

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

In the matter of an application made in terms
of Section 331(1) of the Code of Criminal
Procedure Act No. 15 of 1979 read with Article
138(1) of the Constitution of the Democratic
Socialist Republic of Sri Lanka

**Court of Appeal
Case No. HCC 0178/2019**

Democratic Socialist Republic of Sri Lanka

Complainant

HC Anuradhapura
Case No. 57/2010

Vs.

1. Abdul Hameed Umar Hakthab
2. Shanmugam Sudaharan

Accused

AND NOW BETWEEN

Abdul Hameed Umar Hakthab

Accused -Appellant

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent

Before : R. Gurusinghe J
 &
 M.C.B.S. Morais J

Counsel : K.S. Ratnavel with Chamath Gamage
for the Accused-Appellant

Haripriya Jayasundara PC, A.S.G. with
Sudharshana de Silva S.D.S.G.
for the Respondents

Argued on : 15/05/2024

Decided on : 25/07/2024

R. Gurusinghe J

The Accused-Appellant, Abdul Hameed Umar Hakthab, was indicted before the High Court of Anuradhapura together with the second accused on the following charges:

1. Count No. 1- Both accused were indicted for committing the offence of conspiracy with Thambi, who is also known as Wasanthan *alias* Yakkalamullage Saman Kumara *alias* Thambi to cause the death of Major General Janaka Perera, which is an offence punishable under Section 3(b) read with Section 2(1)(h) of the Prevention of Terrorism Act No. 48 of 1979 as amended.
2. Count No. 2 – Second Accused was indicted for committing the offence of conspiracy with the said Wasanthan *alias* Yakkalamullage Saman Kumara *alias* Thambi to cause the death of 29 individuals, which is punishable under Section 3(b) read with Section 2(1)(h) of the Prevention of Terrorism Act No. 48 of 1979 as amended
3. Counts No. 3 - 31 – The Accused Appellant was indicted for abetting said Wasanthan *alias* Yakkalamullage Saman Kumara *alias* Thambi for causing the death of 29 individuals, which is punishable under

Section 3 read with Sections 2(1)(h) and 3(b) of the Prevention of Terrorism Act No. 48 of 1979 as amended.

4. Counts No. 32 -49 – The Accused Appellant was indicted abetting said Wasanthan *alias* Yakkalamullage Saman Kumara *alias* Thambi for causing grievous injuries to 17 individuals, which is punishable under Section 3 read with Sections 2(1)(h) and 3(c) of the Prevention of Terrorism Act No. 48 of 1979 as amended.

Both accused pleaded not guilty. However, the second accused later withdrew his plea of non-guilt and pleaded guilty to the first and second counts of the indictment and the case against the second accused was thus concluded.

The incident relates to the tragic death of the retired army officer, Major General Janaka Perera, along with 29 other individuals due to the suicide bomb blast that happened on 06.10.2008, at the Anuradhapura Party Office opening ceremony. Further, 17 other individuals sustained grievous injuries in the explosion. During Major General Janaka Perera's address to the crowd, a person in a blue checked shirt approached him and detonated an explosive device.

Prosecution version

The prosecution witness (PW13), Abdul Ali, is the main witness who testified for the prosecution. PW13 stated that the accused-appellant (hereinafter referred to as the appellant) introduced a young boy around 19 years old, stating that the boy's father was involved in treasure hunting and requested PW13 to accommodate him at his house in Gampola. Accordingly, Thambi was accommodated at PW13's house and alternatively at the house of the father of the appellant which was located close to Anuradhapura. The witness said that he did not ask the boy's name and referred to him as Thambi. On the day of the incident, Thambi was at the appellant's father's house. PW13 left the appellant's father's house with the appellant and

Thambi to travel to Anuradhapura. PW13 travelled by bus, while the appellant and Thambi arrived on a motorcycle belonging to the appellant. Three of them met for tea at a tea kiosk near the bus stand in Anuradhapura. While they were having tea, the appellant left alone on his motorcycle to somewhere and returned back shortly. He then asked Thambi to go to his village. Then the appellant and PW 13 left for Gampola, on his motorcycle. On their way to Gampola, the appellant received a phone call. The appellant stopped the motorcycle and answered the call. After the call, he asked PW13 to put a high five. When PW13 inquired about why he was asked to put a high five, he was told that Thambi entered the premises where the explosion took place and died along with Major General Janaka Perera.

The version of the defence.

As per the appellant, he became acquainted with PW13 through a mutual friend during their involvement in politics. PW13 requested him to keep his son at his house due to his son's involvement with a Sinhalese girl. He then kept PW13's son at his father's house. On the day of the incident, the appellant wanted to go to Colombo. On his way to Colombo, the appellant made a call to PW13 to inquire about where he was. He then told the appellant that he was on his way to Kalmunai with his son and that he was currently in Anuradhapura. Coincidentally, the appellant was also in Anuradhapura at that time and requested PW13 to wait for him. He then attended the Party office opening ceremony in Anuradhapura, having been invited by Major General Janaka Perera's wife. Following the event, he met PW13 and proposed travelling together to Kandy, expressing his intention to collect law notes from a friend there. Accompanied by PW13, the appellant travelled to Kandy while PW13's son proceeded to Ampara, Kalmunai.

At the conclusion of the Trial, the Learned Trial Judge convicted the appellant for 1st to 31st charges and acquitted him for 32nd to 49th charges and gave the following sentences:

1. 20 years of rigorous imprisonment for 1st and 3rd counts.
2. Life imprisonment for 4th to 31st counts.
3. Jail terms for each count are to be run consecutively, especially the 1st and 3rd counts.
4. Movable and immovable property of the Accused-Appellant and the liquid cash were to be confiscated and vested with the State.

Being aggrieved by the above-mentioned conviction and sentence, the appellant had preferred this appeal to this court on the following grounds of appeal:

1. *The Learned Trial Judge has failed to evaluate and analyze the evidence placed before the court in light of well-established principles of testimonial credibility and consistency.*
2. *The prosecution has failed to discharge its burden of proof beyond reasonable doubt.*
3. *The court has permitted itself to be misled in matters of Law and Procedure, particularly in accepting productions and documents submitted to the court.*
4. *The Learned Trial Judge has erred and misdirected herself with regard to the Legal Principles applicable to the evaluation of the Dock Statement made by the Accused-Appellant.*
5. *The prosecution failed and neglected to present contemporaneous evidence of persons and technical and scientific evidence, including the video filmed at the scene of the incident.*
6. *The evidence led at the Trial connecting the Accused-Appellant with the conspiracy charge lacks credibility.*
7. *The Learned Trial Judge failed to analyze and consider the contradictions and inaccuracies in the evidence of PW13, the only witness connecting the Accused Appellant to the incident.*
8. *The Learned Trial Judge has failed to evaluate properly the evidence of the eyewitness to the scene whose evidence incident contains serious*

contradictions, the benefit of which ought to have been decided in favor of the Accused-Appellant.

9. *Although numerous potential eyewitnesses were present at the scene, including those injured in the incident, only a selected few were called to give evidence, which raises grave doubts about the prosecution's case.*

As most of the grounds of appeal are interwoven and overlap with each other, all these grounds of appeal will be considered as a whole.

This case is based on direct and circumstantial evidence. PW13, the main witness who testified for the prosecution, identified the person in the photographs marked P1 and P2 taken from the video footage, as the person who claims to be Thambi. Both PW 14 and PW161, the eyewitnesses to the incident, also testified that they saw a person going through the crowd towards Major General Janaka Perera and tugging his shirt, resulting in an explosion. Therefore, the testimonies of PW14 and PW161 corroborate each other in describing the events leading up to the explosion.

PW161 identified the person who caused the explosion as the person seen in photographs marked P1 and P2. Both PW13 and PW161 identified the person in the photographs as the same person involved in the incident.

PW13 stated that the suicide bomber was wearing a blue colour short-sleeved checked shirt. PW14 and PW161, who had seen the explosion, also stated that the suicide bomber was wearing a blue colour short-sleeve checked shirt. Further, PW48, after watching the video, confirmed that the suicide bomber was wearing a blue colour short-sleeved checked shirt (page 391-392-393 High Court Judge recorded that the permission was granted to exhibit the video on a white screen set up in the court, which was clearly visible to the lawyers, the accused and the High Court Judge). Further, PW48 on the basis of the appellant's statement found a blue color checked shirt from a shop called ASB, near the old bus stand in Anuradhapura, which was similar to the shirt displayed in the photographs P1 and P2.

On the other hand, PW47, the Additional Government Analyst and acting Government Analyst, observed fragments of clothing marked P8A and P8B, which consisted of a section of the back of the shirt and two sleeves. These pieces, which were characterized by a blue check design, were found on the ground following the explosion. It was also found that the collar of the shirt bore a trademark label stating 'EQI'.

As PW13 stated that, while Thambi, the appellant and PW13 were having tea at the Tea Kiosk, the appellant had left to somewhere on his motorcycle. The appellant then returned and asked Thambi to leave. The appellant, in his dock statement, stated that he had gone to the Party Office opening ceremony, talked with Major General Janaka Perera's wife, and then had met PW13 and the young boy. The appellant admitted that he had met PW13 on the day of the incident, along with the young person whom he says to be the son of PW13. He states that the said son of PW13 left for Kalmunai. Then, he along with PW13, left for Kandy on his motorcycle. This confirms that the young person (Thambi) had left before PW13 and the appellant leaving for Kandy. The appellant by his dock statement admitted the fact that the young person left before them.

As for PW13, in his cross-examination states ;

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ප්‍ර: තමුන් තමයි මේ තරුණයාට ඒ දවසේ අනුරාධපුරයට එක්කගෙන ආවේ ?

උ: අනුරාධපුරයට උමර් තමයි යතුරු පැදියෙන් එක්කගෙන ආවේ.

ප්‍ර: තමුන් ලා තේ බිච්චා ට පස්සේ තමනුයි උමරුයි බයිසිකලයේ නැගලා ගියා කිව්වා තමන්ගේ ගමට?

උ: ඔව් කොල්ලා ගමට ගියාට පසුව යතුරු පැදියේ නංවාගෙන ගම්පොලට ගියා.

ප්‍ර: තේ බීපු තැන ඉඳලා පිටත් වුනේ ගෙදර යන්න සාක්ෂිකරුයි විත්තිකරුයි නේද?

උ: මමයි උමරුයි යතුරු පැදියෙන් පිටත් වුනා.

ප්‍ර: තමුන් තමයි මේ තරුණයාට ඒ දවසේ අනුරාධපුරයට එක්කගෙන ආවේ ?

උ: අනුරාධපුරයට උමර් තමයි යතුරු පැදියෙන් එක්කගෙන ආවේ.

ප්‍ර: තමුන් ලා තේ බිච්චා ට පස්සේ තමනුයි උමරුයි බයිසිකලයේ නැගලා ගියා කිව්වා තමන්ගේ ගමට?

උ: ඔව් කොල්ලා ගමට ගියාට පසුව යතුරු පැදියේ නංවාගෙන ගම්පොලට ගියා.

ප්‍ර: තේ බීපු තැන ඉඳලා පිටත් වුනේ ගෙදර යන්න සාක්ෂිකරුයි විත්තිකරුයි නේද?

උ: මමයි උමරුයි යතුරු පැදියෙන් පිටත් වුනා.

By putting the above questions the defense also concedes some of the evidence of PW13.

The appellant's position in his dock statement is that PW13 had an elder brother at Kalmunai. When he telephoned PW13 on the day of the incident, PW13 told him that PW13 was at Anuradhapura with his son on their way to Kalmunai. However, no questions were asked from PW13 on behalf of the appellant whether PW13 had a brother at Kalmunai, or whether the person who is said to be the son of PW13 had left for Kalmunai.

On the other hand, PW14, in his evidence, also stated that he received a call from the appellant and inquired whether PW14 would participate in the Party Opening Ceremony. PW14 testified that the appellant and PW14 had studied in the same school at Kurunegala and the appellant was senior to him and they were known to each other from school days. PW14 witnessed the presence of the appellant at the main entrance prior to the opening ceremony. This also confirms the version of PW13 that the appellant had gone away on his motorcycle. The defense, however, has not challenged the fact that he gave a call to PW14 on the day of the incident in the morning, that PW14 had seen the appellant at the main entrance, and that they had known each other from school days. The defense also did not challenge that he left on his motorcycle while PW13 and Thambi were having tea. The fact that the defense did not challenge the testimony of PW13 and PW14 indicates that the appellant has conceded them.

The defence has not cross-examined on certain material points of the evidence for the prosecution.

In the case of Sarwan Singh vs State of Punjab decided on 07th October 2002, the Supreme Court of India held, *“It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted.”*

The law, in this regard, is found in the decision in Dadimuni Indrasena & Dadimuni Wimalasena Vs. The Attorney General CA 135/2003 decided on 10/06/2008 as follows;

‘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.’

The uncontested evidence referred to in this case could be considered as reliable evidence.

Both PW13 and the appellant stated that they got to know each other through a person who was engaged in politics. At that time, the appellant was a supporter of the Mayor (pages 10-11 of brief) in Gampola. PW13 stated that the appellant had told him that he worked as a bodyguard to a Minister. The defence, however, has not denied the evidence of PW13 that they were known to each other prior to the incident. Further, the appellant has not challenged the evidence of PW13 that he kept the suicide bomber at his house on several occasions at the request of the appellant.

The appellant’s narrative involves several improbable co-incidences, such as the co-incidence of meeting with PW13 in Anuradhapura before 7.00am on the same day of the incident. However, the evidence of PW13 shows that all three were met at the appellant’s father’s house. The appellant asked PW13 to go to Anuradhapura by bus, whereas Thambi and the appellant went to Anuradhapura on the appellant’s motorcycle. Further, they met near the Anuradhapura bus stand as agreed.

PW13 says that the appellant has asked PW13 to put a high-five on their way to Gampola. The celebratory nature of “high five” is grossly inappropriate in the context of a tragic explosion that resulted in multiple deaths. This behavior suggests a lack of remorse, which would be expected from an innocent person learning about such a devastating event. Instead, it implies satisfaction or relief, further indicating the appellant’s prior knowledge of Thambi’s actions and explosion, which is consistent with PW13’s testimony, but contradicts the appellant’s claim of innocence. The appellant, however, did not seriously challenge the above stance taken by PW13.

It has been suggested to PW13 as follows, which he had denied.

ප්‍ර: මම තමාට යෝජනා කරනවා මේ තමා හඳුනා ගන්න තරුණයාට තමාට අරන් ඇවිත් තමාගේ දරුවෙක් බවත් කියලා ගැණුනු ළමයෙක් සමග ප්‍රශ්නයක් තිබුන නිසා හක්තාබව තියා ගන්නේ කියලා?

උ: ඒක අලුතෙන් හදලා කියන බොරුවක්. දැන් තමයි මේක මගේ කතට ඇහෙන්නේ.

PW13 denied the above-mentioned suggestion as a total lie and stated that he was hearing it for the first time. The Defence Counsel suggested this question almost at the end of the cross-examination. Prior to that, the defence Counsel always referred to Thambi as a ‘young man’ and not as ‘PW13’s son’ in his questions. This shift in the defence appears to be a desperate attempt to deflect blame from the appellant. If the defense genuinely believed that PW13’s son or the person who was said to be the son of PW13 was the suicide bomber, this position should have been confronted to PW13 earlier in the trial process. On the other hand, if there were any prior statements made by PW13 that contradicted his response to the defense’s new allegation, the defense would have marked these contradictions to challenge his credibility. The absence of any contradictions clearly demonstrates that PW13’s evidence is consistent with his statements to the police. On the other hand, the above suggestion implies that both PW13 and the appellant referred to the same person.

The Counsel questioned on the following;

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- ප්‍ර: ඔහු මොනවා හරි බෙහෙත් පාවාවි කළාද?
- උ: උරහිස රිදෙනවා කියලා තෙල් වගයක් පාවිච්චි කළා. ටියුබ් එකක් පාවිච්චි කළා.
- ප්‍ර: ඒ ටියුබ් එක ඔහු, විත්තිකරුගේ පියාගේ ගෙදර සිට අරගෙන ආවද?
- උ: බෙහෙත් වගයක් උමාරු තමයි අරන් දිලා තියෙන්නේ.
- ප්‍ර: ඒ බෙහෙත් ටියුබ් එක තමාගේ ගෙදර තියලා යම් වේලාවක පොලිසියේ භාරයට ගත්තද?
- උ: ඔව්.

If the young boy is PW13's son, it raises the question as to why the appellant bought him medicine.

Further, PW13 stated that the young boy was accompanied from PW13's home to the appellant's father's home 4 or 5 times at the appellant's request.

- ප්‍ර: තමා කිව්වා මෙම තරුණයා කිහිපවතාවක් ඒහාට මෙහාට තමා ගෙනිවි කියලා. තමාගේ ගෙදරටයි තමාගේ ගෙදර සිට විත්තිකරුගේ තාත්තාගේ ගෙදරටයි කියලා?
- උ: 04, 05 වතාවක් එක්ක ගියා.
- ප්‍ර: කවද එහෙම තමාට ගෙනි යන්න ඕන කියලා කිව්වේ?
- උ: උමර් හත්තායි.
- ප්‍ර: ගේන්න, ගෙනියන්න කියලා?
- උ: ඔව්.

The above positions were not contested by the defence in their cross-examination or refuted in the dock statement.

The Defence Counsel questioned PW13 in the following manner.

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- ප්‍ර: ඔහුගේ නම දැන ගත්තද කවදා හරි. ඒ කියන්නේ මෙම ඡායාරූපයේ දී හඳුනා ගත්ත ළමාගේ?
- උ: ඔව්.

ප්‍ර: ඔහුගේ නම දන්නවාද?

උ: අද වනතුරු නම දන්නේ නැහැ. මම ඇහුවේ නැහැ.

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ප්‍ර: දැන් තමා ඔය ළමයින් හරි බිරිද හරි ඒ ගෙදර ඉන්න ළමාගේ වයස, නම ඇහුවේ නැද්ද?

උ: ඒ ඡායාරූපයේ හිටපු කෙනා බාලවයස්කාරයි. ඒ නිසා මම වැඩිය ගණන් ගත්තේ නැහැ.

ප්‍ර: තමාගේ බිරිද ළමයි ගැන අහන්නේ?

උ: නැහැ.

ප්‍ර: තමා ඇහුනේ නැද්ද ඒ ගෙදර ඉන්න කොට තමා ඔය කියන තරුණයාට එයාගේ නම කියලා කවුරු හරි කථා කරනවා

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උ: ළමයි නිකම තමිබි, මල්ලි කියලා කථා කලේ.

ප්‍ර: අයියා ,මල්ලි කියලා කියලා විසක් නම ඇහුවේ නැහැ.

උ: නැහැ.

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ප්‍ර: තමුන්ට ඡායාරූපයක් පෙන්වා සිටියා පැ. 1, 2 වශයෙන් ලකුණු කර තියෙනවා ඒවා. තමුන් කච්චා මේ ඉන්නේ තමුන්ගේ ගෙදර හිටපු තරුණයා කියලා?

උ: ඔව්.

The above questions imply that the person in P1 and P2 photographs was the person who had been given lodging at the house of PW13.

PW 121 Leelawathie Perera Siriwardena identified the National Identity Card of her deceased son Yakkalamullege Saman Kumara, who was an army soldier who died in action on 07-06-2007 in Vauniyawa. She further stated that she had received the sealed dead body. The body was found by the Red Cross. She also stated that she had not received the National Identity Card of her son. She also stated that P14 is her son's Identity Card, but the photo fixed on it is not her son's photo, and the person on the photo is unknown to her.

By this evidence, the prosecution proved the fact that the suicide bomber had used the National Identity Card of a deceased soldier in order to conceal his identity by removing the soldier's photograph and substituting it with a different photograph.

