

**THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**CA PHC APN 97/2014**

Balachandranprasath Satheesharan  
2, Allp Srancoes Villons  
Argenteuil,  
95100,  
France.

**ACCUSED-PETITIONER**

**Vs.**

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

**RESPONDENT**

**CA(PHC)APN 97/2014**

**HC(KANDY)167/2004**

**Before** : **H.C.J. Madawala, J**  
**L.T.B. Dehideniya, J**

**Counsel** : **Shanaka Ranasinghe PC with P. Padmasiri**  
**for the Petitioner.**  
**Shanil Kularatne SSC for the AG**

**Argued &**

**Decided on** : **21.06.2016**

**H.C.J. Madawala, J**

The petitioner states that an indictment had been forwarded against him and another accused, on five charges of abduction, unlawful assembly, grievous hurt, torture and the killing of Prakash Varagapargas. The 2<sup>nd</sup> accused had pleaded guilty to the charges and was ordered to pay a state cost of Rs.1500/- with a surety bond of Rs.50, 000/- to be of good behavior, further he was also ordered to pay Rs.100, 000/- to the Victim's parents. He further states that he did not receive any summons with regards to the case in which he had been convicted and had no knowledge of the pendency of the said case. Until he learnt about the convictions. 1<sup>st</sup> accused had been convicted upon being tried in absentia in terms of Sec 241(a) of the Criminal Procedure Code.

Counsel for the accused-petitioner submits that the Learned High Court Judge has rejected the petition of appeal of the accused petitioner. He also submits that this is a statutory right available to the accused. Senior State Counsel appearing for the respondent submits that as the appeal has been filed on time he has no objections and consent for judgement in favour of the accused-petitioner.

Counsel for the accused-petitioner further submits the following case law in support of his application. Vide **Dadimuni Indrasena Vs. Attorney General CA Appeal No. 13/2002** and **Sudharman De Silva Vs. Attorney General S.C. Appeal No. 45/85**. Held – Section 14 of the Judicature Act has specifically endowed an accused who is convicted with a substantive right of appeal and this right of appeal cannot be taken away from him on the ground that he had been acting contumaciously or in defiance of the law. Contumacious conduct on the part of an accused is relevant only where the exercise of a discretion vested in the court is involved. Here the right of appeal is statutory and can be asserted as of right by the accused although he had jumped bail and was absconding at the trial.

**In Ukkubandage Thilakarathne Vs. OIC Kakirawa CA 346/81**

“Any person who stands convicted of any offence by the High Court may appeal therefrom to the Court of Appeal”

Arguments concluded.

Heard both counsel in respect of this application and after considering the relevant authorities produced we make order as prayed for in prayer (d) of the prayer to the petition. We order that the Learned High Court Judge to accept the petition of appeal tendered to this court in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979. We set aside the order marked X 8 (a) dated 21-07-2014 and direct the High Court Judge to accept the petition of appeal filed of record and to prepare the briefs and take necessary steps of this appeal.

The Revision Application is allowed.

**Judge of the Court of Appeal**

**L.T.D. Dehideniya, J**

I agree

**Judge of the Court of Appeal**

Na/-