

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

CA PHC APN 20/2011
HC Awissawella 18/2002

Deva Wijayantha
(Presently at the Walikada Prison)

Petitioner

Vs

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent

CA(PHC) APN No. 20/2011

HC Avissawella No. 18/2002

Before : Sisira de Abrew, J. &
K.T. Chitrasiri, J.

Counsel : Jagath Abeynayake for the Accused Petitioner
instructed by U.S.R. Perera
Anoopa De Silva S.C. for the Respondent

Argued &

Decided on : 06.07.2012

Sisira de Abrew, J.

The accused in this case was convicted of the offence under Section 354 and 364(2) of the Penal Code. The accused was, on the first count, sentenced to a term of 06 years rigorous imprisonment and to pay a fine of Rs. 3000/- carrying a default sentence of 01 year rigorous imprisonment. On the second count, he was sentenced to a term of 14 years rigorous imprisonment and to pay a fine of Rs. 3500/- carrying a default sentence of 01 year rigorous imprisonment. In addition to the above sentence, accused was ordered to pay a sum of Rs. 25,000/- as compensation to the victim of this case.

The trial was held in the absence of the accused. The accused who was convicted on 04.09.2006 was produced on a warrant issued by the High Court on 11.09.2006. Learned Counsel appearing for the accused petitioner submits that the learned High Court Judge has not acted under Section 241(3) of the Criminal Procedure Code. Learned Counsel for the accused respondent submits that the accused being a mason was traveling from place to place and that this was the reason for his absence at the trial. Apart from the said ground he has not submitted any other ground. Under Section 241(3) of the Criminal Procedure Code accused must satisfy Court that he was not able to appear at the trial due to bona fide reasons. We therefore decide to examine whether the accused has submitted any bona fide reasons under Section 241(3) of the Criminal Procedure Code. The only reason submitted by the accused was that he could not come to Court because he was traveling from place to place. We hold that this is not a bona fide ground. Court must consider whether the accused was guilty of contumacious conduct. When the accused was released on bail by the Magistrate accused has been directed to report to the Police station. We note that the accused has not complied with this direction. If the accused complied with the direction he would have

known the situation of the case. We are unable to accept the reason that he could not be present in Court as he was a mason traveling from place to place. Considering all these matters, we hold that the accused respondent was guilty of contumacious conduct. If the accused respondent was guilty of contumacious conduct, Court will not act in revision. In this connection we rely on the judgment of Justice Jayasuriya and Justice Kulathilaka in **Rajapakse Vs. The State 2001(2) SLR page 161** wherein His Lordship held thus: “an application in revision should not be entertained save in exceptional circumstances. When considering this issue, Court must necessarily have regard to the contumacious conduct of the accused in jumping bail and thereafter his conduct in a manner to circumvent and subvert the process of the law and judicial institutions. In addition the party should come before Court without unreasonable delay”. As I pointed out earlier accused has not complied with the direction given by Court when he was released on bail.

We therefore hold that he had jumped bail. Further the accused was convicted on 04.09.2006 and was produced before the High Court on 11.09.2006. He filed the petition in this Court on 10.02.2011. We therefore note that he has come to Court after 04

years of the impugned order. Considering all these matters we refuse to intervene in revision and dismiss petition.

Petition dismissed.

JUDGE OF THE COURT OF APPEAL

K.T. Chitrasiri, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KL./-