

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

The Honorable Attorney General,
Attorney General's Department,
Colombo 12.

Court of Appeal Case No. 19/2012

- Vs -

High Court of Kegalle Case
No. 1941/03

Kirama Kankanamge Dinesh Thilina
Danushka Ariyaratne alias Senevi

And now between

Kirama Kankanamge Dinesh Thilina
Danushka Ariyaratne alias Senevi

Accused – Appellant

- Vs –

1. The Honorable Attorney General,
Attorney General's Department,
Colombo 12.
2. Officer in Charge,
Police Station,
Mawanella.

Respondents

BEFORE : H.N.J. Perera, J. &
K.K. Wickramasinghe, J.

COUNSEL : Saliya Pieris with Varuna De Seram for the accused-appellant.
Dileepa Pieris SSC for the AG.

ARGUED ON : 23.11.2015,
28.01.2016 & 09.02.2016

DECIDED ON: 19.02.2016

K.K. WICKRAMASINGHE, J.

The accused-appellant above named was indicted in the High Court of Kegalle for committing murder of one Kiriammalawatta Lekamlage Disna Priyangika Seneviratne at Kadugannawa on or about a day between 22nd April 1992 and 27th April 1992 and thereby committing an offence punishable under Section 296 of the Penal Code. Thereafter the accused-appellant was found guilty of the charge of murder and was sentenced to death on the 3rd February 2012.

When this case was taken up for argument the learned Counsel for the appellant pointed out that immediately after the dock statement was made by the accused-appellant, the learned High Court Judge delivered the judgment without hearing closing submissions of either party.

Further it was brought to the notice of Court that the learned High Court Judge proceeded to pronounce the judgment and sentence on the same date, when the case for the defense was closed. Therefore, it was argued that it amounts to a violation of a right to a fair trial afforded to the accused-appellant.

After perusal of the proceedings it is evident that no time periods were noted on the last date of proceedings. Further it is apparent from the record that this judgment was pronounced on the same day, without giving an opportunity for both counsel to make their submissions.

The learned Deputy Solicitor General for the respondent considered the fact that it would have been more appropriate and prudent that the learned trial Judge should have heard the submissions of parties in support of their respective cases, especially when the case rests entirely on circumstantial evidence.

In the case of **K.D.P. Wijesinghe Vs. Attorney General 50 CLW 32** submitted by the learned counsel for the appellant it was held that *“the pronouncement of his verdict by the trial Judge immediately after the defense was closed, and before the accused’s Counsel could sum up his case, was a denial to the accused, of the fundamental right of having his case summed up by his Counsel.”*

According to article 13(3) of the Constitution provides that *“Any person charge with an offence shall be entitled to be heard in person or by an Attorney-at-law, at a fair trial by a competent Court”*.

In the case of **Attorney General Vs. Aponso [2008] BLR 145** their Lordship's of the Supreme Court held that "*The right of an accused-person to a fair trial is recognized in all the criminal justice systems in the civilized world. Its denial is generally proof enough that justice is denied*".

This Court is of the view that the short time gap between the dock statement and the delivery of judgment gives credence to the argument of the learned Counsel that the learned High Court Judge did not have sufficient time to apply her mind to the entire case and evaluate circumstantial evidence and consider the dock statement given by the accused-appellant when considering the case of the defense.

In the case of **Sarath Amunugama and Others Vs. Karu Jayasooriya and Others** quoting the **King Vs. Sussex Justices ex-party McCarthy [1924]1KB 256** at page 259 held that public confidence in the settlement in dispute "*Public confidence in the settlement of disputes requires that even in so called "open and shut" cases the principles of natural justice must be observed so as to ensure not only that justice was done but also,... that it should be "manifestly and undoubtedly be seen to be done."*

In the case of **W.R.M. Chamila Wijesinghe and Another Vs. Attorney General CA 206-207/2007** it was held thus *“The judges must be concerned about the rule of law and the principals of a fair trial, protection of their interest should be at the forefront of their minds”*.

Therefore, considering all above I set aside the conviction and the sentence imposed on the accused-appellant and order re-trial against the appellant on the same indictment.

JUDGE OF THE COURT OF APPEAL

H.N.J. PERERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

CASES REFERRED TO:

1. **K.D.P. Wijesinghe Vs. Attorney General 50 CLW 32**
2. **Attorney General Vs. Aponso [2008] BLR 145**
3. **King Vs. Sussex Justices ex-party McCarthy [1924]1KB 256**
4. **W.R.M. Chamila Wijesinghe and Another Vs. Attorney General CA 206-207/2007**