

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

Court of Appeal Case No : CA HC/271/2015

Sudath Kumara peprera

Petitioner

Vs.

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

Respondents

CA / 271 / 2015

HC Colombo Case No. HC /2281 /05

BEFORE : **S. Devika de L. Tennekoon, J**

S. Thurairaja, P.C, J

COUNSEL : Dr. Ranjith Fernando for the Accused Appellant.

Rohantha Abeysooriya SDSG for the AG.

DECIDED ON : 11.12.2017

S. Thurairaja, P.C, J

Accused Appellant is present in Court produced by the Prison authorities.

The counsel for the Accused Appellant takes up an objection that there is no fair trial for the Accused Appellant because the Learned Trial Judge has pre judged the case. She had invoked the presumption under Section 114 (f) of the evidence ordinance, saying, that the Accused Appellant should give evidence. Counsel submits that there is no fair trial offered to the Accused Appellant therefore he moves that the matter be sent for fair trial. Senior Deputy Solicitor General, Mr. Rohantha Abeysooriya who is appearing for the State maintaining the highest tradition of the attorney General's Department and submits that there are certain misdirection by the Learned Trial Judge therefore, he concedes to the application by the Appellant.

Considering submissions of both Counsels the Court invites to attention to article 13 of the Constitution. We find that the Accused is entitled for a free and fair trial as enshrined in the constitution. In this case the Learned Trial Judge by inviting a presumption under Section 114(f) she had come to a Pre-

conclusion of which had denied fair trial to the Accused Appellant. Therefore the Court hold with the submissions of the Accused Appellant and vacate the present conviction and the sentence and Order a afresh trial.

We direct the Registrar of the Court of Appeal to inform the Registrar of High Court of Colombo to bring to the notice of the Judge that this incident alleged to have happened in 2002 and to give priority in listing the case for Trial tried and conclude as soon as possible.

Re – trial ordered.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree

JUDGE OF THE COURT OF APPEAL

YD/-