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

In the matter of an Appeal in terms of section 331 of the Code of Criminal Procedure Act No. 15 of 1979 and in terms of Article 138 of The Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:

CA/HCC/72/2018

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT

Vs.

High Court of Monaragala

Case No: HC/92/2016

Pechchamuthu Ganesh *alias* Kalu

ACCUSED

AND NOW BETWEEN

Pechchamuthu Ganesh *alias* Kalu

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

Before	: Sampath B. Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: Indica Mallawaratchy for the Accused-Appellant
	: Rohantha Abeysuriya, A.S.G. for the Respondent
Argued on	: 17-05-2024
Written Submissions	: 15-05-2024 (By the Accused-Appellant)
	: 27-03-2019 (By the Complainant-Respondent)
Decided on	: 22-07-2024

Sampath B. Abayakoon, J.

This is an appeal preferred by the accused-appellant (hereinafter referred to as the appellant) on being aggrieved of his conviction and the sentence by the learned High Court Judge of Monaragala.

The appellant was indicted before the High Court of Monaragala for causing the death of one Mayalagu Yogeshwari, at a place called Kumaradola within the jurisdiction of the High Court of Monaragala, on or about 19-06-2012, and thereby committing the offence of murder, punishable in terms of section 296 of the Penal Code.

After trial without a jury, the learned High Court Judge of Monargala, of her judgment dated 17-01-2018 found the appellant guilty as charged, and accordingly, he was sentenced to death.

The Facts in Brief

Mayalagu Irulai (PW-01) is the sister of the deceased who was also known as Nagamma. She has lived some 8 miles away from her house, but used to be a frequent visitor to her house. During the time relevant to this incident, she had been working at a hotel in the town. Irulai Kandasami is a person who lived close to her house and also a close relative, whose son is the appellant in this matter.

She has referred to the appellant as Ganesh and has admitted that her sister Nagamma used to consume liquor. On the last day her sister visited her house, namely on 19-06-2012, her sister has scolded Kandasami and his family, alleging that they got down her son and made him to consume liquor with them. Due to this reason, there had been a verbal exchange between Kandasami and her sister, where Kandasami has threatened her with death.

After this incident, the deceased Nagamma has left the house of PW-01 and she has come to know later that her sister has gone missing. After about 5 days, Nagamma's body has been recovered among the bowlders situated near the place where she lived. That has been the place where the water supply tank that supplies water to the area was also situated, and was also the place where the appellant has worked and lived. Although the body was in a decomposed state when discovered, PW-01 has identified the body as her sister's.

According to the Judicial Medical Officer (JMO) who conducted the post-mortem marked P-02 at the trial, the death has been caused due to ligature strangulation. He has expressed the opinion that the strangulation may have been caused by something similar to a wire, and has expressed the opinion that the wire marked and produced as P-01 could have been used as the instrument used for the strangulation.

According to the evidence of PW-11 (the police officer who had conducted the main investigations into the offence), he has reached the place where the body of the deceased was found on 23-06-2012 after receiving an information in that regard. He has found the body between two bowlders and it had been in a decomposed state. The body has been identified by her sister and other relatives. The investigation officer has come to know that the deceased had gone missing since the 19th of that month. When he searched the surrounding area, he has discovered a blue-coloured piece of cloth on a rock which was about 3 meters away from the body.

Upon further investigations, he has received an information of a suspect named Pechchamuthu Ganesh *alias* Kalua, who is the appellant. Accordingly, he went to the place where he worked, which was situated nearby and had arrested him. Based on the information provided by him, he has recovered a cable (one end wrapped with a blue-coloured cloth), among the grass cover near the body of the deceased. Although he has discovered this cable, since he intended to bring it to the notice of the Magistrate for the purposes of the inquest, he has let the said cable to be in the same place until the Magistrate observed it.

Based on the same information provided by the appellant, the investigating officer has gone to his house and had recovered 4 pieces of triangular shaped blue-coloured cloth near the cooking stove in the kitchen.

