

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

**In the matter of an Appeal under section 331 (1)  
of the Code of Criminal Procedure Code Act No  
15 of 1979.**

**The Democratic Socialist Republic of Sri Lanka**

**COMPLAINANT**

**Vs,**

- 1) Perumal Sivanadan**
- 2) Arumugam Ganeshan**
- 3) Arumugam Punniyamoorthy**
- 4) Murugesu Pathmanathan**  
**Labbokelle Estate,**  
**Labukelle.**

**ACCUSED**

**CA/72/2013**

**H.C Nuwara Eliya 119/2009**

**And,**

- 1) Perumal Sivanadan**
- 2) Arumugam Ganeshan**
- 3) Arumugam Punniyamoorthy**
- 4) Murugesu Pathmanathan**  
**Labbokelle Estate,**  
**Labukelle.**

**ACCUSED-APPELLANTS**

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

**RESPONDENT**

**Before** : **Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel** : **Dhanaraja Samarakoon for Accused-Appellants  
Haripriya Jayasundera DSG for the Attorney General**

**Argument On: 01.09.2015**

**Decided On: 16.10.2015**

### **Order**

**Vijith K. Malalgoda PC J (P/CA)**

The four Accused-Appellant in this case were indictment before the High Court of Nuwara Eliya on two counts for committing the murder of Ramakrishnan an offence punishable under the section 296 of the Penal Code and voluntary coursing hurt to one Rasaiya an offence punishable under section 315 of the Penal Code. The said trial was commenced on 22<sup>nd</sup> March 2007 and Prosecution witness number one had given evidence on that day. All Accused-Appellants were defended by a retained counsel on that day and the said witnesses' evidence was concluded on the same day and further trial was fixed for the 20<sup>th</sup> of November 2012.

It is brought to the notice of this court by the counsel who represented all 4 Accused, that the procedure adduced by the Learned High Court Judge on 20<sup>th</sup> November 2012 is in violation of the rules of Natural Justice and also Article 4 of the ICCPR Act No. 56 of 2007. According to the proceedings on 20<sup>th</sup> November 2007, the case has come up before a new High Court Judge on that day. Since the case was

part heard before the previous High Court Judge, the parties had agreed to adopt the evidence led before the previous High Court Judge and to proceed with the rest of the case. At the time the said order was made all 4 accused were represented by the same defence counsel who defended them on the previous day.

However subsequent to the said order was made and the prosecuting counsel moved to call the other evidence, defence counsel had informed court that he doesn't have any instruction from the Accused since none of the accused had met him to give instructions and therefore he requested permission to withdraw from the case. The court after allowing the application of the defence counsel to withdraw from the case, assigned a counsel to represent all 4 accused. The said assignment was recorded in the proceedings at 10.45 am and immediately thereafter at 10.45 am the next witness for the prosecution was called to give evidence. According to the submission made by the counsel for all 4 accused, the entire persecution case was concluded on the same day leading the evidence of the two lay witnesses Judicial Medical Officer who conducted the post mortem of the deceased person, the Medical Officer who examined the injured, two Investigating Officers and finally leading the evidence of the Officiate Registrar of the High Court. Thereafter further trial was put off for 22<sup>nd</sup> November 2007 and all 4 accused were remanded until that day. On 22<sup>nd</sup> all 4 accused made dock statements and concluded their cases. Based on the above circumstances it was brought to the notice of this court by Learned Counsel for the Accused-Appellants that the Accused –Appellants were denied of a fair trial by the said conduct of the Honorable High Court Judge of Nuwara Eliya.

Article 13 (3) of the constitution guarantees a fair trial and the said article reads as follows;

**13 (3)** any person charged with an offence shall be entitled to be heard, in person or by and Attorney

–at-Law, at a fair trial by a competent court.

Section 4 -1, (b) of the ICCPR Act No 56 of 2007 read as follows;

4-1). A person charged of a criminal offence under any written law, shall be entitled-

- b). to defend himself in person or through legal assistance of his own choosing and where he does not have any such assistance, to be informed of that right;

In the present case, when the retained counsel withdrew from the case the Learned High Court Judge had correctly assigned a counsel to represent them but, whether he permitted the said assigned counsel to get ready for his case is a matter this court will have to consider at this point. In the case of *Murugaiya Shamila Devi Vs, the Attorney General (CA 262/2009)* Her Ladyship Justice Rohini Marasinghe observed that “assuming that the Accused had requested for an assigned counsel, then the assigned counsel on behalf of the accused must be afforded the opportunity to prepare the case for the Accused.”

In the case of the *Queen Vs, A.K. Peter (1961) NLR 120* Basnayake CJ held that,

“The only ground urged by learned counsel for the appellant is that when the trial commenced on 20<sup>th</sup> January the accused’s counsel who had been retained by him did not appear, and that at 11 am on that day counsel was assigned to defend the accused and the case was taken up for trial at 12.30 pm. It is submitted by Learned Counsel for that appellant that the time allowed for assigned counsel to prepare the case was not sufficient. He has drawn our attention to the fact that the defence was gravely prejudiced by the situation in which assigned counsel was placed. We agree that assigned counsel should be allowed sufficient time for the preparation of his case and for obtaining instructions from the accused. In the instant case sufficient time was not allowed.”

In the present case the Learned High Court Judge after assigning in the counsel, had proceeded to take up the trial without giving any opportunity for the assigned counsel to get ready in this case. There is no material before us to show whether the copy of the indictment was served on the assigned counsel or not. As pointed out by me earlier the evidence of two lay witnesses, two doctors, two police

officers and the officiate registrar were concluded on the same day. Considering all these issues I conclude that the Learned High Court Judge had failed to afford a fair trial to the accused in this case.

The Learned Deputy Solicitor General who represented the Attorney General did not contest this matter and I appreciate the position taken up by state in this case.

For the reasons adduced above I set aside the conviction and sentences imposed by Learned High Court Judge on all 4 accused-appellants and order a fresh trial before a different High Court Judge.

Appeal allowed.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala**

I agree,

**JUDGE OF THE CUORT OF APPEAL**

Appeal allowed.