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

In the matter of an application for revision preferred in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No: **CPA 153 / 15**

High Court of Kurunagala Case No: **HCA 24 / 2004**

Magistrete's Court of Hettipola Case No: **60329**

Officer in Charge

Traffic Branch

Police Station

Hettipola.

Complainant

Vs.

Geeth Prasanna Dissanayake

No.20, Akkara 20,

Galenbidunuwewa.

Accused

AND NOW BETWEEN

Geeth Prasanna Dissanayake

No.20, Akkara 20,

Galenbidunuwewa.

Accused – Appellant

Vs.

1. Officer in Charge

Traffic Branch

Police Station

Hettipola

2. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

AND NOW BETWEEN

Geeth Prasanna Dissanayake

No.20, Akkara 20,

Galenbidunuwewa.

Accused – Appellant – Petitioner

Vs.

3. Officer in Charge

Traffic Branch

Police Station

Hettipola

4. Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondents – Respondents

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: L. Amarasimghe with N.Malkumara for the Accused –

Appellant – Petitioner.

Yohan Aneywickrama, DSG for Respondents.

Argued on: 29.11.2023

Decided on: 31.01.2023.

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the judgment dated 27/09/2006 of the High Court of Kurunegala.

In the instant application the Accused-Appellant-Petitioner (hereinafter referred to as the Petitioner) had been charged in the Magistrate's Court of Hettipola under Section 298 of the Penal Code and under Section 151 (3), Section 149 (1), Section 224, Section 131 and Section 99 of the Motor Traffic Ordinance. The Petitioner had pleaded not guilty to the charges and trial before the Magistrate had commenced. Upon the conclusion of the said trial, the Magistrate had convicted the Petitioner for the charges aforesaid and ordered 01-year rigorous imprisonment for the first charge.

The Petitioner being aggrieved by the said order had made an appeal to the High Court of Kurunegala. In the High Court of Kurunegala, the learned High Court Judge had affirmed the said conviction of the Magistrate.

The Counsel for the Petitioner submitted to this Court that the learned High Court Judge had not considered the evidence led at the Magistrate's Court for the reason that the learned High Court Judge by affirming the conviction of the Magistrate had indirectly approved the conclusion of the Magistrate that the conviction had been based largely on the weaknesses of the defence case. The Counsel averred that the burden is on the prosecution to prove their case. The duty of the defence is to

create a reasonable doubt in the case of the prosecution. He averred that although the Magistrate had concluded that the Petitioner had driven at a very high speed that there is no reliable evidence adduced by the prosecution to establish this fact. Hence, he submitted that the prosecution had failed to establish the charge of criminal negligence under Section 298 of the Penal Code.

The Counsel further averred that even if the contention of the prosecution that the Petitioner had gone mostly on the left hand side of the road and caused this accident that it is not sufficient to prove the high degree of negligence which is necessary to prove the charge under Section 298 of the Penal Code. He further said that there were no break marks on the road or on the grass by the side of the road. Therefore, his main contention was that there was no sufficient evidence to prove the charge under Section 298 of the Penal Code for which the Magistrate had convicted the Petitioner for 01-year rigorous imprisonment.

The Counsel appearing for the Respondents stated at the very outset that he is surprised at the submissions of the Counsel for the Petitioner because, in the High Court, the Petitioner had very clearly stated that he would not be canvassing the conviction of the Magistrate but only challenging the sentence imposed under Section 298 of the Penal Code. Therefore, the learned High Court Judge had referred to that position in his order and had considered only the sentence imposed by the Magistrate.

On perusal of the proceedings in the High Court, this Court also can observe that the submission of the Counsel for the Respondent is correct. But we note that before this Court, the Counsel for the Petitioner did not at least mention the position he had taken up in the High Court. It is a well-established principle of law that when a party file a revision application, the parties is invoking the discretionary powers of Court. Therefore, all parties must divulge all facts relating to the application. It is said that the party filing a revision application in Court must come before Court with clean hands. But here we observe that it had not taken place.

But nevertheless, in the interest of justice we observe that the learned Magistrate in the Magistrate's Court had considered the evidence led before him. The Magistrate had observed that the accident pertaining to the instant matter had been a head on crash and the jeep driven by

the Petitioner had tried to overtake a vehicle and at that point the motorcyclist who had come from the opposite direction had collided with the jeep. The cyclist had been caught under the front right tire of the jeep. The Magistrate had disregarded the evidence given by the Petitioner on the contradictions and the omissions in his police statement. Hence, he had decided that the vehicle driven by the Petitioner had been mostly on the right side of the road as a result of which it had collided with the motorcyclist who had been coming on the opposite side and had caused the death of the motorcyclist.

Therefore, this Court is of the opinion that there is no illegality or any exceptional conclusion which is contrary to law or to the facts of the case in the order of the Magistrate. Although the Petitioner had failed to be consistent in his submissions in the High Court and before us, considering facts and the law pertaining to the instant matter, we see no exceptional reason or illegality to reverse the order of the learned Magistrate and the learned High Court Judge. But we note that the incident had taken place as way back as in 2001. Therefore, although the conviction of the learned Magistrate is affirmed in view of the changes that may have taken place in the life of the Petitioner, we vary the sentence imposed by the learned Magistrate in the first charge of the rigorous imprisonment of 01 year to be suspended for 10 years to be operative from the date of the conviction. The rest of the sentences imposed by the learned Magistrate for the charge under Section 298 and for other charge under the Motor Traffic Ordinance to remain as it is. Subject to the said variation, the instant application for revision is dismissed.

Judge of the Court of Appeal

I agree

Neil Iddawala J.

Judge of the Court of Appeal