

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

1. Hiniduma Dahanayakage Siripala alias  
Kirimahaththaya
  2. Henpitagamage Shantha
- Accused-Appellants**

Vs

The Democratic Socialist Republic of Sri Lanka  
**Complainant Respondent**

CA 2/2008  
HC Embilipitiya HCE 199/2006

Before : Sisira J de Abrew J (Acting P/CA) &  
Upaly Abeyrathne J  
PWDC Jayathilake J

Counsel : Indika Mallawaarchchi for the 1<sup>st</sup> accused appellant  
Niranjan Jayasinghe for the 2<sup>nd</sup> accused appellant  
Kapila Waidayarathne DSG for the Respondent

Argued on : 20.1.2014  
Decided on : 19.2.2014

**Sisira J de Abrew J(Acting P/CA)**

The accused appellants in this case were convicted of the murder of a man named Kadawathagama Arachchige Premarathne and were sentenced to death. They were also convicted for causing injuries with a dangerous weapon to Kankanamge Hinnihamy which is an offence punishable under Section 315 of the Penal Code. Being aggrieved by the said conviction and the sentence they have

appealed to this court. Learned counsel for the accused appellant submitted that the learned trial Judge had not complied with Section 196 of the Criminal Procedure Code (CPC) and as such the conviction could not be sustained. This was the only ground urged by learned counsel for the accused appellant. Learned DSG submitted as the accused appellants were represented by an Attorney-at-Law at the trial it was obvious and could be presumed that the learned trial Judge had complied with section 196 of the CPC. Section 196 of the CPC reads as follows:

“When the court is ready to commence the trial the accused shall appear or be brought before it and the indictment shall be read and explained to him and he shall be asked whether he is guilty or not of the offence charged.”

It is necessary to consider when the accused appears or is brought the High Court whether the court should read and explain the indictment to the accused and ask whether he is guilty or not of the offence. When finding an answer to this question I would like to consider a judgment of His Lordship GPS De Silva CJ in *David Perera Vs Attorney General* [1997] 1SLR 390. His Lordship in the said judgment considered section 182 of the CPC which reads as follows:

182 (1) “Where the accused is brought or appears before the court the Magistrate shall if there is sufficient ground for proceedings against the accused, frame a charge against the accused.”

182 (2) “The Magistrate shall read such charge to the accused and ask him if he has any cause to show why he should not be convicted.”

His Lordship held thus: “Compliance with Sections 182(1) and (2) of Code of Criminal Procedure Act is imperative. When an amended plaint is filed, a fresh charge sheet should be framed and read out to the accused. Failure to do so vitiates the conviction.”

In *Vithanage Gunawardene Vs The Attorney General* CA 22/2002-decided on 12.11.2003 Justice Tilakawardane sent the case back for re-trial on the ground that the charge had not been read to the accused.

In *Abdul Sameem Vs The Briber Commissioner* [1991] 1 SLR 76 Justice A DE Z Gunawrdena held “that the failure to frame a charge as required under Section 182(1) is a violation of a fundamental principle of criminal procedure and is not a defect curable under Section 436 of the Code of Criminal Procedure Act No. 15 of 1979.”

The words found in Section 182 of the CPC are almost identical to the words in sections 196 of the CPC. A close reading of section 196 of the CPC suggests that when an accused person appears or is brought before the High Court on an indictment, it is imperative for the learned High Court Judge, before commencement of the trial, to read and explain the indictment to him and also ask whether he is guilty or not of the charge. This is a fundamental requirement in criminal law and no trial can commence without following the said procedure. Thus I hold that compliance with Section 196 of the CPC is mandatory and failure to do so vitiates the conviction. Court of Appeal cannot presume that the learned trial judge has complied Section 196 of the CPC when the accused has been defended by an Attorney-at-Law. Complying with Section 196 is a duty cast on the High Court Judge. I am therefore unable to agree with the submission of learned DSG. I am also unable to agree with the contention of the learned DSG that no prejudice was caused although the indictment was not read out to the accused.

For the above reasons I set aside the conviction and the sentences on the 1<sup>st</sup>

and 2<sup>nd</sup> counts of the indictment and order a retrial against the accused appellants on the same indictment.

Retrial ordered.

Judge of the Court of Appeal.