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C.A. L.A No.47/2005 (F)

K. T.Chitrasiri, J. Decided on: 28.03.2013

Section 18 of the Civil Procedure Code

This is an application seeking to set aside the order dated 27th January 2005 of the learned District Judge of Colombo. By that order, an application made under Section 18 of the Civil Procedure Code to add the petitioner-respondent namely, Shahla Cassim, as a party to the action had been allowed.

Held 1 : "To decide that ground for adding a party the Court must answer the following questions:

(1) What are the questions involved in the action? and

(2) Is the presence of the party seeking to be added necessary in order to enable the court effectually and completely to adjudicate upon and settle them ?.

Held 2 : However, it must be noted that non-consideration of matters that came into existence after filing of the action is applicable only when it comes to adjudication but looking at such matters may not prevent the parties arriving at a settlement of the dispute on their own or under similar circumstances. Accordingly, it is my considered view that the circumstances that came into existence subsequent to the filing of the action are irrelevant in adjudicating that action.

2. M. Serasinghe Vs. D.M. Kanakarathna

C.A. 864/2000(F)

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K.T. Chitrasiri, J. Decided on: 07.06.2013

Sections 770, 755 and 758 of the Civil Procedure Code,

This is an appeal seeking to set aside the judgment dated 18.09.2000 of the learned District Judge of Kurunegala.

Held 1: Under those circumstances, even if this Court is to consider exercising discretion under Section 770, such a course of action is impossible since the party who had not been made a party to the appeal is now dead. No substitution to substitute his heirs has been effected either. Therefore, this court is prevented from exercising discretion under 770 of the Civil Procedure Code in order to consider the application of the learned Counsel for the appellant.

Held 2: In the circumstances, Court has no option than to dismiss the appeal for not adhering to the requirements referred to in Section 755 and 758 of the Civil Procedure Code.

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K T.Chitrasiri, J.Decided on: 21.05.2013

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K.T. Chitrasiri, J. Decided on : 12.02.2013

Section 325 of the Civil Procedure Code

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Final appeal

In that judgment learned District Judge made order in favour of the plaintiff as prayed for in paragraphs (අ) and (ආ) of the plaint dated 04.07.1994. Learned District Judge refused to grant the other reliefs sought by the plaintiff in that plaint. In terms of the aforesaid prayer (අ) and (ආ) the plaintiff was declared entitled to the land referred to in the schedule to plaint and to have the defendant and his agents and those who are holding under him, evicted from the said land in dispute. Simultaneously, learned District Judge rejected the claim of the defendant made relying upon the law of prescription.

Held : Section 3 of the Prescription Ordinance is very clear on this point. Accordingly, a claim on prescription can be succeeded only after proving undisturbed and uninterrupted possession by a defendant in any action.

5. Mohamad Azeez Sithy Nairne Vs. Page No 137
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CA 843/98 F

K. T. Chitrasiri, J Decided on: 26.02.2013

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This is an appeal seeking to set aside the decision dated 25.09.1998 of the Learned District Judge of Kegalle.

6. P. Malam Arachchi Vs.D.A. Marbram Page No 282

C.A. No. 708/98(F)

K. T. Chitrasiri, J Decided on: 04.06.2013.

Sections 754(5) & 757 of the Civil Procedure Code

This is an appeal seeking to set aside the two orders dated 23.4.1998 and 13.08.1998 of the learned District Judge of Balangoda

7. S. Ranaweera & another Vs. A.K.Alawatugoda

(nee) Fernando

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C.A. NO.940B/9B (F)

K.T.Chitrasiri, J Decided on : 11.12.2013

Sections 86(2)& 839 of the Civil Procedure Code.

Two separate appeals have been filed by the two defendant-appellants. By the said impugned order, learned trial Judge disallowed the two applications of the two appellants that were made to have the ex parte judgment vacated.

Held thus :

“ The principles of natural justice are the basis of our laws of procedure. The requirement that the defendant should have notice of the action either by personal service or substituted service of summons

is a condition precedent to the assumption of jurisdiction against the defendant.

'Jurisdiction' may be defined to be the power of a court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it. When the jurisdiction of a Court is challenged the Court is competent to determine the question of jurisdiction. An inquiry whether the Court has jurisdiction in a particular case is not an exercise of jurisdiction over the case itself. It is really an investigation as to whether the conditions of cognizance are satisfied. Therefore, a Court is always clothed with jurisdiction to see whether it has jurisdiction to try the cause submitted to it.

