

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRILANKA

CA. NO. 96/2013

H.C. Batticoaloa No. 359/85

Rasaiya Amarthalingam
Ward Road,
Eruwil,
Kalawanchikudi.

Appellant

Vs.

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

Respondent

C.A. NO. 96/2013

H.C. Batticaloa No. 359/85

BEFORE : H.N.J. PERERA, J. &
K. K. WICKRAMASINGHE, J.

COUNSEL : Jayantha Weerasinghe P.C. with Sanjith
Senanayake and Dinesh de Zoysa for the
Accused-appellant.
P. Kumararatnam D.S.G. for the respondent.

ARGUED AND

DECIDED ON : 10th July, 2015.

H.N.J. PERERA, J.

In this case the accused-appellant had been charged for committing an offence punishable under Section 296 read with Section 32 of the Penal Code causing the death of one Sinnathamby Thangavadivelu alias Thangavelu on or about 23rd March 1990. Learned Counsel for the accused-appellant brings to the notice of Court that the trial had proceeded in the absence of the accused-appellant and some of the evidence had been recorded on 15.06.1987 before the learned High Court Judge and thereafter the order had been made to continue the trial in his absence. It is the submission of Counsel for the accused-appellant that there is no sufficient evidence to come to the

conclusion that the accused-appellant had been absconding Court and the police have failed to lead any evidence of any police officer to confirm the fact that the accused-appellant was absconding, although, no evidence had been led on that day the accused-appellant was in fact under the custody of the S.T.F. Perusal of the said proceedings of 15th June 1987 shows that evidence had been led of the Gramaseva Niladari of Vellavelly. He had stated that he visited the house of the accused-appellant and came to know that the father of the accused-appellant was dead and the mother was living and they were unable to state any whereabouts of the accused-appellant. Counsel also brings to the notice of this Court, that the said Gramaseva Niladari had not stated to Court when in fact he had visited the residence of the accused-appellant and prosecution also has failed to lead the evidence of the mother to substantiate the fact that the accused-appellant was absconding at that time. On a perusal of the evidence led before the High Court, we are of the view, that there had been no sufficient evidence before the High Court Judge to justify that the accused-appellant was absconding Court and there was no evidence before the learned High Court Judge to make an order under Section 241 of the Criminal Procedure Code to continue with the trial in his absentia. On perusal of the order of the High Court Judge, it is seen that he has merely mentioned that there is no possibility of producing the accused before Court. It is very clear that

the Judge has not considered the evidence before him to find out whether in fact the accused-appellant was absconding Court.

At this stage, Counsel for the Respondent submits the fact that there had been no sufficient evidence before the High Court Judge to proceed with the case under Section 241 of the Criminal Procedure Code. Therefore, Counsel moves that the conviction and the sentence imposed on the accused-appellant be set aside and this case be sent back for re-trial.

We set aside the conviction and the sentence of the accused-appellant imposed by the learned High Court Judge dated 07.11.2012 and send the case back for re-trial against the accused-appellant on the said indictment. The learned High Court Judge is directed to dispose of this case as expeditiously as possible.

JUDGE OF THE COURT OF APPEAL

K. K. WICKRAMASINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=