

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

CA (PHC) APN 145/2011

MC Colombo Case No. 2613/05

HC Colombo Case No. HCRA 45/2009

Officer in Charge

Police Station

Mutwall

COMPLAINANT

Vs.

1. Ranmuni John Rohitha De Silva

2. Suresh Marcellus

ACCUSED

And

1. Ranmuni John Rohitha De Silva

2. Suresh Marcellus

ACCUSED -PETITIONERS

Vs.

Officer in Charge

Police Station

Mutwall

COMPLAINANT- RESPONDENT

2. Hon. Attorney General

The Attorney General's Department

Colombo 12.

RESPONDENT

3. Anthony Clement de Silva

No. 99,

Madampitiya Road,

Colombo 15.

INTERVENIENT- AGGRIEVED PARTY

And now

Anthony Clement de Silva
No. 99, Madampitiya Road,
Colombo 15.

**INTERVENIENT- AGGRIEVED PARTY
PETITIONER**

Vs.

1. Ranmuni John Rohitha De Silva
2. Suresh Marcellus

**ACCUSED - PETITIONERS -
RESPONDENTS**

Officer in Charge
Police Station
Muttwal

**COMPLAINANT- RESPONDENT
-RESPONDENT**

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

RESPONDENT- RESPONDENT

CA(PHC) APN 145/2011

HC Colombo 45/2009

Before: A.W.A. Salam, J. &

Sunil Rajapakshe , J.

Counsel: Jeewantha Jayathilaka appears with Thilanka Polgampala and R. Amarasena for the Petitioner.

Anuja Premarathna appears for the Petitioner with Thanuja Hathurusinghe for the Accused-Petitioner-Respondent.

Mr. Kumarage SSC appears for the AG.

Argued &
Decided on: 15.05.2013.

A.W.A. Salam, J.

This is a revision application filed by the Intervenant Aggrieved Party – Petitioner to have the judgment of the Learned High Court Judge dated 12.10.2011 set-aside. The facts briefly are that the accused-petitioners made a revision application to the High Court to have the order of the learned Magistrate dated 18.02.2009 set-aside. The learned High Court Judge by the impugned order has failed to consider the grounds urged by the accused-petitioners against the order of the learned Magistrate and probably by inadvertence has not made any order as to the legality of the order of the Magistrate that was impugned before her.

In the circumstances, we are compelled to direct the High Court to go into the merits of the revision application of the accused-petitioners with regard to the admissibility of the piece of evidence dealt with in the Magistrate Order. Further, it appears that the learned High Court Judge has by inadvertence acquitted the accused as has been correctly pointed by the learned counsel for the petitioner that accused who had not been convicted by the Magistrate has been acquitted by the High Court.

Hence, demonstrably there has been a serious injustice occasioned by the order dated 12.10.2011, and we are compelled to set aside the entire order of the High Court Judge dated 12.10.2011. For the above reasons, we direct the High Court Judge to recommence the hearing of the revision application of the accused-petitioners and make an appropriate order.

JUDGE OF THE COURT OF APPEAL.

Sunil Rajapakshe, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

Mm/-.