The witness has marked the relevant portion of the statement that led to the discovery of the cable and the pieces of cloth as P-03 in terms of section 27 of the Evidence Ordinance. The cable mentioned has been marked as P-01 earlier in the evidence, and the blue-coloured piece of cloth which was wrapped around the cable as P-02, and the pieces of cloth found in the kitchen as P-4 and P-5 A, B, C, D.

Although it has been suggested on behalf of the appellant that the productions marked through him were not recovered as a result of the statement made by

him to the police, the witness has denied it stating that the productions were recovered only because of the statement made by the appellant.

PW-07 Thangavelu Pichchamuththu is the father of the appellant. He is the same person mentioned by PW-01 as Kandasami. He has confirmed that the deceased Nagamma came to her sister's house who lived near his house and there was an altercation between the deceased and himself. It had been his position that the deceased used filthy language towards him after getting drunk, which resulted in the altercation.

The appellant has come home after going to the town around 8.00 p.m. that day and has left the house around 9.00 p.m. stating that he is going to attend a party at the water tank. The water tank mentioned here is the place where the appellant has worked, and according to the evidence of the father, the appellant has been living in the premises of the water tank.

The appellant has returned on the following day and has informed his mother that Nagamma died. The PW-07 has given clear evidence to the effect that after informing his mother, when questioned, the appellant said the same thing to him as well. It has been his evidence that although he was informed of the death, he did not inform it to anyone else, and only after he was arrested and taken to the police station, he revealed this information to the police.

Under cross-examination, he has stated further that once he and his family members were taken to the police station, they were assaulted by the police. Although it has been suggested to him that there was a dispute between him and his son, he has refuted that, though he has admitted that his son once assaulted him and he received injuries as a result. To the suggestion that he was lying in this regard, he has maintained the position that he has no reason to lie against his own son, other than revealing what he told him about this incident.

The prosecution has also called the Government Analyst as a prosecution witness. The Government Analyst has testified that the blue-coloured pieces of

cloth produced before him for testing were parts of the same cloth by giving clear reasoning as to reaching such a conclusion.

Apart from the above witnesses, police officers who assisted the investigations have given evidence at the trial to substantiate their roles in the investigations.

At the conclusion of the prosecution evidence, the learned trial Judge has decided to call for a defence of the appellant based on the evidence placed before the Court. The appellant has decided to make the following statement from the dock.

> "ස්වාමීනි, මගේ නම පෙච්චමුත්තු ගනේෂ්. මගේ තාත්තයි මල්ලියි පොලිස්සියයි බොරු නඩුවක් දාලා තියෙන්නේ ස්වාමීනි. නාගම්මාත් එක්ක මගේ කිසිම තරහක් නෑ ස්වාමීනි. ඒ නිසා මම නිදහස් කරන්න කියල මම ඉල්ලා සිටිනවා."

The Grounds of Appeal

At the hearing of this appeal, the learned Counsel for the appellant formulated the following grounds of appeal for the consideration of the Court.

1. In view of the self-contradictory and inconsistent evidence of the Chief Investigating Officer, namely Wijesinghe, a serious doubt arises as to whether the alleged section 27 statement is that of the accused-appellant named in the indictment.
2. The learned trial Judge has failed to take cognizance of the fact that the prosecution has woefully failed to establish the chain of custody (inward journey).
3. The learned trial Judge totally failed to address her judicial mind of the aforementioned infirmities in relation to section 27 recoveries.
4. The learned trial Judge legally flawed on the principles relating to section 27 recoveries.
5. Police statement of the main witness, namely PW-07, Thangavelu Pechchamuthu had been obtained illegally under duress and torture based on his own admission.

6. Due to the inherent weaknesses and infirmities in the evidence of the main witness (PW-07), it is unsafe to place reliance on the evidence of the said witness to form the basis of the conviction.
7. The evidence of PW-07 is wholly contradicted by PW-10 (police evidence) further creating a doubt in the prosecution case.
8. Evaluation of the dock statement is deficient and legally flawed as the learned trial Judge has examined the legality and the tenability of the dock statement in the light of evidence led by the prosecution.
9. The evaluation of the circumstantial evidence on the part of the learned trial Judge is deficient and flawed.
10. Application of the Ellenborough Principle to the instant case is wholly unwarranted.
11. In the totality of the aforementioned grounds of appeal, the judgment of the learned trial Judge is defective and deficient, thereby rendering the judgment legally and factually wrong.

Consideration of the Grounds of Appeal

The evidence placed before the trial Court in this matter makes it clear that there had been no eyewitnesses to the incident.

This is a matter where the prosecution has relied on the circumstantial evidence, the scientific evidence, and the confession that has been allegedly made to the father of the appellant by him, to prove the prosecution case. It is therefore my view that before considering whether the grounds of appeal urged have merit, the relevant law in that regard should be considered.

In the case of **The King Vs. Abeywickrama 44 NLR 254** it was held:

> **Per Soertsz, J.**,
>
> *"In order to base a conviction on circumstantial evidence, the jury must be satisfied that the evidence was consistent with the guilt of the accused and inconsistent with any reasonable hypotheses of his innocence."*

In the case of **Don Sunny Vs. The Attorney General (1998) 2 SLR 01**, it was held:

1) *When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards only inference that the accused committed the offence. On consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.*

2) *If on a consideration of the items of circumstantial evidence, if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.*

3) *If upon consideration of the proved items of circumstantial evidence the only inference that can be drawn is that the accused committed the offence, then they can be found guilty. The prosecution must prove that no one else other than the accused had the opportunity of committing the offence. The accused can be found guilty only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.*

However, when considering the circumstantial evidence, what has to be considered is the totality of the circumstantial evidence before coming to a firm finding as to the guilt of an accused, although each piece of circumstantial evidence when taken separately, may only be suspicious in nature.

In the case of **King Vs. Gunaratne 47 NLR 145**, it was held:

> *"In a case of circumstantial evidence, the facts given in evidence may, taken cumulatively, be sufficient to rebut the presumption of innocence, although each fact, when taken separately, may be a circumstance only of suspicion.*

The jury is entitled to draw inferences unfavourable to an accused where he is not called to establish an innocent explanation of evidence given by the prosecution, which, without such explanation, tells for his guilt."

In the case of **Regina Vs. Exall (176 English Reports, *Nisi Prius* at page 853)**, **Pollock, C.B.** considering the aspect of circumstantial evidence remarked;

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in a chain, but that is not so, for then, if any one link brock, the chain would fall. It is more like of a rope composed of several cords. One strand of the rope might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

It was observed in the case of **Karunaratne Vs. Attorney-General (2005) 2 SLR 233,**

Per Jagath Balapatabendi, J.,

"*The primary advantage of circumstantial evidence is that the risk of perjury is minimized since it, unlike direct evidence, does not emanate from the testimony of a single witness. It is therefore more difficult to fabricate circumstantial evidence, than it is to resort to falsehood in the course of giving direct evidence.*

There is no principle of the law of evidence which precludes a conviction in a criminal case based entirely on circumstantial evidence. There are no uniform rules for the purpose of determining the probative value of circumstantial evidence. This depends on the facts of each case."

In the case of **Krishantha de Silva Vs. The Attorney General (2003) 1 SLR 162**:

Per Edirisuriya, J.,

"It is admitted that this is a case of circumstantial evidence. In such a case, circumstances relied upon should be consistent with the guilt of the accused

and inconsistent with his innocence. If the circumstantial evidence relied upon can be accounted for on the supposition of innocence then the circumstantial evidence fails. Circumstantial evidence can be acted upon only if, from the circumstances relied upon the only reasonable inference to be drawn is the inference of guilt. If the circumstances are consistent both with guilt and with innocence then the case is not proved on circumstantial evidence. The hypothesis of innocence must be excluded by the circumstances relied upon and the circumstances must point to one conclusion alone, i.e. the guilt of the accused. The learned trial Judge has in detail discussed these principles to be followed in appreciating circumstantial evidence in the instant case."

The 1st, 3rd and the 4th ground of appeal urged before this Court relates to the alleged section 27 of the Evidence Ordinance recovery made by the police as a result of the statement made by the appellant. Based on his statement, police have recovered a cable from the vicinity where the body was found, which had a blue-coloured piece of cloth wrapped on one end of it. They have also recovered several blue-coloured pieces of cloth from the house of the appellant, which matched the earlier mentioned wrapped cloth and the other piece of cloth recovered by the main investigating officer near the body.

Although a ground of appeal was raised on the basis that the evidence in that regard by the main investigating officer was contradictory and inconsistent, I am unable to find such contradictions and inconsistencies.

I am not in a position to conclude that the learned High Court Judge was misdirected as to the relevant applicability of a section 27 statement as contended by the learned Counsel for the appellant.

It is settled law that the value that can be attached to a recovery made based on a section 27 statement is to impart the knowledge of the fact discovered to the person who made the statement.

The Indian Supreme Court in the case of **Kottaya Vs. Emperor 1947 AIR PC at Page 70** held;

> *"In Their Lordships' view it is fallacious to treat the' fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."*

In **Rex Vs. Jinadasa 51 NLR 529**, the evidence against the accused was purely circumstantial. This was a case of murder using a katty consequent to information given by the accused. The body was found the next morning. In his statement the accused also stated "I can point out the place where I threw it." The katty was discovered thereafter. The main question which came up for consideration in this case was whether any oral information given by the accused could be used to prove a discovery of a fact. It was held, that even where a fact had been discovered consequent to an oral information, such evidence can be led.

In **Rex Vs. Packeerthamby 32 NLR 262**, it was held that even though a confession may be generally inadmissible, any discovery could be proved under

Section 27. This judgment was cited with approval in **Iver Vs. Galgoda 44 NLR 94**.

It is clear from the judgment under appeal that the learned High Court Judge has not used the recovery made in terms of the statement made by the appellant as the sole reason for the conviction. The learned High Court Judge has only considered the fact that if not for the knowledge of the appellant, the said discoveries would not have been made, in her deliberations and evaluation of evidence, as pieces of circumstantial evidence against the appellant, for which I do not find any reason to disagree.

The 2nd ground of appeal was on the basis that the prosecution has failed to establish the chain of custody of productions.

It is clear from the evidence that it was the main investigating officer (PW-11), who has recovered the cable alleged to have been used in committing the crime and blue-coloured pieces of cloth from the crime scene, as well as from the kitchen of the appellant's house. The cable and the pieces of cloth recovered from the house have been recovered based on the section 27 statement of the appellant. After the discovery, the cable has been kept as it is until the arrival of the Magistrate to hold the inquest, and thereafter, all the relevant productions have been handed over to the police reserve. After obtaining a Court order in that regard, the relevant productions have been sent to the Government Analyst under proper custody and had been duly returned after the Government Analyst Report was made available. Although it was alleged that there had been a break in the chain of custody, I do not find any reason to accept such a contention.

The ground of appeal number 5, 6, and 7 was on the basis that the police statement of the main witness, namely PW-07 (the father of the appellant), has been obtained illegally under duress and torture, and because of the inherent weaknesses of his evidence, it was unsafe to place reliance on such evidence. It was also argued that the evidence of PW-07 was contradictory to that of PW-10.

According to the evidence of PW-07, who was the father of the appellant, the appellant has come home a day after the deceased was last seen and has confessed to him that the deceased is dead.

It was contended by the learned Counsel for the appellant that the PW-07 was taken into custody by the police and had been assaulted according to his own evidence, and therefore, his statement has been recorded under duress, and thus, evidence based on such a statement cannot be accepted as a basis for a conviction.

When the relevant police officer who recorded the statement of PW-07 gave evidence before the Court, he has denied that PW-07 was assaulted and his statement was recorded under duress. That was the reason for the argument that the evidence of PW-07 and PW-10 are contradictory in that regard.

It is the view of this Court that no police officer will admit an assault of a person under police custody when giving evidence in a Court of law. It is my view that such a denial in itself cannot be considered as contradictory to the evidence of PW-07.

The admissibility of evidence obtained by illegal, improper or unfair means has been well discussed by **E.R.S.R. Coomaraswamy** in his authoritative book, ***Law of Evidence*, Volume II (Book 2) Chapter 27, pages 989 – 1041**.

He has clearly expressed the view that such evidence cannot be excluded merely on the basis that they were obtained illegally, improperly or by unfair means by itself.

In the case of **Rajapakse (Excise Inspector) Vs. Fernando (1951) 52 NLR 36**, a Supreme Court bench of three Judges consisting of **Dias S. P. J., Gunasekara, J.** and **Pulle, J.** having considered a case where in a prosecution under the Excise Ordinance, an excise officer tendered evidence which was discovered by him in the course of an illegal or irregular search, overruling three decisions of **Nagalingam, J.** on the same question, held that, such evidence was admissible.

Murin Perera Vs. Wijesinghe (1950) 51 NLR 337, Andiris Vs. Wanasinghe (1950) 52 NLR 83, and **David Appuhamy Vs. Weerasooriya (1950) 52 NLR 87** overruled.

Held further;

1. That the Evidence Ordinance is a statute which consolidates and amends the law of evidence. Therefore, the Courts are precluded from refusing to admit admissible evidence on the ground of public policy. The Courts are not empowered to invent a new head of public policy.
2. That while it may undesirable that agent provocateur and others should tempt or abate persons to commit offences, it is not open to a Court to acquit an accused person, where the offence charged is proved, on the sole ground that such evidence was procured by unfair means. Such considerations may affect the credit of the witness, but such evidence is not inadmissible and therefore, when the offence charged has been proved on such evidence, it is the duty of the trial Judge to convict.

In the appeal under consideration, although PW-07 says that he was arrested and assaulted at the police station, he has not claimed that as a reason for him to say that his son confessed to him of causing the death of the deceased. He has clearly denied that he is giving such evidence under the influence of anyone or falsely, but telling what was told to him by his son.

It was argued that the evidence of PW-07 refers to something what the appellant has told his mother and not to the PW-07 himself. Therefore, such evidence becomes hearsay evidence as the mother of the appellant has not given evidence in the case, and hence, inadmissible.

However, I find that although PW-07 has commenced his evidence stating that his son, after coming home told his mother about the death of the deceased, he in fact told him as well, after he spoke to him about that. I find that the evidence of PW-07 when taken in its totality, it becomes clear that he has not spoken something not told to him by the appellant, but clearly of a confession made by

the appellant to him, and also to his mother in the same process. I am of the view that his evidence cannot be considered as hearsay under any circumstances for the reasons as considered above. The evidence of PW-07 speaks about a clear confession made to him by his own son. That goes on to show that the appellant has made the confession voluntarily and on his own free will, may be out of his own feelings of guilt in that regard.

In the ground of appeal number 8 and 10, it was argued that the learned High Court Judge has failed to properly evaluate the dock statement made by the appellant at the trial, and the Ellenborough Principle had been wrongly applied by the learned High Court Judge in her judgment.

It is abundantly clear from the judgment that the learned High Court Judge has clearly considered the evidence made available before the Court to come to a firm finding whether the prosecution has established a strong *prima facie* case against the appellant. The learned High Court Judge has listed the instances of circumstantial evidence against the appellant and has determined that the appellant has failed to give a reasonable explanation as to the incriminating circumstantial evidence against him.

Although it is correct to argue that an accused person can remain silent, and has no burden of proof in a criminal case, and also the burden of proving a charge or charges beyond reasonable doubt is solely on the prosecution, it is settled law that once the prosecution establishes a strong *prima facie* case against an accused person, such a person is required to offer a reasonable explanation that creates a doubt as to the incriminating evidence against him.

In this action, when the appellant was called upon for a defence, he has only denied the allegation against him and has stated that his father, brother and the police have initiated a false action against him. Other than that, he has not said anything relating to the circumstantial evidence against him or the confession made by him to his father. Even when the relevant witnesses were cross-

examined on his behalf, no reasonable doubt or reasonable explanation has been created as to the evidence of the prosecution witnesses.

E.R.S.R. Coomaraswamy in his book, ***Law of Evidence*****, Volume1 at page 21** has observed in this regard as follows:

> "*The recent tendency of the Supreme Court of Sri Lanka also appears to be to expect an explanation of telling circumstances, though the failure that is commented on is the failure of the accused to offer evidence and not to give evidence himself. A party's failure to explain damning facts cannot convert insufficient into prima facie evidence, but it may cause prima facie evidence to become presumptive. Whether prima facie evidence will be converted into presumptive evidence by the absence of an explanation depends on the strength of the evidence and the operation of such rules as that requiring a specially high standard of proof on a criminal charge*."

In the case of **Krishantha de Silva Vs. The Attorney General (supra)**, it was held;

1. Even though the accused made a statement from the dock, he was silent as to what happened after the deceased was placed on the bed; the statement that he did not know anything about the incident cannot be accepted.
2. An accused person is entitled to remain silent, but when the prosecution has established strong and incriminating evidence against him, he is required to offer an explanation of the highly incriminating evidence. The accused has failed to bring an explanation of such circumstances established against him.

In the Supreme Court case of **Munasinghe Mudalihamy Koralage Dissanayake Vs. The Director General, Commission to Investigate Bribery or Corruption SC Appeal No. 160/2017 decided on 21-11-2023**, **Yasantha Kodagoda, P.C.,**

J. having considered in detail the value that can be attached to a dock statement observed as follows;

> "*Indeed, a person accused of having committed an offence has an unfettered right to remain silent. That means there can be no compulsion on an accused person to incriminate himself or to give evidence which is exculpatory in nature. Be that as it may, an accused also has the entitlement to give evidence under oath from the witness box. If at a time when the accused is being ably defended by Counsel, he opts to make a dock statement which is an unsworn statement from the dock, in my view a pragmatic and realistic approach to criminal justice should necessitate the Court to consider inter-alia as to why the accused has opted to make a dock statement. The reasons are obvious. They are, (i) unwillingness to take an oath or affirmation before commencing to give evidence, (ii) unwillingness to face cross-examination, (iii) to prevent the contents of the dock statement being compared and contrasted during cross-examination with the exculpatory statements and admissible inculpatory statements.*
>
> *Thus, while it is necessary to assess the credibility of the accused and the testimonial trustworthiness that may be attributed to the testimony contained in a dock statement, when doing so, the trier of facts (the Judge or the jury as the case may be) must keep in mind the afore-stated factors which has prompted the accused to make a dock statement. While the contents of a dock statement should indeed be treated as "evidence," it is necessary to bear in mind that the evidential weight that may be attached to a dock statement is much less than the weight that may be attached to evidence given under oath or affirmation.*"

For the reasons as considered above, I am of the view that the learned trial Judge has rightly determined the value of the dock statement made by the appellant, and the dock statement as well as the defence taken up by the appellant has not

created any reasonable doubt as to the evidence against him or has provided a reasonable explanation which can be considered in favour of the appellant.

As I have already considered, I find no basis to accept that the evaluation of the circumstantial evidence by the learned High Court Judge was deficient and flawed. I am of the view that the learned High Court Judge has well considered the circumstantial evidence and also the confession made by the appellant to his father and other relevant evidence, and has come to a finding that, the only inference that can be drawn would be the inference of guilt of the appellant.

The learned High Court Judge has determined that the appellant is guilty to the charge after having considered the relevant legal principles in its correct perspective, which needs no disturbance from this Court.

For the reasons as considered above, I find no basis for the grounds of appeal urged by the learned Counsel for the appellant.

Accordingly, the appeal is dismissed. The conviction and the sentence dated 17-01-2018 affirmed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal