

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

In the matter of an application for Revision
under and in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

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

**Court of Appeal
No.CA/CPA/0114/2025
High Court of Vavuniya
Case No. HCV/2923/2019**

COMPLAINANT

Vs.

1. Jeyaratnam Sri Ranga
2. Gabada Gedara Don Amarasiri
Kumara Senarathne
3. Padi Gamage Sugath Roshan Sanjeewa
4. Rathnayake Mudiyansele
Harischandra Bandara
5. Walpola Gamaralalage Padmapala
6. Herath Mudiyansele Ajith
Priyadarshana Herath

ACCUSED

AND NOW BETWEEN

Gabada Gedara Don Amarasiri Kumara
Senarathne,
No.765/A, Bogahawaththa Road,
Thalangama North,
Malabe.

2nd ACCUSED - PETITIONER

Rathnayake Mudiyansele Harischandra
Bandara,
11/3, 1st Lane,
Egodawaththa Road,
Boralesgamuwa.

4th ACCUSED-PETITIONER

Vs.

1. Jeyaratnam Sri Ranga

ACCUSED-RESPONDENT

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

COMPLAINANT-RESPONDENT

Before: **A. Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Danushka Rahubadda with Uvindu Jayasiri for the
Petitioners.

Sajith Bandara, SC for the State.

Written Submissions: By the Petitioner not filed.
By the Respondent not filed.

Argument On: 16/09/2026

Order On : 09/10/2026.

Dr. Sumudu Premachandra J.

1] The 2nd and 4th Accused-Petitioners have filed a Petition before this Court seeking to invoke its Revisionary Jurisdiction against the Order dated 03/10/2025 made by the High Court Judge of Vavuniya in Case No. HCV/2923/19.

2] The case arises from an indictment containing eleven charges, to which the Petitioners and the other Accused pleaded not guilty. During the trial, the Prosecution relied upon the evidence of PW 08, who produced a statement recorded in Tamil and marked as “P6”, which the Petitioners alleged had been obtained under duress.

3] On 16/04/2025, the Prosecution issued a notice under Section 66 of the Evidence Ordinance, claiming that the original of the Tamil Statement was in the custody of the Petitioners and requiring its production. Following a voir dire inquiry, however, the Prosecution failed to adduce direct evidence establishing that the original had been lost or that it was in the possession of the Petitioners. Nevertheless, by Order dated 03/10/2025, the High Court Judge held that the original document had been lost and permitted a photocopy of “P6” to be produced as secondary evidence pursuant to Sections 65(3) and 63(2) of the Evidence Ordinance.

4] The Petitioners contend that the High Court Judge erred in law by admitting the photocopy as secondary evidence without the Prosecution satisfying the mandatory requirements prescribed by Sections 65 and 66 of the Evidence Ordinance.

5] They maintain that the Prosecution failed to establish that reasonable and diligent efforts had been made to locate or secure the original document and further failed to prove that the photocopy had been produced through a verified mechanical process or duly recorded by the officers who testified.

6] They also allege that the investigating officer did not conduct any formal or adequate investigation to trace the original document. Accordingly, the

Petitioners argue that the impugned Order has caused them grave prejudice and resulted in a serious miscarriage of justice, and that Revisionary Jurisdiction is their only available legal remedy to challenge the Order.

7] In support of the Petition, they have annexed several documents, including the certified case record in HCV/2923/19 with Sinhala translations (P-1 and P-1(i)), the impugned Order dated 03/10/2025 with its Sinhala translation (P-2 and P-2(i)), the indictment dated 08/11/2019 (P-3), a copy of the contested Tamil statement marked (P-4), and the Section 66 notice dated 16/04/2025 together with its annexed photocopy in the voir dire inquiry (P-5 and P-6).

8] Thus, the Petitioners pray that this Court be pleased to:

- a) Issue Notice on the Respondents;
- b) Revise and set aside the Order of the High Court Judge of Vavuniya dated 03/10/2025 marked as P2;
- c) Make an Order that the copy of the statement marked as P6 during the trial of HCV/2923/19 in the High Court of Vavuniya is inadmissible as secondary evidence;
- d) Grant costs; and
- e) Grant such other and further reliefs that Your Lordships' Court deems fit.

9] The Respondent raises preliminary objections, arguing that the Petition lacks exceptional circumstances, contains misrepresentations, fails to attach essential documents, and is vexatious. Defending the trial proceedings, the Respondent asserts that a crucial document which is a statement recorded from the 4th Accused Appellant was established through testimony and contemporaneous records, but original custody was lost despite diligent investigative efforts. Consequently, the Respondent contends that the High

Court Judge did not error in law and prays that the Court of Appeal rejects and dismiss the application, affirm the High Court Order in HCV/2923/19 (Vavuniya), and award costs.

10] In replying, the Petitioners address procedural delays, clarifying that their application challenging an 03/10/2025 Order was delayed due to the High Court of Vavuniya's registry taking time to issue certified case records and process Sinhala translations. They request the dismissal of the Prosecution's preliminary objections *in limine*, arguing that all necessary materials were included and that any missing Tamil translations or documents were due to courtroom unavailability.

11] The crux of the story is the admissibility of the P6 statement. However, it is to be noted P6 was marked on 12/12/2023 and there was no objection raised by the Accused Petitioners. The document was not marked subject to proof and thus, it deemed to be admitted by the Petitioners. Thus, the application was filed on 22/12/2025. I do not know why the Petitioners got late to file this application for over 2 years. It is a trite law that Revision cannot be entertained when the parties have slept over their rights. Thus, the Petitioners are guilty of laches. If P6 is not admissible in law, why have they waited for 2 years to file it from the date of marking P6? Thus, this application has to be dismissed.

12] The document which was marked as P6, is a photocopy. Can a photocopy be admitted? Section 61 of the Evidence Ordinance enacts;

“61. The contents of documents may be proved either by primary or by secondary evidence.”

13] Thus, it is clear contents of documents can be proved by secondary evidence. The Primary evidence is defined in section 62 as;

“Primary evidence means the document itself produced for the inspection of the court.”

14] The page 398 of the Sinhala translation of the case record shows;

“ප්‍ර. එම කට උත්තරය නැවත දුටුවොත් හඳුනාගන්න පුළුවන්ද?

උ. එහෙමයි ස්වාමීනි

ස්වාමීනි, මේ අවස්ථාවේදී පි.ආර්./ 180/16 2027.02.01. 380/59 III (RIB) දරණ රිය අනතුරු අංක 10/2011 දරණ රිය අනතුරු ගොනුවේ 56 පිටුවට සක්ෂිකරුට පෙන්වා සිටීමට අවසර පතම්.

අධිකරණයෙන්.

අවසර ලබා දෙමි.

මහාධිකරණ විනිසුරු

චඩ්‍රිනියාව”

15] Thus, it is clear that the Witness has inspected the record and the original has been produced and the P6 photocopy was marked. By prayer “c” of the Petition, the Petitioners seek an Order that the P6 be declared inadmissible as a photocopy was marked. However, RIB was tendered to court and after inspection P6 was marked.

16] Section 63 of the Evidence Ordinance defines the secondary evidence. It enacts;

“Secondary evidence means and includes –

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from a compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.”

17] A photocopy falls under the category of Section 63(2) a copy made from the original by a mechanical process which in themselves ensure the accuracy of the copy, and a copy compared with such a copy. In the case in hand, the RIB was produced and the Witness identified the original and was compared and

then P6 was marked. That is the only conclusion that can be drawn from the record, and proceedings cannot be contradicted and there is no such application that it never happened in such a way.

18] With regard to Section 63(2) of the Evidence E.R.S.R. COOMARASWAMY in his book **“THE LAW OF EVIDENCE (WITH SPECIAL REFERENCE TO THE LAW OF SRI LANKA)”**, VOLUME II (BOOK 1), page 78 says;

“(2) Copies made by mechanical process

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies¹

*Thus, a photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original,² and **a copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.**³ Printed, lithographed or photographed copies are, therefore, though primary evidence of each other's contents, only secondary evidence of the common original.⁴ The word “copy” is not defined in the Ordinance but the Provisions of the section show that it obviously means a document prepared from the original which is an accurate or true copy of the original.⁵ A copy not prepared in the manner described in Section 63 (2) is only admissible when it has been compared with the original. In the absence, therefore, of evidence to that effect, a copy made from a copy, although the latter has been so compared,*

¹ Section 63 (2).

² Section 63, Illustration (a)- illustrates first limb of Section 63 (2)- See *Brahma Bahadur Vs. Chartered Bank* A.I.R. (1956) Cal.399.

³ Section 63, Illustration (b)- illustrates second limb of Section 63 (2)- See *Norton Evidence*, 243.

⁴ See Section 62, Explanation 2. See Phipson op.cit., 13th Ed., para.36-17, p.892; See also *Nodin Vs. Murray* (1812) 3 Camp.228; *Re Stephens* (1874) L.R.9 C.P.187; *U.S.Shipping Board Vs. The St.Albans* (1931) A.C. 632 at 641-642; *R Vs. Quinn & Bloom* (1962) 2 Q.B.245; *Hindson Vs. Ashby* (1896) 2 Ch.1 at 21.

⁵ *Hindusthan Construction Co. Vs. The Union of India* A.I.R. (1967) S.C.526.

is not admissible.⁶ It is the process of mechanical reproduction that insures the accuracy of the reproduction in the first instance.

(3) Examined Copies

Copies made from or compared with the original⁷

These are called examined copies and are those sworn to be true by a witness who has examined them line by line with the originals,⁸ or who has examined the copy, while another person read the original.⁹ Thus, a copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.¹⁰ [Emphasis is added]

19] Thus, it is clear that the Witness has seen the original and compared it and it can be admissible. Section 65 of the Evidence Ordinance says;

“Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: -

(1) when the original is shown or appears to be in the possession or power

(i) of the person against whom the document is sought to be proved, or

(ii) of any person out of reach of, or not subject to, the process of the court, or

(iii) of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(2) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is sought to be proved, or his representative in interest;

⁶ Cunningham, *Evidence*, p. 199.

⁷ Section 63 (3).

⁸ *Reid Vs. Margison* (1808) 1 Camp.469.

⁹ *The Crawford Peerage Case* (1845-48) 2 H.L.C. 534; *The Slane Peerage Case* (1835) 5C. & F.23 at 42.

¹⁰ Section 63, Illustration (c); See *Letchiman Vs. Murugappa Chettiar* (1936) 39 N.L.R. 19 at 21. (where there was no evidence that the copy of a last will had been compared with the original and the copy was rejected); see also *Krishna Chaodrani Vs. Kishori Lal Roy* 14 I.A.71-P.C.

(3) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(4) when the original is of such a nature as not to be easily movable;

(5) when the original is a public document within the meaning of section 74;

(6) when the original is a document of which a certified copy is permitted by this Ordinance or by any other law in force in Sri Lanka to be given in evidence;

(7) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.”

20] In the instant case, there is no application to admit secondary evidence with regard to P6, when it was marked for the first time. Thus, the reasons for default marking that the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in a reasonable time is not a question in this case.

21] In our law, photocopies are classified as secondary evidence and are generally inadmissible unless the absence of the primary document (the original) is legally accounted for under Section 65 of the Evidence Ordinance. However, Section 65 allows that the secondary evidence can be given if the party seeking to rely on it proves that the original has been lost or destroyed, is in the possession of the opposing party who refuses to produce it, or falls under another specific exception listed in Section 65 (such as a public document where a certified copy is permitted). In this case, proceedings show that the original of P6 was tendered when photocopy was marked. Thus, there is no necessity to apply section 66 of the Evidence Ordinance.

22] In **Sri Lanka Ports Authority v Jugolinija Boal East** [1981] 1 SLR 18, and **Balapitiya Gunananda Thero v Talalle Methananda Thero** [1997] 2 SLR 101, our superior courts clearly held that a document not objected at the

marking is deemed to be admitted. Thus, if P6 has not been objected for being admitted, it is now too late to agitate, that P6 a photocopy cannot be considered.

23] This an application for Revision. It must therefore have exceptional circumstances to invoke Revisionary Jurisdiction of this court. In **Attorney General v Podisingho** 51 NLR 385 at 390 it held what exceptional circumstances are;

“In my view such exceptional circumstances would be (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of this Court has been made out by the petitioner, or (c) where the applicant was unaware of the orders made by the Court of trial.”

24] In **Ranasinghe and Others v L.B. Finance Ltd.** [2005] 2 SLR 393 at pgs. 401 to 402, it held;

“The next matter to be decided is whether the defendants are guilty of laches. The question whether delay is fatal to an application in revision depends on the facts and circumstances of the case. If the impugned order is manifestly erroneous and is likely to cause great injustice, the Court should not reject the application on the ground of delay alone.”

25] In in **Wijesinghe v Tharmaratnam** Sri Skantha’s Law Reports Vol. IV 47 at 49 it held;

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

26] If P6 is admissible, the Order dated 03/10/2025 of the learned High Court Judge of Vavuniya is tenable.

27] In the above circumstances, I see that there are no merits in this application. Thus, the Revision application is dismissed. No Costs.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL