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BRIBERY (AMENDMENT) ACT NO. 10 OF 1958

Pothunaduge Winston Alfred Kanthilal Silva Vs. The Attorney General Commission to Investigate Allegations of Bribery or corruption. 113

CA (PHC) Apn. No. 105/06

Sarath de Abrew, J. Decided On :15.05.2012

Section 23A (4) of the Bribery (Amendment) Act No. 10 of 1958

"Any person charged with an offence shall be entitled to be heard in person or by an attorney-at-law, at a fair trial by a competent Court. In this context it is most relevant and opportune to determine whether the application of Article 13 (3) would extend to include situations where there cannot be a fair trial by a competent Court based on a flawed indictment where mandatory provisions prescribed by law to initiate trial proceedings are blatantly infringed.

CIRCUMSTANTIAL EVIDENCE

Ulpatha Vidanage Wasanthi Wijewardena Vs. Republic of Sri Lanka 71

C..A. Application No. 61/2009

Ranjith Silva, J Decided on: 15.03.2012

Circumstantial evidence

Held: To base a conviction on circumstantial evidence, it must lead only to the inference of guilt of the accused and there cannot be any other possible innocent interpretation or hypothesis.

CODE OF CRIMINAL PROCEDURE

1. **C.A.(PHC) No.05/2001** 39
PHC.Kegalle No.692/Rev
Sisira De Abrew, J. Decided On :10.02., 2012.

Code of Criminal Procedure, Section 431(1)

The Court held that the section applies only to three categories of property. That is;

- (1)property taken under section 29of the Criminal Procedure Code (related to search of persons who are arrested)*
- (2)the alleged or suspected to have been stolen*
- (3)property found under the circumstances which create a suspicion of the commission of any offence.*

2. **C.A.41/2011** 171
W.L.R. Silva, J.Decided on : 13.06.2012.

Circumstantial Evidence; Admission

Held : For three long years the alleged information regarding the murder was suppressed and these witnesses who had duty to assist under the provisions of the Criminal Procedure Code to give this information to the Public

Authorities and had refrained from uttering a word. They made a statement only after the Police started investigation after 3 years of the incident. It appears that the police had recovered a knife and a shirt hidden in the garden of the 1st witness on a statement made by him. The High Court Judge has erroneously taken this as circumstantial evidence and as an admission made by the accused with regard to the crime.

If there was any circumstantial evidence pointing at a particular person, the circumstantial evidence, formidable and significant was against the 1st witness in whose garden the knife and the shirt was found.

3. *Kankanamge Wasantha Kumara, Vs. Attorney-General* 55

CA. Appeal No. 148/2005

Ranjith Silva, J Decided on: 08.03.2012

Code of Criminal Procedure; Section 195(e)(e)

Held: Not affording the Jury option has resulted in an illegality and not a mere irregularity. But the illegality does not culminate in a nullity absolute but only in a relative nullity.

4. *Wijesinghe Rajakaruna Mohottalage Chamila Wijesinghe Vs. Attorney .General* 75

C.A.209-207/2010

Ranjith Silva, J. Decided on 21.03.2012

Code of Criminal Procedure Act; Section 182(1) and (2)

Held: Compliance with Section 182(1) and (2) of Code of Criminal Procedure Act is imperative..

The procedure adopted in English Courts were much different to their procedure adopted in Sri Lanka.

Sri Lankan law is completely different and it makes no provision for any implied or tacit waiver.

DOCK STATEMENT

- 1 *Seepadalage Sumathipala, Vs. Republic of Sri Lanka.* 80
C.A. No. 136/2010
Ranjith Silva, J. Decided on : 20.03.2012.

Corroboration; Dock statement

Held: Corroboration is not the sine qua non for a conviction in sexual offences.

Dock statement has to be evaluated in the light of the totality of evidence and should not be compartmentalized. The dock statement should not be compared with the evidence of the prosecution and dock statement should not be considered as inferior evidence. In considering the dock statement one has to be mindful that if the dock statement is neither accepted nor disbelieved still if it is sufficient to create some doubt, the benefit of the doubt should be given to the accused.

- 2 *Munasinghe Arachchilage Chamalie Perera, Vs. Republic of Sri Lanka.* 175

C.A. Appeal No. 38/2011

Ranjith Silva, J Decided on: 14.06.2012

Possession & trafficking of Heroin.

His Lordship decided that evidence should not be compartmentalized whether the dock statement should be acted upon or not whether it is sufficient to throw any doubt in the prosecution case should be decided in the light of the totality of the evidence and not by comparing the evidence with the prosecution evidence and not by compartmentalizing and evaluating the evidence separately.

EVIDENCE ORDINANCE

I. Welipiti Gamaralalage Somasiri Vs. Hon. Attorney General

CA.90/2005

149

H.N.J.Perera, J Decided on : 11.6.2012

Evidence Ordinance Section 114(f)

Held; The Court of Appeal cited with approval the judgment of King vs. Chalo Singho, 72 NLR 269 which was as follows; "Prosecuting Counsel is not bound to call all the witnesses named on the back of the indictment or tender them to cross examination.

There is no misdirection by the Judge when he omits to refer to Section 114(f) of the Evidence ordinance in cases in which the Crown does not call or tender for cross examination on the request of the Defence Counsel, a witness,

whose name appears on the back of the indictment and whom the Defence Counsel had himself an opportunity of calling.”

2. ***Mahadevan Yogakanthan Vs. Republic of Sri Lanka*** 166
C.A. Appeal No. 41/2010
W. L. R. Silva, J. Decided on: 12.06.2012

Prevention of Terrorism (Temporary Provision) Act; Section 16, ; Evidence Ordinance Section 24

Held: Section 24 of the Evidence Ordinance does not require positive proof of improper inducement, threat or promise to justify the rejection of a confession. If the Court after proper examination and careful analysis of the evidence and the circumstances of the given case, holds to the view that there appears to have been a threat, inducement or promise, though this is not strictly proved, then the Court must refuse to receive in evidence the confession.

JURY OPTION

1. ***G. W. Indrakeerthi de Silva Vs. The Attorney-General*** 43
C.A. 201/2009
Ranjith Silva, J. Decided On : 17.02.2012

The 1st Accused opted to have a non jury trial but for some reason or other after several dates of trial wanted to be tried by his peers and at that time when he expressed his wish he was not too late as trial had not yet commenced.

Held: It was illegal not to heed his request and not to allow him to be tried by his peers.

MURDER

1. **C.A. No. 257/09** 22
H.C. Panadura Case No. 1587/2002
Ranjith Silva, J Decided on : 26.01.2012.

Murder; Dying Declaration;

There were two accused. The dying declaration which is the only evidence speaks of the involvement of the 2nd Accused and is completely silent with regard to the 1st Accused. The first medical report although not marked in evidence which is repugnant to all accepted norms and principles of a fair trial leads to the inevitable conclusion that poison had not been forced.

2. **Ravindra Dharmapriya Keerthiratne Vs. Attorney General**
C.A. Case No. 46/2001 124
Sarath De Abrew, J. Decided on :30.05.2012.

Murder

Held; Irrespective of the failure of the accused person to specifically raise the mitigatory plea in favour of an exculpatory plea and irrespective of the nature of injuries of the victim, where the evidence disclose the probability of a

sudden fight or struggle, there is a duty cast on every trial judge to apply the test of probability and improbability to carefully assess the direct, circumstantial and medical evidence to decide on a balance of probability whether the injuries on the accused were the result of a protracted sudden struggle or whether injuries were merely the result of unarmed resistance of the victim.

The total absence of a motive or premeditation are factors that are contributive to the probability that the incident took place due to a sudden dispute giving rise to a sudden fight.

3. *The Attorney General Vs. .Meewaduma Arachchige Udayasiri. Vs. The Attorney General*

CA 95/2008

182

H.N.J. Perera, J. Decided on : 22.6.2012

Murder

Held: Although there appears to be some irregularity committed with regard to the evaluation of the evidence led in this case, in view of other cogent evidence available in this case, The Court is of the view that this irregularity must be disregarded as it has not caused any prejudice to the substantial rights of the accused or occasioned a failure of justice.

PENAL CODE

1. *Malagamage Wasanta Pradeep Kumara. Vs. Attorney-General*
C.A. No. 299/2008 46
W.L.R. Silva J Decided on:01.03.2012

Penal Code Section 264(2)(e); Rape

The Court of Appeal cited with approval the views of forensic experts that it is not necessary to finish the sexual act or accomplish the sexual act but the minimal penetration between the labia, that is if the penis is placed between the labia, that is sufficient to constitute penetration for the act of rape.

2. *Ratnayake Mudiyansele Sunil Vs Hon. Attorney-General,*
CA. Appeal No. 199/2009 50
Ranjith Silva, J Decided on:08.03.2012

Penal Code Section 365(b)2(b), Act No. 16 of 2006.

By the amended Act, the mandatory sentence is reduced to 07 years whether the offence was committed much earlier or whether the offence was committed thereafter, and will apply to pending cases.

3. *Alwa Pillai Ponniah Vs. The Hon. Attorney General,*
C.A. No. 151-152/1997 85
Sarath De Abrew, J. Decided on: 29.03.2012.

Penal Code Section 100 & 101; Abetment

Held: To convict for abetment, the ingredients with regard to abetment as laid down in Section 100 and 101 of the Penal Code have to be proved beyond reasonable doubt. There is no evidence on record that the 2nd Accused instigated, engaged in conspiracy or intentionally aided the 1st Accused to commit the offence.

4. *Rajapakshe Gedera Swarnawathie Vs. Attorney General*

C.A. No. 78/2009

98

Ranjith Silva, J. Decided on : 22.03.2012.

Held; The prosecution is duty bound to exclude the possibility of that other person committing the offence. If there is no case for the prosecution, then no amount of corroboration can cure that.

Solanga Arachchige Sumith Gihan Perera, Vs. Hon. Attorney-General

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CA. Appeal No. 99/2010

Sarath de Abrew, J Decided on: 10.05.2012

Belated appeal (after 14 days) state objected.

But court considered it as Revision application. A appellant was convicted for murder death sentence imposed by High Court - Under section 297 of the Penal Code for culpable homicide not amounting to murder on the basis of sudden fight and impose a sentence of 10 years R.I.

See also: Code of Criminal Procedure(Ravindra Dharmapriya Keerthiratne Vs. Hon. Attorney General)

6. *Manmogam Parimalarajah Vs. Hon. Attorney General* 121
CA PHC APN 137/2011
Sisira de Abrew, J Decided on: 21.05.2012

Section.296 of the Penal Code.

7. *Jude Anthony Jayamaha. D . S. Vs. Hon. Attorney General*
C.A. 303 / 2006 203
W.L.Ranjith Silva, J Decidedon : 11.07.2012

S. 296 of the Penal Code - Murder

Charge :-

Conviction of a lesser offence

A conviction for a lesser offence or an offence different to the one pleaded in the indictment amounts to an acquittal from the initial charge framed against the accused. Which can be challenge by the state is an appeal.

Evidence :-

Evidence- Evidence not challenged in cross- examination

Whenever a statement of fact made by a witness is not challenged in cross examination, it has to be concluded that the fact in question is not disputed.

A plea of Introduction:-

a plea under section 79 whether raised by the accused or not can be considered in favour of the accused by the trial Judge

provided there is evidence in the case to determine on a balance of probability.

Dock Statements:- Evaluation of Dock Statement

Whether the evidence of the defence or the dock statement is sufficient to create a doubt cannot be decided in a vacuum or in isolation because it needs to be considered in the totality of the evidence that is in the light of the evidence for the prosecution as well as the defence.

PRIMARY COURT PROCEDURE ACT.

1. *H.P.Sarath Kumara, Vs. W.M.Gunarathna Menike,* 26
C.A. (PHC) NO.126/2004
K.T.Chitrasiri,J. Decided On :16.02.2012.

Primary Court Procedure Act. Section 66

When there is no certainty as to the ownership as well as the location of the strip of land claimed as a right of way' the learned Judge has come to the correct decision by allowing the petitioner to use the roadway as claimed by her until the land in dispute is declared a State land or till an order is made by a court having competent jurisdiction

2. *Galkissage Gunawathi Vs. M A Irangani* 103
CA (PHC) 66/2002
Sisira de Abrew J Decided on: 28.3.2012

Primary Court Procedure Act; Section 66(1)(a)

Held: If possession of a wrong land had been handed over to the Appellant in terms of her interim order, it becomes bounded duty of the Magistrate to rectify it. It is an accepted principle that Court can rectify its own errors.

ROMAN DUTCH MAXIMS

1. Kankanamalage Vijith Samantha Vs. Hon. Attorney General 196

General,

CA. Appeal No. 211/2007

W.L.R. Silva J. Decided on :28.06.2012.

Held: The Roman Dutch Maxim, “falsus en uno falsus in omnibus” applies in a qualified and restrictive sense in the presence law of our country’ If a man is caught lying in one instance he should be treated as a liar no longer applies and if the truth can be separated safely from the falsehood, there is nothing wrong in acting on that part of the evidence which is true.
