka** [2002] 2 SLR 277 Gamini Amaratunga, J. prior to considering a variation in sentence, held that:

“We, therefore, called upon the accused-appellant to show cause why his sentence should not be enhanced and we give him time to show cause”.

In **SC/SPL/LA No. 201/2006** the Supreme Court held that:

“It is a cardinal principle that the accused person ought to be given an opportunity to present to court any argument that he might have against the enhancement of the sentence”.

In this case, the Learned High Court Judge had not given an opportunity to the Appellant to present his argument against the enhancement of the sentence. This is clear violation of principle of natural justice embodied in the maxim *audi alteram partem*.

Hence, it is very important that an Appellant never be subjected to a greater punishment by a Superior Court unless he or she afforded an opportunity to show cause against the proposed enhancement.

Further, judicial power of revision, which should be primarily used only to right serious injustices and not to increase sentences in general fashion.

Hence, I set aside the order of the Learned High Court Judge of Badulla dated 25.01.2006 and affirm the order of Learned Magistrate of Thuppitiya dated 14.12. 2000.

Therefore, this appeal is allowed.

The Registrar of this Court is directed to send this Judgement to the High Court of Badulla and the Magistrate Court of Thuppitiya.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL