

RATNAYAKE
v
THE ATTORNEY-GENERAL

COURT OF APPEAL
NANAYAKKARA, J. AND
ABEYRATNE, J.
C.A. 120/2001
D.C. ANURADHAPURA 80/2000
DECEMBER 12, 2003 AND
FEBRUARY 9, 2004 AND
MARCH 25, 2004

Penal Code, sections 32 and 356 – Absence of formal adoption of proceedings by succeeding judge – Is it fatal ? – Violation of a fundamental procedure – Re-trial 12 years after the incident - Is it just ?

Held:

The trial judge who finally concluded the trial had failed to formally adopt the proceedings held before his predecessor. This is a violation of a fundamental procedural requirement which justifies a re-trial in the interests of justice.

Per Nanayakkara, J.,

“Ordering a re-trial against the accused-appellant who had been under the strain of a criminal charge poised over his head for such a long period of time –15 years – would be resulting in causing irremediably detrimental consequences and disorganisation to his family”

APPEAL from the judgment of the High Court of Anuradhapura.

Case referred to:

1. *Karunaratne v State* – 78 NLR 413

Dr. Ranjith Fernando with Harshini Gunawardena for accused-appellant.

Shavindra Fernando, Senior State Counsel for Attorney-General.

Cur.adv.vult

May 20, 2004

NANAYAKKARA, J.,

In this case the accused-appellant along with another was charged with having abducted one K.P. Rupasinghe with the intention of secretly and wrongfully confining him, an offence punishable under section 356 of the Penal Code. 01

The accused-appellant and the other accused faced the charges on the basis of their culpability under section 32 of the Penal Code and at the end of the trial, the accused-appellant was found guilty of the charge preferred against him and sentenced to 4 years rigorous imprisonment and a fine of Rs. 2000/-. The other accused who faced the charge along with the accused-appellant was acquitted at the end of the trial. 10

At the hearing of the appeal the learned Counsel drew the attention of this court to the non compliance of certain procedural requirements that should have been observed in the conduct of the trial. He particularly referred to the absence of formal adoption of proceedings held before the commencement of proceedings by the trial Judge who eventually convicted the accused-appellant.

As rightly pointed out by the learned Counsel persual of the proceedings makes it amply clear that the trial Judge who finally concluded the trial had failed to formally adopt the proceedings of his predecessor. 20

This I think is a violation of a fundamental procedural requirement which justifies a re-trial in the interests of justice.

Nevertheless this court desists from adopting such a procedure in view of certain special circumstances to which the learned Counsel has referred to in his submissions.

The incident in respect of which the accused-appellant was convicted had occurred in the year 1989 and it was only 10 years after the incident that a formal complaint had been made. There had been only a dock identification of the accused-appellant which had been made 12 years after the incident. 30

Therefore ordering a re-trial against the accused-appellant who had been under the strain of a criminal charge poised over his head for such a long period of time would be resultant in causing irremediably detrimental consequences and disorganization to his family.

In this connection observations made by His Lordship Justice Rajaratnam in the case of *Karunaratne v State*⁽¹⁾

“When a deserving conviction and sentence have to be confirmed 10 years after the proved offence the Judge cannot disregard the serious consequences and disorganisation that it can cause to the accused’s family. Therefore the delay of 10 years to finally concluded the case is a very relevant circumstance to be taken into consideration and in the circumstances of the case a suspended sentence was considered appropriate”. 40

Therefore we substitute a sentence of 2 years R.I. in place of 4 years R.I. imposed on the accused-appellant by the trial Judge and suspend the sentence for 10 years. This sentence in our view would meet the ends of justice.

Subject to this variation the appeal stands dismissed. 50

ABEYRATNE, J.

I agree

Sentence varied.