

**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, read with the  
provisions in chapter XXIX of the Code  
of Criminal Procedure Act No. 15 of  
1979.

C A (PHC) APN / 113 / 2015

High Court of Anuradhapura

Case No. H C 03 / 2014

Nanahamige Kishanthi Manel Kumarai,  
No.47,  
Paranagama,  
Dutuwewa.

**AGGRIEVED PARTY - PETITIONER**

-Vs-

1. Karunarathnage Ajith Thushara  
Karunarathna,

**ACCUSED - RESPONDENT**

2. Hon. Attorney General,  
Attorney General's Department  
Colombo 12.

**COMPLAINANT - RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel: Amila Palliyage with Eranda Sinharage and Sandeepani  
Wijesuriya for the Aggrieved Party Petitioner.

D W Johnstson for the Accused Respondent.

Varunika Hettige DSG for the Attorney General.

Decided on : 2017 - 09 - 27

### JUDGMENT

## **P Padman Surasena J**

Learned counsel for all the Parties, when this case came up on 2017-08-01 before us, agreed to have this case disposed of, by way of written submissions. Therefore, this judgment would be based on the material that the parties have so adduced before this Court.

Hon. Attorney General had indicted the Accused Respondent in this case in the High Court of Anuradhapura alleging that he, on or about 2011-09-27, at Dutuwewa, had committed the murder of one Abesinghage Thakshila Mihirani Abeysinghe, an offence punishable under section 296 of the Penal Code.

The Accused Respondent, upon the charge in the indictment being read over and explained to him, had pleaded not guilty to the charge. The trial

had then begun on 2015-02-23. Thereafter during the said trial, the Accused Respondent having moved to withdraw the plea of not guilty, which he had earlier tendered, had opted to plead guilty to a lesser charge of culpable homicide not amounting to murder, punishable under section 297 of the Penal Code,.

Learned High Court Judge had then recorded his plea of guilty, permitting him to withdraw his previous plea of not guilty and had convicted the Accused Respondent for an offence punishable under section 297 of the Penal Code. Having proceeded to hear the submissions of learned counsel for both parties on the question of the quantum of sentence, learned High Court Judge had imposed a term of 08 years RI and a fine of Rs. 500/= along with a default sentence of 01 week imprisonment on the Accused Respondent.

It is this sentence that the Aggrieved Party Petitioner seeks to enhance through this revision application. It is his prayer in this application that this Court should pass a reasonable and adequate sentence on the Accused Respondent considering the facts and circumstances of this case.

Thus, the task before this court in this case is to ascertain whether there are any grounds to allow such an application.

It must be noted that the following grounds have been considered by the learned High Court Judge when deciding the quantum of sentence;

- I. that the Accused Respondent was convicted for an offence punishable under section 297 of the Penal Code on the basis of grave and sudden provocation
- II. that the deceased was the wife of the Accused Respondent;
- III. that the Accused Respondent was 25 years of age;
- IV. that the Accused Respondent had no previous convictions,
- V. that the Accused Respondent had chosen to plead guilty,

Learned Deputy Solicitor General stated that she would abide by any order that this Court would make in this regard.

Perusal of the order made by the learned High Court Judge shows to the satisfaction of this Court that he had carefully considered all aspects he ought to have considered before passing the sentence. This Court cannot find any basis to deviate from the course of action that was adopted by him in this case.

In these circumstances this Court is of the view that it has no basis to interfere with the sentence imposed by the learned High Court Judge. Thus, this Court decides to refuse this application. It should stand dismissed.

We make no order for costs.

Application is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**