

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

CA No.71/2013

Nadaraja Chithrawel
Mari Amman Kovil Road,
Thalawai.

Appellant

Vs.

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

Respondent

BEFORE : P.R. Walgama, J. &
S. Devika De L. Tennekoon, J.

COUNSEL : Dr. Ranjith Fernando for the accused-appellant.
P. Kumararatnam DSG for the respondent.

DECIDED ON: 31.08.2016

P.R. WALGAMA, J.

Counsel for the accused-appellant states that this is a death sentence case under Section 296 of the Penal Code. It is noted that the Tamil brief as well as the English translation which has been accepted by Hon. Attorney-General. Both do not reflect that the mandatory provision of Section 195(ee) of the Criminal Procedure Code has been complied with by not giving the jury option to the accused. He submits after verification and consultation with the counsel for the Attorney-General. In those circumstances, Court may in its usual manner set aside the conviction and the sentence and transmit back to the High Court of Batticaloa for a trial *de novo*.

Learned DSG informs Court that indictment was served on 10.03.2010 trial commenced on 03.05.2011. In both occasion the jury option was not given to the accused.

In view of the above submissions made by both Counsel the conviction is hereby set aside and the Registrar is directed hereby to remit the case record to the relevant High Court for a trial *de novo*.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L. TENNEKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-