

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

**CA No.262/09**

HC Colombo No. HC 4786/2009

Murugaiya Sharmila Devi  
765/F/24,  
Bodiraja Mawatha,  
Colombo 10

No:133,  
Kossara Babapulle,  
Grandpass

**Petitioner**

**Vs.**

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

**Respondents**

**C.A.No.262/09**

**H.C.Colombo No.HC4786/2009**

**Before** : Rohini Marasinghe,J. and  
H.N.J.Perera,J.

**Counsel** : Amila Palliyage for the Accused-  
Appellant.  
Thusith Mudalige S.S.C. for A.G.

**Argued and  
Decided on** : 03.10.2012.

**Rohini Marasinghe,J.**

The Counsel for the Appellant contends that the appellant had been denied a fair trial. In this case as borne out by the case record, the assigned counsel of the appellant had been absent at the time the case was taken up for hearing. The Trial Judge had very rightly assigned another counsel. Having assigned a counsel, the Trial Judge had wrongly proceeded to hear the case on the same day at the same time.

The Article 4 of the ICCPR Act 56 of 2007 deals with the entitlement of the accused charged for criminal offences. The relevant articles would be the Articles 4 (b) and (d) of the ICCPR Act No. 56 of 2007.

Accordingly, every accused should have a counsel and also be afforded a reasonable opportunity to present/defend his case; including his evidence under a condition that does not place him at a substantial disadvantage in relation to the case of the prosecution. It does not mean however that there is a duty on Court to provide legal aid to an indigent accused to such a level so as to ensure total parity with counsel for the State. But every accused has a right to have a counsel of his own choosing. However, if being asked the accused requests for a counsel to be assigned for his defense, it is the duty of the High Court Judge to assign a counsel for the accused. (Section 195 (g) of the CPC) This right was further guaranteed by Article 13 (3) of the 1978 Constitution. Now it is further reinforced by Article 4 of ICCPR Act, No.56 of 2007. Assuming that the accused had requested for an assigned counsel, then the assigned counsel on behalf of the accused must be afforded the opportunity to prepare the case for the accused. There is further force in the argument of the counsel for the appellant that the appellant was denied of a fair trial, as it is clearly borne out by the record that the assigned counsel of the appellant was not even possessed with the indictment at the time the trial commenced.

As these rights have been violated the conviction and the sentence are quashed.

A re-trial is ordered.

**JUDGE OF THE COURT OF APPEAL.**

**H.N.J. Perera, J.**

I agree.

**JUDGE OF ~~THE~~ COURT OF APPEAL**

WC/-