Failure to serve summons is a failure which goes to the root of the jurisdiction of the Court to hear and determine the action against the defendant. It is only by service of summons on the defendant that the Court gets jurisdiction over the defendant. If a defendant is not served with summons or otherwise notified of the proceedings against him, the

judgment entered against him in those circumstances is a nullity. The proceedings being void, the person affected by them can apply to have them set aside ex debito justitiae in the exercise of the inherent jurisdiction of the Court which is saved by Section 839 of the Civil Procedure Code. Hence the District Judge acted within his jurisdiction in inquiring into the question of non-service of summons".

"failure to serve notices is a failure that affects the jurisdiction of the Court."

EVIDENCE ORDINANCE

**1. Balapatabendige Piyadasa Vs.B. A. Don
Jayantha Hemakumara** **Page No 88**

C.A 286/1998 (F)

Anil Gooneratne J . Decidedon: 31.01.2013

Ss. 41(2) & 41 A(1) of the Evidence Ordinance

Held 1 : Unless the judgment could be called a perverse judgment on the basis of the ruling on highly unacceptable facts, the Appellate Court is not bound to disturb primary facts.

Held 2: Section 41 (2) does not give the conviction the force of a presumption of guilt but only makes the conviction relevant in civil cases. Even a presumption of guilt could be disproved by evidence to the contrary in the civil case.

**2. B. Manohari Fernando Aththachchi Vs. Indra
Manchanayaka** **Page No 250**

C.A.No.473/98 (F)

K.T.Chitrasiri, J. Decided on: 09.05.2013.

Section 114(f) of the Evidence Ordinance,

This is an appeal seeking to set aside the judgment dated 21.05.1998 of the learned District Judge of Marawila

Held : In terms of Section 114(f) of the Evidence Ordinance, it is presumed that the evidence which could

have been produced and if those evidence is not produced, it would be treated as unfavourable to the person who withhold it.

**3. N. G. W. Madanayake Vs. Caroline Meriah
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C.A 123/1992(F)

Anil Gooneratne J. Decided on: 04.03.2013

Section 91, 92 etc of the Evidence Ordinance.

Section 25(1) of the Partition Law

Section 3 of the Prescription Ordinance.

This is an appeal from a partition case where judgment was delivered by the learned District Judge on or about 20.2.1992.

However I observe that there are exception to the rule in Section 91, 92 etc of the Evidence Ordinance.

Held : There is something very important in this partition suit, which the trial judge has given his mind,

i.e the question whether the administrators conveyance (P8) or the fiscal conveyance No. 20396 has validity.

This court is mindful of points of contest No. 8, based on prescriptive rights of parties. Such an issue cannot be considered lightly. A party may succeed on paper title but that alone may not suffice. Any court need to consider the ingredients of Section 3 of the Prescription Ordinance in relation to each parties rights and decide whether evidence by way of each parties rights are established by strong evidence to satisfy the matters needed to be established under Section 3 of the Prescription Ordinance. In the context of the said Section 3 strong oral evidence should never be ignored or be sacrificed for documentary proof.

GENERAL MARRIAGES ORDINANCE

Nadurana Pathirannehelage vs. Nedurana Pathirannehelage & Others Page No 225

CA 1090/2000 (F)

A. W.A. Salam, J Decided On : 30.04.2013

***General Marriages Ordinance - Section 12 (1) of
the Kandyan Law Amendment Ordinance***

Final Appeal

Held : The effect of a deega marriage of a daughter is that she loses the right to succeed to the estate of her father. In absence of any evidence to the contrary a deega marriage indicates the quitting from her parental home and point to a departure to join another family.

KANDYAN LAW AMENDMENT ORDINANCE

See : General Marriages Ordinance

MONEY

S.D.M.Farook & another Vs. L.B.Finance Ltd.

C.A. No.44/98(F)

Page No 312

K. T. Chitrasiri, J Decided on: 10.06.2013

Two appeals have been filed by the 1st defendant-appellant (hereinafter referred to as the 1st defendant)

and the 2nd defendant-appellant (hereinafter referred to as the 2nd defendant) seeking to set aside the judgment dated 03.12.1997 of the learned District Judge of Colombo.

MONEY RECOVERY

Segull Shipping (Pte) Ltd. Vs. Colombo Drydocks Ltd,

Page No 426

C.A. No. 590/ 2000 F

Upaly Abeyrathne J. Decided on: 17.07.2013

Final appeal

Held: A bond which is an instrument under seal whereby one person binds himself to another for the payment of a specified sum of money either immediately or at a fixed future date could include a guarantee bond and or an indemnity bond.

MOTOR TRAFFIC ACT

Sri Lanka Insurance Co-operation Vs. J.D. Prinsi Pilochina Rathnayake

Page No 255

CA 1054/98 (F), 1055/98(F), 1056/98(F)

K.T. Chitrasiri, J Decided on: 20.05.2013.

Sections 105 & 106 of the Motor Traffic Act

These three appeals have come up before this Court pursuant to the order dated 14.09. 1998 delivered by the learned District Judge of Negombo.

MUNICIPAL COUNCIL'S ORDINANCE

**Colombo Municipal Council, Vs. Ceylon
Electricity Board,**

Page No 366

CALA 209 / 2005

Upaly Abeyrathne, J. Decided on: 20.06.2013

**Sections 236,327(1) Municipal Councils of the
Municipal Council's Ordinance**

The Defendant-Petitioner (hereinafter referred to as the Petitioner) in this Appeal has sought leave to Appeal from an order of the learned Additional District Judge of Colombo dated 17.05.2005 and leave was granted by this Court.

MUSLIM MARRIAGE AND DIVORCE ACT.

Tuan Muthaliph Tuan Nazar Vs. . A. A. M. Illyas

C.A. 531/2008

Page No 330

Anil Gooneratne J. Decided on: 13.06.2013

Muslim Marriage and Divorce Act.

The Petitioner to this Writ application seeks to quash the order marked, P2 of 10.5.2008 relating to payment of 'Mathah' or compensation to the 2nd Respondent in a Divorce proceedings under the Muslim Marriage and Divorce Act.

Sec 47(1)(a) to(j) of the Act. Quazi has power to grant 'Iddah' maintenance which is a post divorce settlement. 'Mathah' is also a post divorce settlement but sec. 47 makes no reference to award of ' Mathah' (omitted to include same under 47)

PARTITION LAW

**Mahalekamge Sumanasiri Vs. M. I. Rajapakse
Vidanage Amarawansa Gunasekera & Others**

C.A 1102/1998 (F)

Page No 72

Anil Gooneratne J. Decided on: 24.01.2013

Section 26(4) of Partition Law No. 21 of 1977 .

This is an appeal from a partition suit.

Held : There is no statutory bar to partition several lands held in Common. The deciding factor seems to be that common ownership need to prevail in respect of all lands

2. M.P. Siyathuwa Vs. M.P. Kirisaduwa & Others

C.A 184/1997 (F)

Page No 115

Anil Gooneratne J. Decided on: 07.02.2013

Section 18(2) & 19(2) of the Partition Law

This is an appeal from the judgment of the District Court of Kegalle in a partition suit.

Held: On receipt of the surveyor's return which disclosed that a substantially larger land was surveyed, the District Judge should have decided on one of the following courses after hearing the parties.

- (i) To reissue the Commission with instructions to survey the land as described in the plaint. The surveyor could have been examined as provided in section 18(2) of the Partition Law to consider feasibility of this course of action.

- (ii) To permit the Plaintiffs to continue the action to partition the larger land as depicted in the preliminary survey. This course of action involves the amendment of the plaint and the taking of consequential steps including the registration of a fresh lis pendens.

- (iii) To permit any of the Defendants to seek a partition of the larger land as depicted in the preliminary survey. This course of action involves an amendment of the statement of claim of that defendant and the taking of such other steps as may be necessary in terms of section 19(2) of the Partition Law.

3. Hewa Pathirana Siriwimala Pathirana & another Vs. Dewata Tejjalage Mohotha Page No 288

C.A.No.258/98 (F)

K.T.Chitrasiri, J. .decided on: 07.05. 2013

Section 2 of the Partition Law

This is an appeal seeking to set aside the judgment dated 19.12.1997 of the learned District Judge of Kurunegala. Held : It is trite law that a party cannot seek to have a land partitioned, if it does not belong to in common.

4. Sidni Horden De Alwis Senevirathna Vs. Indrani Somalatha

Page No 302

C.A. 19/98(F)

K.T. Chitrasiri, J. Decided on: 07.06.2013

Section 25 of the Partition Act

Held: Section 25 of the Partition Act, a duty is cast upon the trial Judge to investigate title of the parties in a partition action.

See also: Evidence Ordinance

PRESCRIPTION ORDINANCE.

1. Wimaladasa Mathangaweera Vs. M.K.Pantis

C.A.Appeal No.876/98 (F)

Page No 55

K.T.Chitrasiri, J. Decided on: 16. 01.2013

Section 3 of the Prescription Ordinance.

Held: The burden of proving independent rights as prescriptive rights, shifts to the defendant once the paper title is undisputed.

Held : The respondent in this appeal cannot take up such an issue at this stage since he had not challenged the title of the plaintiff in the original court.

Held : In a vindicatory action **the claimant need merely prove two facts, namely, that he is the owner of the thing and that the thing is in the possession of the defendant."**

2. P.L. Amarasinghe Vs.M.B. Dharmadasa

CA 973/98

Page No 352

K. T. Chitrasiri, J. Decided on: 18.06. 2013

Sections 7 and 8 of the Prescription Ordinance

3. Eileen Eunice De Silva, Vs. G. Liyanage

Jayanoris,

Page No 375

C.A. No. 43 / 2000 F

Upaly Abeyrathne, J. Decided on: 02.07.2013

S.3 of the Prescription Ordinance

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Colombo seeking for a declaration of title and ejectment of the Respondent from the premises described in the schedule to the plaint. The Respondent filed an answer praying for a dismissal of the Appellant's action and claimed a prescriptive title to the said land. After trial the learned Additional District Judge delivered judgment in favour of the Respondent. Being aggrieved by the said judgment dated 17.02.2000 the Appellant has preferred the present appeal to this court.

Held : It is well settled law that in certain circumstances the failure to reply to a letter amounts to an admission of a claim made therein.

The person who receives that letter must answer if he means to dispute the fact that he did so agree.

See also: Evidence Ordinance

RENT ACT

**1. Nurul Misiriya Sareek Vs. Ranathunga
Arachchige Asilin Nona** **Page No 200**

CA Appeal No.113/98(F)

K.T. Chitrasiri, J. Decided on: 18.03.2013

Rent Act No.7 of 1972

This is an appeal seeking to set aside the judgment delivered on 19.12.1987 which is undated.

**M. R. Malani Seneviratne Vs. Arauwatte
Jayasoma & Others** **Page No 101**

C.A 148/1999 (F)

Anil Gooneratne J. Decided on: 05.02.2013

Section 14 of the Rent Act.

Section 52, 52(2) of the Partition Law.

This appeal arises from the order of the learned District Judge dated 1.12.1998 pertaining to an order made under Section 52(2) of the Partition Law (delivery of possession of land).

Held : This court also wish to observe that the tenant is protected only if all the co-owners or one of them lets the entirety of the premises with the consent and acquiescence of the other co-owners.

SUPREME COURT RULES

M. L. A. M. Hizbullah Vs. Ceylinco Profit Sharing Investment Corporation Limited & another

C. A 177/2013 (Revision)

Page No 389

Anil Gooneratne J Decided on: 03.07.2013

Part IV of the Rules of the Supreme Court

Held :This court observes that the Petitioner has failed to comply with Part IV of the Rules of the Supreme Court, more particularly Rule 46 i.e original record or a certified copy of same not tendered to court, as required in terms of the said Rule. The said Rule require that the petition should be accompanied by originals of documents or duly certified copies of same.

Held 1 :We wish to state that framing of issues are not necessarily restricted to pleadings.

An issue of law which goes to the very root of the case should be allowed in the interest of Justice even though it does not arise out of the pleadings.

Held 2 : Either party would have a right to raise consequential issues. The test is whether such issue arise from an issue raised by the opposing party.

SETTLEMENT OF DEBTS LAW NO.27 OF 1975.

**J. A. Piyadasa, Vs. Chandrawathie Dahanayake
& others**

Page No 398

C.A. No.1048/98

K.T.Chitrasiri, J Decided on: 25. 07.2013

**S. 3(1) & (7) of the Settlement of Debts Law
No.27 of 1975.**

This is an appeal seeking to set aside the judgment dated 19.08.1998 of the learned District Judge of Walasmulla. In the petition of appeal addressed to this Court, it is stated that the learned District Judge is incorrect to have dismissed the plaint stating that the plaintiff-appellant (hereinafter referred to as the plaintiff) is not entitled to claim rights referred to in the deeds bearing Nos.11682 and 5311 marked as P4 and PS on the basis that those deeds have become null and void in view of the provisions contained in the Settlement of Debts Law No.27 of 1975.

Held : 1. when it comes to the interpretation of those two Sections 3(1) and 3(7). Plain reading of those sections would make it crystal clear that the creditor should make an application within three months from the date of operation of the law to the Conciliation Board to have the debt settled. Failure to do so would result in making

the conditional transfer null and void in terms of Section 3(7).

Held : 2. in addition to becoming a conditional transfer null and void, failure to act under Section 3(1) also prevents a creditor filing action in courts or making applications to Debt Conciliation Board or to a Conciliation Board.

.....

CRIMINAL LAW

**ANIMALS ACT NO. 29 OF 1958 AS AMENDED
BY ACT. NO. 10 OF 1968;**

**1. Loku Balasuriyage Don Lili Vs. OIC ,Police
Station, Nikaweratiya. & Hon. Attorney General
CA(PHC) No. 08/2009**

Page No 82

Rohini Marasinghe, J. & Deepall Wijesundera, J.

Argued & Decided on: 29.01.2013

**Animals Act No. 29 of 1958 as amended by Act.
No. 10 of 1968; Proviso to Section 3A;**

The Court held that;

“In terms of the proviso to Section 3A of the Animals Act, in order to confiscate (a vehicle) cannot be made if the owner established one of the two matters. They are:
1) that he has taken all precautions to prevent the use of the vehicle for the commission of the offence.

2) that the vehicle has been used for the commission of the offence without his knowledge. Consequently, if the owner of the lorry establishes any of these matters on a balance of probability, an order for confiscation should not be made.

.....In an inquiry of this nature the learned trial judge must take into consideration the fact the owner in her evidence had stated that she had no knowledge of the commission of this offence. The fact that the lorry had been used for an offence of similar nature is a highly relevant fact, which may be used with some other evidence to negative the defence that the owner had no knowledge of this offence.”

2. Yakdehige Mahesh Priyadarshana Fernando Vs.

OIC, Wennappuwa. & Hon. Attorney General

CA (PHC) 60/2011

Page No 67

Rohini Marasinghe J. & Deepali Wijesundera, J.

Argued & decided on: 22.01.2013.

Section 3A of the Animals Act

In terms of the section 3A of the Animals Act, an order for confiscation cannot be made if the owner establishes one of two matters. They are- (1) that he taken all precautions to prevent the use of the vehicle for the commission of the offence (2) That the vehicle had been used for the commission of the offence without his knowledge.

BAIL ACT

Wellivita Arachchige Chandrika Jayathunga, Vs.

Hon Attorney General

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C.A(PHC) Application No. 58/2001

A. W. A. Salam J& Sunil Rajapakse J.,

Decided on: 03.09.2013

Sunil Rajapakse J.,

S. 14 of the Bail Act – Circumstances under which a subsisting order for bail may be cancelled

CRIMINAL PROCEDURE CODE

Claid Earl Fenando & another, Vs. The Hon

Attorney General

Page No 485

C.A Application No.223-224/07

Sisira J De Abrew, J & P.W.D.E. Jayathilake, J

Decided On: 05.12.2013

P.W.D.C. Jayathilake, J

Chapter IV of the code of Criminal Procedure Code -Ss.
37 & 38 of the Criminal Procedure Code & S.
106, Evidence Act

“If the Police Officer who arrested a person has not completed the legal process to make it a legal arrest, what could be the result? I am of the opinion that there are two unavoidable inferences,

1. There was Criminal intention at the time of the arrest
2. Criminal intention had developed subsequent to the arrest. “

See also: Evidence Ordinance

**Wijeratne Mudiyansele Jayantha Wijerantne Vs.
The Hon. Attorney General,**

Page No 191

C.A.Appeal No.218/2008

Sisira De Abrew, J & P.W.D.C. Jayathilaka, J

Argued & Decided on: 06.03.2013.

**Cross examination; Dock Statement;
per Sisira de Abrew J. ;**

“ I hold that whenever the evidence given by a witness on a material point is not challenged in cross examination, it has to be concluded that such evidence is not disputed and is accepted by the opponent subject of course to the qualification that the witness is a reliable witness.

For the benefit of trial Judges and legal practitioners of this country, I would like to state the following guidelines with regard to the evaluation of the dock statement.

1. If the dock statement is believed, it must be acted upon.
2. If the dock statement raises a reasonable doubt in the prosecution case, the defence taken up in the dock statement must succeed.
3. The dock statement one accused person should not be used against another accused person.”

DNA TEST

**Kahapola Arachchige Milroy Lasantha Fernando
alias Gamini Vs. The Hon. Attorney General,**

C.A. Appeal No. 249/2010

Page No 150

Sisira de Abrew, J & P.W.D.C. Jayathilaka, J

Argued & Decided on: 04.03.2013.

Alleged Rape; Pregnancy ; Refusal of the request made
for a DNA test of the Accused and the baby ;

Sisira de Abrew, J

The Court held that;

“In a case of rape, if the victim who has delivered a baby as a result of the alleged intercourse that she claims to have had with the accused says that she did not have sexual intercourse with any other person except the accused and if the accused who denies the charge makes an application to the trial Judge to subject himself and the baby to a DNA test, the conviction without allowing the application of the accused is unreasonable.’

EVIDENCE

1. **Hettiarachchige Amila Pathum Vs.The Attorney-General,** Page No 141

C.A 204/2008

Sisira de A brew J. & P.W.D.C. Jayathilaka, J.

Argued & decided on: 27.02.2013.

Guidelines to assess of defence evidence per Sisira de Abrew J. ;

“ After considering the said legal literature, I, for the benefit of the legal practitioners and trial judges in this

country, set down the following guidelines with regard to the defence evidence;

(i) If the Accused's evidence is believed it must be acted upon.

If the Accused's evidence creates a reasonable doubt in the prosecution case, his defence must succeed."

**2. Randeer Liyon Siyas Alias Liyon Siyas Randeer
Vs. Hon Attorney General**

Page No 500

C.A. 146/2010

Sisira J. de Abrew, J. (Acting PICA) & P.W.D.C.
Jayathilaka, J.

Argued & Decided on: 03.12.2013

Sisira J. de Abrew, J.

Witness – Failure to call a witness on behalf of the defence due to a reason beyond control of the accused.

Retrial – Circumstance under which acquittal ordered retrial of ordering a re-trial.

1. Faul Hameed Jeinudeen alias Manidan Vs. Hon. Attorney General

Page No 234

CA No. 269/2007

Sisira J. De Abrew, J. & P.W.D.C. Jayathilaka, J.

Decided On: 09th May, 2013.

Section 32(1) of the Evidence Ordinance.

Section 32(1) of the Evidence Ordinance reads as follows:-

Sisira J. De Abrew, J.

“ Statements, written or verbal, of the relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance “ cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases.:-

(1)when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question"

See also : Criminal Procedure Act

**2.Tennakoon Mudiyanseelage Palitha Tennakoon.
Vs. The Hon. Attorney-General. Page No 457**

CA. Appeal No.173/11

Sisira J. de Abrew, J. & P.W.D.C. Jayathilaka, J
Argued & Decided on: 05.09.2013.

Sisira de Abrew, J.

Sections 27 & 32 of the Evidence Ordinance.

Regarding dying declaration under Section 32 of the Evidence Ordinance – Whether heard substantiated by independent witness.

**3.Dissanayake Mudiyanseelage Jayasiri Vs. The
Hon. Attorney General Page No 477**

C.A.Appeal No.331/2007

Before : Sisira J. de Abrew, J. & P.W.D.C. Jayathilake, J.

Argued & Decided on: 14.11.2013

Sisira J. de Abrew, J.

Murder- S. 105 of the Evidence Ordinance- S. 334 of the
Criminal Procedure Code

KIDNAPPING AND: RAPE

**Geekiyanage Sunil Padmasiri de Silva Vs. The
Democratic Socialist Republic of Sri Lanka**

CA 197/2010

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Sisira J de Abrew ,J. & PWDC Jayathilake,J.

Decided on: 9.5.2013

Sisira J de Abrew ,J.

Kidnapping and: Rape

In a case of rape, the accused can be convicted for the
offence of rape on the evidence of the prosecutrix even
without corroboration if she speaks the truth.

**1. Pargoda Vithanalage Thilakaratne Rupasinghe
Vs. The Attorney General.**

CA 212/2009

Page No 205

Sisira J de Abrew J & Sunil Rajapakshe J

Decided on: 28.3.2013

Sisira J de Abrew J ;

Murder; Evidence to Prove Murderous Intention

The Court held that;

“ In a charge of murder, it is difficult to find direct evidence to prove the murderous intention. How does the Court decide whether the assailant had murderous intention? Several factors can be considered in this regard. Some of them are as follows;

1. the weapon used,
2. the number of injuries caused,
3. the place of the body where the assailant inflicted injuries’
4. the force used by the assailant to inflict injuries.”

2.Sangarathnage Semapala Perera Vs. The Democratic Socialist Republic of Sri Lanka

CA 260/2009

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Sisira J de Abrew J & PWDC JayathilakeJ

Decided on: 12.6.2013

Sisira J de Abrew J.

Murder – Dying Declaration- Conditions proceeding to act upon. – Appeal allowed.

3.Lawrence Hewage Sarath Premaratne alias Sarath Premawardena Vs. The Attorney-General.

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C.A.Appeal No. 86/2009

Sisira. J. de Abrew, J & P.W.D.C. Jayathilaka, J

Argued & Decided on: 10.06.2013.

Sisira. J . de Abrew, J

Section 280 of the Criminal Procedure Code

Murder – Allocutus - Evidential value.

4.Somi Ranasinghe Vs. The Attorney General.

CA 186-187/2007

Page No 521

Sisira J de Abrew J & PWDC Jayatilake J

Decided on: 11.12.2013

Sisira J de Abrew J

Murder – Common intention – When can be formed.

5.L.G.Dhanaratne Vs. The Attorney-General.

C.A. 102/2012

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Sisira J. de Abrew, J. & P.W.D.C. Jayathilake, J.

Decided on: 02.08.2013

Sisira J. de Abrew, J.

Murder – Delay of witnesses to make statements to the police.

See also : Evidence Ordinance

OFFENSIVE WEAPONS ACT NO 18 OF 1966

**Nanayakkara Kappetiduwege Thilakananda
Nanyakkara Vs. The Democratic Socialist
Republic of Sri Lanka**

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CA 292/2007

Sisira J de Abrew J & PWDC J ayathilakeJ

Decided on: 30.5.2013

Sisira J de Abrew J.

S, 4(2) of the Offensive Weapons Act No 18 of 1966

Burden of Proof of the defence When the defence raised by the accused is not proved by evidence, it is the duty of the trial Judge to state that it had not been proved. When the trial Judge, in his judgment, makes such an observation, it cannot be interpreted to say that he had placed a burden on the accused.

PENAL CODE

1.W.A. Camilus Silva Vs.Hon. Attorney General,

C.A. Appeal No. 20/2003

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Sisira J. De Abrew, J. & P.W.D.C. Jayathilaka, J.

Argued & Decided on: 02.07.2013.

Sisira J. de Abrew, J.

Sections 79 and 78 of the Penal Code.- Section 105 of the Evidence Ordinance -

Murder – Plea of intoxication – Burden of proof

2.Mudiyanselage Manjula Samankumara Vs.

Attorney General

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CA 20 A-B/2010

Sisira de Abrew J & Sunil Rajapakshe J

Decided on: 28.2.2013

364 (2) of the Penal Code as amended by Act No.22 of 1995 and sections 100 and 113A of the Penal Code - Different aspects of the Offence of Gang Rape; Abetment; and Conspiracy were discussed

RAPE

P.L. Duminda Gunawardene Vs The Democratic Socialist Republic of Sri Lanka

Page No 436

CA 100/2009

Sisira J de Abrew J & PWDC JayathilakeJ

Decided on: 25.7.2013

Sisira J de Abrew J

Rape- Uncorrobarated testimony of the prosecutrix-
anger of convicting.