

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

CA. No. 194/04
HC. Kegalle 1361/99

Widanalage Jayantha Marasinghe / Nilan
C/41/02, Owatte Road,
Hingula, Mawanella.
Remand Prison, Bogambara.

Accused-Appellant

Vs.

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

Respondent

C.A 194/2004

High Court Kegalle Case
No: 1361/99

Before : Vijith K. Malalgoda, P.C J P/CA &
H.C.J. Madawala, J.

Counsel : Dharmasiri Karunarthne for the Accused-
Appellant.

Rohantha Abeysuriya D.S.G for the Respondent.

Accused-Appellant is present in court produced by
the Prison Authorities.

Argued &
Decided on : 03.08..2015.

VIJITH K. MALALGODA PC J(P/CA)

The Accused-Appellant in this case was tried in absentia in the High Court of Kegalle. The record indicates that the Accused – Appellant was absent right throughout the case and the case proceeded without him. At the conclusion of the trial Learned High Court Judge has found him guilty and he was sentenced to death. After the pronouncement of the said judgment on 19.05.2004 the Accused was apprehended by authorities and produced before the same High Court on 24.11.2011 six years after the said conviction. On that day he was represented by a counsel and when the Court inquired him for reason to his absence, under Section 241(iii) of the

Criminal Procedure Code, the position taken up by the Accused was that he was unaware of warrant issued against him. The Accused had not taken any step to explain his absence beyond that. However the learned Counsel representing the Accused-Appellant before this court submits that when the 241(i) inquiry was proceeding in the High Court, the prosecution had called for the evidence of a Gramasevaka who was not in charge of the area the Accused was living prior to his disappearance. Counsel submits that when the Accused left the area he informed the relevant Gramasevaka, the area he is going to stay but due to the above mistake i.e. failure by the prosecution to call the correct Gramasevaka, the correct facts were not placed before the High Court. The said decision to proceed in absentia was made without proper material being placed before the Court. However we observed that the wife of the Accused-Appellant too was summoned at the said 241 inquiry before the Learned Trial Judge. We further observe that when the Accused-Appellant was apprehended in 2011 and produced before High Court he has not taken up this position i.e. the position taken up by the counsel before this court.

The learned Trial Judge being dissatisfied with the position taken up by the Accused-Appellant on 24.11.2011, on 22.02.2012 made an order to the effect that she cannot accept the position taken up by the Accused-Appellant. Therefore decided to impose the death

sentence already imposed on him after giving him an opportunity to make his allocutus. We see no reason to interfere with the findings of the learned High Court Judge. Therefore we dismiss the appeal.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala, J
I agree.

JUDGE OF THE COURT OF APPEAL.

Vkg/-