

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

**CA 189/2012**

High Court (Embilipitiya) H.C.E.54/2010

R. Saman  
No: 71,  
Hospital Road,  
New City,  
Embilipitiya.

Aruna Indika Hettiarachchi  
No: 30,  
Koul Ara North,  
Sewanagala.

**Appellants**

**Vs.**

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

**Respondent**

**Before** : **Sisira J. De Abrew, J**  
**P.W.D.C. Jayathilaka, J**

**Counsel** : Dr. Ranjith Fernando for the Accused-  
Appellant.  
Sarath Jayamanne DSG for the AG

**Argued &**

**Decided on** : **06.11.2013.**

**Sisira J. De Abrew, J**

Heard both counsel in support of their respective cases. Learned counsel for the accused – appellant brings to the notice of this court that the learned trial judge has not complied with section 195(e e) of the Criminal Procedure Code. Sarath Jayamanne DSG confirms this position. He submits that he went through the original case record and his departmental file but did not find any indication to state that the learned trial judge had complied with section 195(e e) of the Criminal Procedure Code. We have perused the original record and find nothing to indicate that the learned trial judge had complied with section 195 (e e) of the Criminal Procedure Code. Two accused in this case were charged with the offence of rape. The victim is, according to the medico legal report, is 37 years old at the time of this incident. The learned trial judge has to

comply with section 195(e e) of the Criminal Procedure Code. In these circumstances, we have no alternative but to order a re trial. We set aside the conviction and the sentence imposed on both accused appellants and order a re-trial. At the new trial learned trial judge must take steps to comply with section 195(e e) of the Criminal Procedure Code and he must also take steps to conclude this case as early as possible.

*Re-trial ordered.*

**Judge of the Court of Appeal**

**P.W.D.C. Jayathilaka, J**

I agreed.

**Judge of the Court of Appeal**

Na/-