

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

C.A. No: 99/2012

H.C. Anuradhapura Case No: 263/05

R.W. Rupasinghe Amarabandu

No: 20,

Mahagedara,

Dankotuwa

Appellant

Vs.

Hon. Attorney General

Attorney General's Department,

Colombo 12.

Respondent

C.A. No:99/2012 - H.C. Anuradhapura Case No:263/05

BEFORE : ANIL GOONERATNE, J. &
MALINIE GUNARATNE, J.

COUNSEL : K.A. Upul Anuradha Wickramaratne fore the
Accused-Appellant.
Madhawa Tennakoon SSC for the Respondent.

ARGUED &
DECIDED ON : 03.06.2014.

ANIL GOONERATNE, J.

We have heard both Counsel for the accused-appellant as well as the learned Senior State Counsel. It has been now brought to the notice of Court that the requirement referred to in Section 195(ee) of the Code of Criminal Procedure Amendment Act No.11 of 1988 has not been complied with by the learned High Court Judge. Perusing the record indictment has been served on 30.11.2005 (indictment served only on the 1st accused). On 21.01.2009 since there was no appearance for the 1st accused-appellant the learned High Court Judge has assigned a Counsel for the 1st accused-appellant. Thereafter in the same proceedings it is recorded that the charge has been read to the accused and that the accused has pleaded not guilty. There is no indication by perusing the several journal entries and the proceedings that the required jury option referred to in 195(ee) of the said Amendment Act has been complied with. According to the section it is mandatory to inquire from the accused whether or not he elects to be tried by a jury. In the above circumstances, we have no alternative but to send this case back

for retrial. Accordingly, we quash the conviction and the sentence and send the case back for retrial to the High Court of Anuradhapura.

Registrar of this Court is directed to forward the record forthwith to the relevant High Court.

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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