

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

**CA 282/09**

HC-Vavuniya-1908/06

A. Sivaraja

**Appellant**

**Vs.**

Hon. Attorney General

Attorney General's Department

Colombo 12

**Respondent**

**CA 282/09**

**HC-Vavuniya-1908/06**

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

Counsel : Ranjith Meegaswatte for the Accused-  
Appellant  
Ayesha Jinasena, DSG for AG

Argued &

Decided on : 10.10.2012

**Rohini Marasinghe, J.**

The Appellant had been convicted for the murder of his wife on 16.05.2003 and sentenced to death. Three of the prosecution witnesses namely Nageswaran, Wasanthi Kumari, Sulochana were siblings of the deceased. The name of the deceased was Sandakumari and was their younger sister. The incident had happened in the house of the deceased and the Appellant. The witnesses also lived close to the house of the Appellant. On the day of the incident the witnesses had heard a gunshot from the direction of the Appellant's house. The witnesses had rushed to the house of the appellant. They saw their sister lying fallen on the

ground. They also saw the Appellant standing by the deceased with a gun in hand. The Appellant had said that the gun went off accidentally. The Appellant then had left the scene leaving the gun. The witnesses described the Appellant as a drunkard who used to always fight with his wife over trivial things like the food not being tasty. The witnesses also said that the Appellant left the gun at the scene and left. According to the evidence of the doctor who conducted the post mortem the shot had been fired at close range. The doctor had further testified that the death had been caused due to a gunshot injury to the chest.

The trial had proceeded under section 241(1) of the Criminal Procedure Code. The Chapter XVIII deals with the manner trial in the High Court may be conducted in the absence of the accused. The relevant section would be section 241(1) (b) which refers to instances where the accused was absconding before the indictment could be served on the accused. The Section 241(3) deals with situations where the accused appears during the course of the trial or after the conclusion of the trial and moves to satisfy that his absence from the court was for any of the reasons mentioned in that section, the "court shall set aside the conviction and sentence, if any, and order that the accused be tried de novo. The grounds of appeal inter alia were that the trial judge had erred in law in not giving an opportunity for the appellant to show cause for his absence during the trial. However, the Counsel for the appellant did not show the manner the trial judge had erred in his approach, when

he is purported to have dismissed the application of the appellant which was made to show cause for his absence.

If the trial judge had not allowed the application of the accused as mentioned in section 241(3) his remedy would have been to move in revision against that order.

However, I am of the view that it would be better if the court appoints a counsel as amicus curiae in charges of this nature so as to eliminate all possibilities of risk of factual error that would result in a wrong conviction. But that does not mean that the trial judge did not have the right to commence the trial as he rightly he did in the case, under Chapter XV111 of the Criminal Procedure Code.

I see no reason to interfere with the decision of the trial judge and dismiss the appeal.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

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

LA/-