

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

In the matter of an Application for Revision
under Article 138 (1) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka read with Section 364 of the Code of
Criminal Procedure Act No. 15 of 1979.

CA (PHC) APN : 123/2016

High Court of Kandy
Case No: HC 160/2014

Vs.

Hon. Attorney General,
Attorney – General Department,
Colombo 12.

Complainant - Petitioner

Perislagé Rohitha Lal Jayasinghe,
No. 72,
Udangamuwa,
Ethalgala,
Laeliamba.

Accused - Respondent

BEFORE

: K. K. Wickremasinghe, J.
Devika Abeyratne J.

COUNSEL

: Mohan Weerakoon PC with AAL Uthpala
Tennakoon for the Respondent .

Ms. Chathuri Wijesuriya, SC for the Petitioner

ARGUED ON : 14.07.2020

WRITTEN SUBMISSIONS ON THE
PRILIMINARY OBJECTION : Petitioner on – 05.08.2020

DECIDED : 31.08.2020

K.K.WICKREMASINGHE J.

The Hon. Attorney General has filed this revision application seeking to set aside the order of the Learned High Court Judge of Kandy dated 10.12.2015 and to impose an appropriate legal sentence.

The Accused Respondent was indicted for two charges an offences alleged to have committed on or about 12.02.2008 punishable under following sections:-

(1) Section 354 of the Penal Code Amended by Act No.22 of 1995 for committing the offence of Kidnapping of a girl below the age of 16 years.

(2) Section 364 (2) of the Penal Code Amended by Act No.22 of 1995 for committing the offence of Statutory Rape.

When the charges were read out to the Accused Respondent on the 03.12.2014, he has pleaded not guilty. There after the case was fixed for trial and ordered to issue summons on PW1 and PW2. On 10.12.2015 the Accused Respondent has withdrawn his plea of not guilty and pleaded guilty to both charges framed against him. Accordingly he was convicted for both charges by the Learned High Court Judge.

After considering submissions of both counsel and also considering SC Appeal No. 17/2017, the Learned High Court Judge has imposed following sentences on the Accused Respondent:-

1st Charge:-

- (1) 6 months Rigorous Imprisonment Suspended for 10 years.
- (2) A Fine of Rs.5000/= and a default sentence with a term of 6 months Rigorous Imprisonment.

2nd Charge:-

- (1) 18 months Rigorous Imprisonment Suspended for 10 years.
- (2) A Fine of Rs.5000/= and a default sentence with a term of 6 months Rigorous Imprisonment.
- (1) In addition to above, the Respondent was also ordered to pay Rs. 50,000 as compensation to the Prosecutrix with a default term of 2 years Rigorous Imprisonment.

At the commencement of the argument, the Learned President Counsel for the Respondent took up following preliminary objections:-

- (a) The Petitioner is guilty of laches since the Petitioner has failed to provide an explanation to the delay (after 10 months) in filing this application.
- (b) The petitioner has failed to file an Appeal.

The contention of the Learned State Counsel was that Power of revision is an extraordinary jurisdiction lies on this court and it has to be exercised carefully.

Analysis of the Preliminary Objection:-

(a) The Petitioner has failed to explain the delay in filing this revision application.

In the case of *Opatha Mudiyanseelage Nimal Perera Vs AG* , CA Revision 32/92 cited by the Learned President's Counsel it was held that,

"These matters must be considered in limine before the court decides to hear Petitioner on the merit of his application before he could pass the gateway to relief his aforesaid contumacious conduct and his unreasonable and undue delay in filing application must be considered and determination made upon these matters before he is heard on the merit of the application."

This position has been constantly followed by our courts since the petitioner seeks a discretionary remedy should act promptly .Therefore an inordinate an unexplained delay in seeking such relief would disentitle the petitioner to it. The petitioner in the instant case has not specifically mentioned the reasons for such delay in the petition. However the petitioner has submitted that when there is an error on the face of the record and when there is an illegality, it should be considered. This court is mindful of the fact that there is delay in filing this application. Also of the view that there is an error in the sentence imposed by the Learned High Court Judge. Anyhow we have to decide whether SC case No. 17/2013 could be applied in this case, as considered by the Learned High Court Judge in his order.

In many instances, this court in the interest of justice has overruled the preliminary objection and considered the facts of the case. Facts of one case differs from the other and therefor one cannot assume that it has to be always a jail term or even not. Therefore in the interest of justice, as decided in Attorney General Vs Deegana Rankoth Valavve Kanlar Ganga Kularatna alias Babby Seeya CA (PHC) APN 183/2017 decide on 10.05.2019 and Lesly Ranjith Silva Vs AG CA (PHC)APN 46/2017 decided on 01.02.201, this court will have to consider the merits of the case, when deciding the sentence.

(b)The petitioner has failed to file an Appeal.

In the case of **Rustom Vs Hapangama (1978-79) 2 SLLR 225**, it was held that,

"It is established that this Court can intervene by way of revision even where right of appeal exists if the failure to exercise such right is explained to the satisfaction of court..."

The petitioner is exercising the revisionary jurisdiction under section 364 of the Criminal Procedure Code. Therefore this court can follow the principles established in **AG Vs H.N. de Silva 57 NLR 121, Gomes Vs Leelaratne 66 NLR 234** etc.

In the case of **Rasheed Ali Vs Mohamed Ali (1981) 2 SLR 29** it was held that,

"It is well established that the powers of revision conferred on this Court are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal where it lies has been taken or not. But this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the Court..."

In the case of **Bank of Ceylon v. Kaleel & Others (2004) 1 SLR 284**, it was held that,

"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court..."

In order to check above, this court will have to go to the merits of the instant case. Therefore, in the interest of justice and reasons cited above, we overrule the preliminary objection raised by the Learned President's Counsel and fix this case for Argument.

Judge of the Court of Appeal

Devika Abeyratne J.

I agree

Judge of the Court of Appeal