

KARUNARATNE
V.
REPUBLIC OF SRI LANKA

COURT OF APPEAL.
DR. GUNAWARDENA J. (P/CA)
J. A. N. DE SILVA, J.
C. A. 102/94
H. C. AMPARA 424/87
MAY 15, 1996

Criminal Procedure Code - Murder - Conviction - S. 209 (2), S. 234 and S. 234(1) - Failure to direct the Jury on possible Verdicts - Fatal - Requirement that the Registrar should ask the Jurors whether they are Unanimous - Imperative.

Held:

(1) Comprehensive direction on possible verdicts is required under the law.

(2) It is an imperative requirement - S. 234(1) Criminal Procedure Code - that the Registrar of the High Court should ask the Jurors whether they are unanimous. Failure to follow the aforesaid procedures set down in law are fatal to the Conviction.

AN APPEAL from the High Court of Ampara.

Case referred to:

1. *Rathinam v. Queen* 71 NLR 275.

Dr. Ranjith Fernando with Ms. Yasanthi Kumari for Accused-Appellant.
C. R. de Silva DSG for Attorney General.

Cur. adv. vult.

May 15, 1996.

DR. GUNAWARDENA J. (P/CA)

The Accused-Appellant along with two others were indicted in the High Court of Ampara with having committed the murder of one Michael Fernando on 15.10.1981, an offence punishable under Section 296 of

the Penal Code. After trial, the jury had convicted the Accused-Appellant on the said charge and Accused had been sentenced to death. This appeal is from the said conviction and sentence.

The Counsel for the Appellant submitted that there is a fatal irregularity in the procedure adopted at the trial, in that, the learned trial Judge has failed to direct the jury on the possible verdicts. He cited the Section 209 (2) of the Criminal Procedure Code where it is stated that,

“The verdict returned shall be unanimous or by a majority of not less than five to two.”

He referred to the case of *Rathinam v. The Queen*⁽¹⁾ wherein it is stated as follows:

“(1) at the conclusion of his summing-up the trial Judge addressed the jury as follows:-

“Try to be unanimous in your decision; but if you cannot be unanimous, at least bring in a 5 to 2 verdict. Any other verdict is not acceptable in law. You may now retire and consider your verdict.”

Held, that direction, such as it was, was inadequate. The jury should have been further informed as to what would be the position if they were finally divided 4 to 3.”

The Counsel submitted that even such a direction was held to be inadequate. Thus this shows that comprehensive direction on possible verdicts is required under the law.

The Counsel for the State conceded that the summing up of the trial Judge does not contain any directions on the possible verdicts.

We note further that the trial Judge himself has stated that the summing up was written out, before it was read out to the jury, as there were complaints about difficulties in taking down the summing up. Thus, we are assured that what is on record is an accurate copy of the directions given to the jury by the learned trial Judge.

The learned Counsel for the Appellant further contended that under Section 234 of the Criminal Procedure Code it is an imperative requirement that the Registrar of the High Court should have asked the jurors whether they are unanimous.

Section 234(1) of the Criminal Procedure Code state as follows:-

“when the jury are ready to give their verdict and are all present the Registrar shall ask the foreman if they are unanimous.”

Upon a careful examination of the record we are unable to find that such a question had been asked by the Registrar from the foreman of the jury as required by law. Thus, there is no evidence to show that infact the Registrar did ask the foreman of the jury whether they are unanimous or not. This assumes special significance in view of the fact that no directions have been given in regard to the possible verdicts.

We are of the view that the failure to follow the aforesaid procedures set down in law are fatal to the conviction and therefore it is illegal to allow the verdict to stand. We hereby set aside the said verdict and the sentence of death imposed on the Accused-Appellant. We hereby direct that a fresh trial be held in this case, as early as possible, in view of the fact that the offence had been committed in 1981.

J.A.N. DE SILVA, J. - I agree.

Appeal allowed.

Fresh Trial Ordered.