

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

Sellathambi Somadundaram alias
Mottasundaram

C.A 272/15

HC Trincomalee 391/10

Appellant.

Vs.

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

Respondent.

CA 272/2015**HC-Trincomalee No: 391/2010**

Before : M.M.A. Gaffoor,J
A.L. Shiran Gooneratne,J

Counsel : Ganeshawaran for the Accused-Appellant.
P. Kumararathnam DSG for the Respondent.

Decided on : 10/09/2018

M.M.A. Gaffoor,J

The Accused-Appellant was indicted in the High Court of Trincomalle, that, on or around 09th August 2007 within the jurisdiction of that Court, the Accused-Appellant had in possession 2 grenades and 38 numbers of live ammunition thereby committing an offence under the regulations 36(1) and 36(5) of the Extra Ordinary Gazette of the Democratic Socialist Republic of Sri Lanka bearing No: 1405/14 dated 13.08.2005 issued by Her Excellency the President under Section 5 of the Public Security Ordinance and cited as Emergency (Miscellaneous Provisions and Powers) Regulation.

The Prosecution led evidence of the following witnesses, to prove the above indictment.

1st witness of the Police Inspector Nishantha.

2nd witness of the Police Constable 21879 Abeywickrema

3rd witness Sub Inspector Gamage

5th witness Police Sergeant 59103 Jayanethi

6th witness Police Constable 8051 Jayasundara

13th witness P.G. Madawella Deputy Government Analyst.

The said witnesses were cross-examined by the defence counsel and at the conclusion of the trial written submissions were tendered by counsel.

On 26.11.2015 judgment was delivered convicting the Accused-Appellant and was sentenced to 20 years rigorous imprisonment. Being aggrieved by the said conviction and sentence imposed on him, by the High Court, the Accused-Appellant preferred an appeal on the following question of law and other substantial questions on facts that may be urged by the counsel for the Accused-Appellant.

- a) The Honourable High Court Judge has not addressed his mind to the several contradictions, omissions and improbabilities which were very glaring in the evidence led by the prosecution and in the documents tendered.

- b) Whether the Learned High Court Judge erred in fact and in law by failing to consider the matters set out below among other substantial questions of fact that may be urged by the Counsel of the Defendant-Appellant at the time of hearing this appeal;
- i. Whether the police party of 10 including the Defendant-Appellant could travel in a Jeep which could accommodate only 4 to the spot where the purported recovery was made.
- ii. Whether the Police Constable 21879 Abeywickrama who took the purported statement from Defendant-Appellant is competent in Tamil language? who only pasted the purported confession dated 15th September 2007 in the Grave Crimes Information Book under Date: 2007 September 16 time 07.15 page 391 Paragraph 104 in the case bearing No: HCT/402/2010 wherein ASP Trincomalee II states that since the suspect didn't know Sinhalese, police constable 59274

Sahayarasa was asked to translate while recording the confession of the accused before the ASP.

- iii. Since both police constable 59274 Sahayarasa and police constable 21879 Abeywickrama are from the Uppuvelly Police station. If 21879 Abeywickrama had competence in translating from Tamil to Sinhalese ASP would have got him to translate instead of only pasting the confession in Grave Crimes Information Book.
- iv. Whether the productions were introduced by the police in the light of several contradiction in the evidence led by the prosecution?.

According to the judgment dated 26.11.2015, we observe that there is no evaluation of evidence of witnesses put forward by the prosecution. We also observe the final paragraph of the judgment which narrates the conclusion in arriving at the conviction. This case was heard before four High Court Judges and the adoption of proceedings are not properly done. According to decided Judgments of the Supreme Court, the non adoption of proceedings is a fatal error where cases are sent back to the original court for re-trial. In this matter, the Accused-Appellant has been in remand custody for 11

long years. For the reasons stated and considering the period of incarceration, we are of the view that this is not a fit case to be sent for re-trial. Therefore, we set aside the conviction and sentence and acquit the Accused-Appellant from all charges leveled against him. We direct the Superintendent of Prison to release the accused-appellant from their custody on receipt of the judgment of this Court.

The Registrar of this Court is directed to communicate this order to the Superintendent of Prisons and the relevant High Court .

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-