

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

In the matter of an Appeal under and in terms of Article 138 of the Constitution seeking to revise and set aside the order made by the High Court Galle in Case No.605/31.

**Court of Appeal**

**Application No:**

**CA(PHC)APN 119/2022**

Thawalama Range Forest Officer

Forest Department

Thawalama.

**Complainant**

**High Court of Galle No.**

**HC/605/21**

**MC Udugama Case No.**

**10605**

**VS.**

Gayashan Hideniya

No.85,Koralagama Galandala,

Ga/ Panangala,

Galle.

**Accused**

**AND**

Udugama Gamage Yasas Chamindha

123, Gunanada Mawatha,

Udugama.

**Claimant**

**VS**

1. Attorney General

Attorney General's Department  
Colombo-12.

**1<sup>st</sup> –Respondent**

2. Thawalama Range Forest Officer

Forest Department,  
Thawalama.

**Claimant-Respondent**

3. Gayashan Hindeniyage

No.85, Koralagama Galandala,  
Ga/Panangala,  
Galle.

**Accused-Respondent**

**AND NOW BETWEEN**

Udugama Gamage Yasas Chamindha

123, Gunananda Mawatha,

Udugama.

**Claimant-Petitioner**

1. Attorney General

Attorney General's Department

Colombo-12.

**Respondent –Respondent**

2. Thawalama Range Forest Officer

Forest Department,

Thawalama.

**Complainant-Respondent-Respondent**

3. Gayashan Hindeniyage

No.85, Koralagama Galandala,

Ga/Panangala,

Galle.

**Accused-Respondent-Respondent**

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

**P. Kumararatnam, J.**

**COUNSEL** : **S.Kumarasingham with A.Gamalath  
Arachchi for the Petitioner.**

**Ridma Kuruwita, SC for the  
Respondents.**

**ARGUED ON** : **02/08/2023.**

**DECIDED ON** : **13/11/2023.**

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**JUDGMENT**

**P. Kumararatnam, J.**

The Complainant-Respondent (Hereinafter referred to as the Complainant) filed a charge sheet Under Section 25(2) read with Sections 40, 40(A) and 40(B) of the Forest Ordinance for transporting 06 cu. Mets. of Mahogany timber classified as firewood(ඳො) using a vehicle bearing No. SP GC-8735 without a valid permit thereby violating

regulation No. 02 of the Forest Regulations of 2008 and causing a loss of Rs.216.00 to the State.

The charge sheet was filed against the Accused-Respondent (Hereinafter referred to as the Accused) in the Magistrate Court of Udugama. As the Accused pleaded guilty to the charge sheet, the Learned Magistrate of Udugama had convicted the Accused and imposed a fine of Rs.25216/- and fixed for an inquiry to confiscate the Vehicle bearing No. SP GC 8735.

At the conclusion of the inquiry, the Learned Magistrate had decided to confiscate the aforesaid vehicle by his order dated 15.06.2021. At the inquiry only the Appellant had given evidence on his behalf.

Being aggrieved by the order of the Magistrate, the Appellant filed a revision application in the Provincial High Court of Southern-Province Holden at Galle to revise the order of the Magistrate of Udugama. After an inquiry, the Learned High Court Judge had dismissed the said revision application and affirmed the order of Learned Magistrate of Udugama by her order dated 21.09.2022.

Now the Appellant filed this appeal to set aside the order of the Learned High Court Judge of Southern-Province Holden at Galle dated 21/09/2022.

**The Appellant submitted following grounds of appeal:**

1. The Learned High Court Judge erred by not considering whether the Learned Magistrate of Udugama has correctly evaluated the evidence placed before him.
2. The Learned High Court Judge failed to appreciate the manner in which the Petitioner dispensed the burden cast upon him under the Forest Ordinance.
3. The Learned High Court Judge failed to appreciate that the prosecution has not properly challenged the evidence given by the Petitioner.

4. The Learned High Court Judge erred by coming to the conclusion that the Petitioner's evidence was not corroborated by another witness when corroboration is not *cine-qua-non* in this instance.
5. The Learned High Court Judge failed to give due consideration to the evidence led before the Learned Magistrate of Udugama.

In this case the Learned High Court Judge, considering the order of the Magistrate Court of Udugama decided to dismiss the revision application stating that that the Appellant had failed shock the conscious of the court.

In this case a vehicle had been confiscated for transporting timber (firewood) (ඳු) worth about Rs.216/-.

The Claimant of the vehicle has given evidence in the court and has claimed that he was unaware of the crime being committed as he has employed the Accused as a driver of the vehicle. The Claimant has given specific instructions to the Accused not to use the vehicle for the illicit transport of sand timber and other items which need permits. Further, he used to contract the Accused daily in the evening to ascertain and assess the happenings regarding the hires and related matters for the day.

The Learned Magistrate has dismissed the application on the basis that the Claimant had failed to show that he took all necessary precautions to prevent a crime being committed. The vehicle is brought to the residence of the claimant if there were any repairs to be effected.

Further, the Accused was working as the driver of the said vehicle for about three years. During this period there was no complaint about misusing the vehicle.

Both the Learned Magistrate and the High Court Judge has missed to comprehend that the timber mentioned in the charge sheet as firewood (፪፬) and its value mentioned as Rs.216/-.Both the Learned Magistrate and the Learned High Court judge had failed to consider the value of the timber (Firewood) (፪፬) transported in the vehicle by the Accused. Further, The Learned High Court Judge erred in law by coming to the conclusion that the evidence given by the Petitioner was not corroborated by another witness.

The Section 134 of the Evidence Ordinance sets out that “no particular number of witnesses shall in any case be required for proof of any fact”. As long as the evidence given by a witness is not challenged and contradicted, corroborative evidence is not *sine-qua-non* such an instance.

In this case the Petitioner’s evidence has not been contradicted or challenged by the Complainant.

In **Sadi Banda v The Attorney General CA (PHC) Appeal No. 03/2013** dated 25.07.2014 the Court observed follows:

*“Nevertheless, the Learned Magistrate has confiscated the lorry. I am of the view, before making the order of confiscation Learned Magistrate should have taken into consideration, value of the timber transported, no allegations prior to this incident that the lorry had been used for any illegal purpose, that the appellant and or the accused are habitual offenders in this nature and no previous convictions, and the acceptance of the fact that the Appellant did not have any knowledge about the transporting of timber without a permit. On these facts the Court is of the view that the confiscation of the lorry is not justifiable”*

In this case the Petitioner had given cogent evidence that he had no knowledge about transporting timber (ඳුරු) in this case. The complainant had charged the Accused for transporting firewood (ඳුරු). The value of the timber-firewood (ඳුරු) estimated as Rs.216/-. This has not been considered by both the Learned High Court Judge and the Learned Magistrate. Further, last three years there was no any offence committed by the Accused nor the vehicle involved in any illegal activity. These matters had not been considered by the either Courts.

Considering all these matters in to careful consideration, the only conclusion this Court could reach is that Learned High Court Judge has not exercised his revisionary jurisdiction justifiably in considering the order made by the Learned Magistrate of Udugama.

Hence, I set aside the order of the Learned High Court Judge of Galle dated 21.09.2022 and the order of Learned Magistrate Court of Udugama dated 15.06.2021.

Therefore, this appeal is allowed.

I direct that the vehicle No. SP GC 8735 be released to the Appellant.

The Registrar of this Court is directed to send this Judgement to the High Court of Galle and the Magistrate Court of Udugama.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**