

IN THE SUPREME COURT OF DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Special Leave to Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. Spl. LA Application No :66/2017

CA Appeal No: 104/2012

HC(Kandy) No: 248/2004

1. Billinghamawattegedara Karunaratne
alias Raja
Presently at Welikada Prisons
1ST ACCUSED- APPELLANT – PETITIONER

-Vs-

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

COMPLAINANT-RESPONDENT-RESPONDENT

BEFORE : Sisira J. de Abrew, J.
Priyantha Jayawardena, PC, J. and
Nalin Perera, J.

COUNSEL : Barana Gayan Perera for the 1st Accused-
Appellant-Petitioner.

Harippriya Jayasundera, DSG, for the
Attorney General.

ARGUED&
DECIDED ON : 05.12.2017

Sisira J. de Abrew, J.

Heard both Counsel in support of their respective cases.

Learned Counsel appearing for the Accused-Appellant-Petitioner raises a following question of law:-

Has the Court of Appeal failed to consider the defence case?

We have perused the judgment of the Court of Appeal and we find that the written submissions filed by the Attorney General have been reproduced from word to word in the judgment. Thereafter Her Ladyship has written two sentences affirming the conviction and the sentence. We therefore, hold that the Court of Appeal has failed to consider the Appellant's case and severe prejudice has been caused to the Accused-Appellant in this case.

In our view, when the Appellate Court considers an appeal it becomes the sacred duty of that Court to consider arguments for both sides. When the Appellate Court reproduces the written submissions filed by the Attorney General and writes a few sentences affirming the conviction, (the Appellate Court) fails to perform its sacred duty.

It is not the duty of the Court of Appeal to reproduce the written submissions filed by one party in the judgment and give the judgment in favour of the party who filed written submissions. The Court

of Appeal in this case after reproducing the written submissions filed by the Attorney General in its judgment, has dismissed the appeal.

In these circumstances, we answer the above questions of law in the affirmative.

In our view the judgment of the Court of Appeal cannot be permitted to stand. We therefore set aside the judgment of the Court of Appeal and direct the Court of Appeal to re-hear the case by a different Bench.

Registrar of this Court is directed to send a copy of the judgment to both Judges who wrote the judgment and also to the Registrar of the Court of Appeal for their information.

Appeal allowed.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J.

I agree.

JUDGE OF THE SUPREME COURT

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