

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

**CA. No. 268/2012**

H.C Batticaloa Case NO.HCB/2653/10

Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Mohammed Usanar Nazeer

**Accused**

**And Now Between**

Mohammed Usanar Nazeer

**Accused Appellant**

**Vs.**

Hon. Attorney General  
Attorney General's Department  
Colombo 12

**Respondent**

C.A. No. 268/2012

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H.C. Batticaloa Case No.HCB/2653/10

BEFORE

:

H.N.J. PERERA, J. &  
K.K. WICKRAMASINGHE, J.

COUNSEL

:

Shanaka Ranasinghe PC with P. Padmasiri  
for the Accused-Appellant.

S. Thurairajah DSG for the A.G.

ARGUED &

DECIDED ON

:

16.10.2015.  
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**H.N.J. PERERA, J.**

Accused-appellant is present in Court produced by the Prison Authorities.

Counsel for the accused-appellant submits to Court that in the instant case the accused-appellant had not been afforded a fair trial. He submits that no evidence had been led to identify the body of the deceased person in this case. Although the two witnesses who had identified the deceased's body before the doctor had been listed, the prosecution had failed to lead the evidence of either one of those witnesses to identify the deceased's body. He submits that inadmissible evidence too had been led contrary to Section 25 of the Evidence Ordinance to the effect that the accused-appellant had confessed to the killing of

the deceased in this case and also the evidence of the police officer too had been led contrary to the Evidence Ordinance, which had prejudiced to the case of the accused-appellant and denied him a fair trial. We find that no where in the judgment the learned Judge referred to the said inadmissible evidence that had been led in this case and for these reasons Counsel moves that this is a fit and proper case to send back for a re-trial. Counsel for the respondent too concedes that inadmissible evidence had been led in this case and therefore moves that the said conviction be set aside and the matter be referred for a re-trial before the High Court. Therefore, after considering the submissions and the evidence that had been led in this case and the judgment, we set aside the conviction and the sentence of the learned High Court Judge dated 10.12.2012 and order trial de novo before the present Judge of the High Court of Batticaloa and the present Judge is directed to hear and dispose of this case as expeditiously as possible.

Appeal allowed. Re-trial ordered.

JUDGE OF THE COURT OF APPEAL

**K.K. WICKRAMASINGHE, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

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