

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

In the matter of an application for revision
in terms of Article 138 of the Constitution
of the

Democratic Socialist Republic of Sri
Lanka.

CA/CPA/70/2022

HC of Colombo Case No.: HC/3748/2007

The Attorney General,
Attorney General's Department,
Colombo 12

Complainant

Vs

Jayalath Pedige Suranga Nalin
Dilruksha

No. 408/23/A, Samanpura

Kottawa

17th Accused

AND NOW BETWEEN

Jayalath Pedige Suranga Nalin
Dilruksha

No. 408/23/A, Samanpura

Kottawa

(Presently at the Welikada prison)

**17th Accused –
Petitioner**

Vs.

Attorney General,
Attorney General's Department,
Colombo 12

Complainant-Respondent

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

Counsel: Ranil Samarasooriya with Wimukthi Weragama for the 17th Accused-
Petitioner
Wasantha Perera, DSG for the Complainant- Respondent

Written

Submission: 22.11.2025 (by the 17th Accused-Petitioner)

On

Argued On: 04.09.2025

Judgment On: 29.10.2025

JUDGMENT

B. Sasi Mahendran, J.

This is a revisionary application filed by the 17th Accused Petitioner (hereinafter referred to as the Petitioner) invoking the revisionary jurisdiction of this court, seeking the following reliefs prayed in the petition dated 25 July 2022.

The Petitioner has *inter alia* prayed for the following reliefs;

- a) Issue Notice on the Complainant - Respondent abovenamed;
- b) Make an Order to revise and set aside the sentence (PA) pronounced in relation to the Petitioner on 05th May 2022 in the High Court, Colombo, Case No. HC 3748/2007 in relation to the 2nd count and substituting the said sentence with a reduced sentence handed to the Petitioner
- c) Grant costs, and
- d) Grant such further and other relief

The following facts are relevant to the Application

The Petitioner, along with others, was indicted before the High Court of Colombo bearing case No. HC 3748/2007 by an indictment dated 07th March 2007 on 20 charges. On 9th January 2012, Senior State Counsel for the respondent amended the indictment by removing ‘මෙන් මැරිමට තැන් කිරීමේ’ from 5,6,7,8,9, and 10 counts.

After the petitioner did not plead guilty, the trial commenced on 09.01.2012 before the High Court of Colombo. On 24.02.2020, the counsel who appeared for the Accused informed the court that the petitioner is willing to plead guilty if the charges for murder are reduced to those punishable under section 297 of the Penal Code by ending the case No. HC 3748/2007 without further time spent.

Thereafter, on 5 May 2022, the Deputy Solicitor General informed the court that they are not proceeding against the 4th, 13th, 18th and 21st Accused on the basis that there is no evidence against them. And the court discharged above accused from all charges; and allowed the indictment to be amended. Accordingly, the Accused were charged under Section 32 read together with Section 297 of the Penal Code.

Subsequently, the petitioner, together with the other accused, entered a plea of guilty to charges 1 to 10 and charge 20. Upon considering the submissions presented by both parties, the Learned High Court Judge delivered the judgment on 05.05.2022, imposing the following sentences on the Petitioner:

Charge 1 - A fine of Rs. 5,000

Charge 2 - Eight years of rigorous imprisonment and a fine of Rs. 5,000

Charges 3 to 7 - Two months of rigorous imprisonment for each charge, along with a fine of Rs. 5,000 per charge

Charges 8 to 10 - A fine of Rs. 1,000 per charge

Charge 20 - Six months of rigorous imprisonment and a fine of Rs. 5,000

The Learned High Court Judge provided the following reasons for imposing the sentence on the petitioner.

Page 1215 of the brief,

මෙම නඩුවේ සිද්ධීමය කරුණු දෙස අවධානය යොමු කිරීමේදී පෙනී යන්නේ 17 වන වූදිත මෙම නඩුවේ ප්‍රධාන වූදිත ලෙස හඳුනා ගත හැකි බවයි. එක් එක් වූදිත මත පැවරිය හැකි අපරාධ වගකීම පිළිබඳව අවධානය යොමු කිරීමේදී ඔහු ප්‍රධාන වූදිත ලෙස හැදින්වීම නිවැරදි බව ඉදිරිපත් වී ඇති සාක්ෂි අනුව පැහැදිලිව පෙනේ. රීට අමතරව අනෙක් වූදිතයන්ට සාපේක්ෂව 6 වන වූදිත මත වැඩි අපරාධ වගකීමක් පැවරෙන බව ඉදිරිපත් වී ඇති සාක්ෂි අනුව පෙනේ. 6,17 වූදිතයන් හැරුණු විට අනෙක් වූදිතයන් මත අපරාධ වගකීම පැවරෙන්නේ සාපේක්ෂව අඩු මට්ටමකින් බව ඉදිරිපත් වූ සාක්ෂි අනුව පෙනේ. එම වූදිතයන් අතුරින්ද 11 වන වූදිතගේ ස්වභාවය අනෙක් වූදිතයන්ගෙන් වෙනස්කොට සැලකිය හැකි බවද පෙනේ. එක් එක් වූදිතයන්ට දඩුවම නියම කිරීමේදී මෙම සිද්ධීමය පසුබීමද විශේෂයෙන් සැලකිල්ලට ගනු ලබන බව මෙහි සටහන් කර තබමි.

The petitioner's principal grievance was that the Learned High Court Judge had not taken into account the mitigating circumstances submitted on behalf of the petitioner during sentencing. The petitioner contends that the punishment imposed for the second count is excessive.

We are mindful that the incident occurred at the University of Jayawardena pura between two groups who were pro-ragging and anti-ragging. According to the evidence, the deceased, Owitigala Vithanage Samantha, sustained 37 injuries as a result of the incident. During, several eyewitnesses identified the petitioner as having assaulted the deceased with a club. Furthermore, we are mindful that the sentence was imposed by the Learned High Court Judge based on the evidence presented before him.

We are also mindful that the petitioner was originally indicted on charges of murder and attempted murder, and evidence was led in support of those charges. However, on 24th February 2020, counsel for the defence submitted an application indicating their willingness to plead guilty, provided the charge of murder was amended to one of culpable homicide not amounting to murder.

Following the said amendments, the accused entered a plea to the revised charge, upon which the Court proceeded to sentence them. It is noteworthy that although the trial commenced in 2009, no application was made by the petitioner to seek a reduction of the charge until the conclusion of the trial. The request to plead guilty to a lesser offence was only submitted after the prosecution had closed its case.

According to the findings of the Learned Trial Judge, the 17th accused bore a greater degree of criminal liability in comparison to the others and was identified as the principal offender. The sentence was imposed on 15.05.2022; however, the revision application was filed on 21.07.2022, following a delay of two months.

Generally, our courts are reluctant to invoke revisionary jurisdiction unless the petitioner demonstrates exceptional circumstances or satisfies the court that the impugned order shocks its conscience.

In *Wijesinghe V. Tharmaratnam* CA 120/80, Decided on 14th October 1986, page 47 at page 49 *Srikantha's Law Reports, Volume (IV)* Jameel J. held that,

"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of court."

This was further established in **Bank of Ceylon Vs Kaleel and others [2004] 1 SLR 284**, Per Wimalachandra J,

“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 the instant case, the petitioner has failed to establish any exceptional circumstances that would warrant the invocation of this Court's revisional jurisdiction.

Also, we are mindful that there was a delay of two months in filing this application, for which the petitioner has provided no explanation.

For the above-mentioned reason, we dismissed the application without issuing the notice to the respondents.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL