

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

Court of Appeal Case No : CA HC/313/2009

Thuppahige Saranapala

Petitioner

Vs.

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

Respondents

CA 313/09

HC-Colombo-1477/03

Before : S. Devika de L. Tennekoon, J. &
S. Thurairaja, PC, J.

Counsel : Anuradha Weerakkody for the Accused-Appellant
D.S. Soosaithas, SSC for AG

Decided on : 08.12.2017

S. Thurairaja, PC. J.

Heard submissions of both counsels and perused written submissions filed by them. We carefully considered the proceedings and the evidence led before the High Court.

We found on 12.05.2008 that the trial was taken up before a judge, due to his elevation and the trial was continued before another judge and he delivered the judgment.

When the trial taken up before a new Judge the Accused was present but without a lawyer. The accused was assigned with a counsel on that day and the trial continued before the new judge. End of the day's proceedings, we find that the counsel for the Accused made an

application to get a copy of the indictment. This shows that the Counsel has defended the accused without even having a copy of the indictment. We can easily presume that the Accused-Appellant's Counsel was not armed with the basic document namely the indictment and other necessary evidential materials.

We have discussed in many cases that the accused has a right to have a fair trial which is enshrined under article 13 of the constitution of Sri Lanka. Further United Nation's declaration of human rights, International Covenant on political rights and other international documents which Sri Lanka is a signatory as well as some of them were passed as laws of Sri Lanka. We have dealt with this issue in detail in C.A. 286/09 decided on 30/11/2017.

Under these circumstances we find that the Accused-Appellant did not have a fair trial. Therefore we conclude there is not trial held. Accordingly, we order a re-trial.

Registrar is hereby directed to transmit the case record immediately to the Registrar of High Court of Colombo.

Further, the Registrar of High Court, Colombo is directed to consult with the Judge concern and to give priority to list this case to take

up for trial because, as per the indictment this incident has alleged to have occurred on 04/10/2001.

Retrial ordered.

JUDGE OF THE COURT OF APPEAL

S. Devika de L Tennekoon, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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