The appellant states that his primary source of income was from the spices business. However, the other evidence indicates that the appellant did not have employment or any stable income. PW 105 Samsudeen Mohomed Azwar stated in his evidence that he had worked as an authorized foreign currency ex-changer at No. 53 B York Street, Colombo 01. He knew a person named Ali (PW13), who had been introduced by the accountant of his company, and Ali was not a financially well-off person. Ali introduced a person named Umar Hakthab to the witness in 2008. PW105 stated that the appellant had given Rs. 3.3 million in total on two occasions to the witness to exchange it for dollars. He further stated that he had handed over Rs. 3.3 million to the CID in March 2009. This witness identified the appellant at the trial.

The defence suggested that the money was given by the appellant in order to invest. However, PW105 denied that this money was intended for investment; instead, he affirmed that it was given to him to convert into US dollars. This fact implies that regardless of the intended purpose (investment or currency exchange), the appellant had given a significant sum of money to PW105. On the other hand, this evidence draws the inference that the appellant had a large amount of money in his possession. However, he has not explained how he earned that amount of money. Further, the appellant has not denied the above version of PW105 in his dock statement. Further, PW162 W.P.C. Medagedara produced documents marked P45 and P46 and identified her signature on those documents. P45 and P46 are official receipts issued by the Criminal Investigation Department, which states that Rs. 1.0 million and Rs.2,324,200/= is from S.M Asfar (PW105).

PW 76 Segu Mohideen Mallika Umma stated that she had worked abroad for 4 to 5 years, and she had deposited money in her account from time to time while she was abroad. She is the sister-in-law of the appellant, who testified that the appellant had deposited Rs. 600,000/- in her bank account at People's Bank and asked her to give the money to his wife. According to this witness, the wife of the appellant was living in the same house at that time.

PW 101 was the Assistant Manager of the People's Bank, Medawachchiya Branch. He gave evidence regarding the account details of the appellant and Segu Mohideen Mallika. According to his evidence, the bank account of the appellant was active from 27-06-2005 until October 2008. Also, the savings account of Segu Mohideen Mallika, which was opened in January 1991, was active from 08-11-2005 to 18-11-2008.

The appellant has not explained the Rs.3,324,200/= given to S. M Asfar (PW105), the Rs 600,000/= deposited in his sister-in-law's account, or the Rs.1,500,000/= deposited in his bank account in October 2008. The appellant travelled to India with PW 13 after the bomb incident and the appellant converted Rs 400,000/= into US dollars. Further, PW130, who personally knew the appellant for a considerable time before the incident, reveals the appellant's financial background, stating that he had not possessed a two-storied, tiled house when he visited his house, but he had a small hut as the house which is not even built properly. PW76, the sister-in-law of the appellant, in her evidence, says that the appellant was unemployed. This evidence was not challenged in cross-examination.

The evidence indicates that the appellant, who had no employment or source of income, received a considerable amount of money both before and after the bomb blast.

PW 112 was a Lieutenant attached to the army at the time of the incident and was assigned to work in Weerapuram village. It was his duty to identify temporary residence persons in that area and to keep records of residence certificates issued to them by the Grama Niladari. This witness further

stated that he was informed of a person who was building an unusually big house near the mosque at Maha Siyambalagaskada Wewa. He further stated that he had visited that house and inquired about this information and searched the house. He had found many people from the Puttalam area. He had advised the wife of the appellant to inform her husband to supply details to the Grama Niladari. Later, the appellant met him and produced his National Identity Card. The appellant further stated to him that he was working under Keheliya Rambukkwella, and the house had been constructed to throw a party for the ministers. This witness had identified the appellant in the dock.

The above evidence supports the fact that the appellant constructed a large house, considering his unstable income, which appeared to be unusually large compared to the others in the area. It has also confirmed that the appellant had been in association with strangers in that area.

Further, the defence did not suggest that PW13's evidence against the appellant was false or motivated by animosity. This lack of suggestion implies that the defence has not claimed that PW13's testimony was dishonest or biased due to personal animosity towards the appellant.

One of the grounds of appeal is that the prosecution failed and neglected to present contemporaneous evidence of persons and technical and scientific evidence. However, what contemporaneous or technical evidence the prosecution could have presented was not suggested. The prosecution exhibited the available video that was filmed at the scene of the incident.

The investigations have been handed over to the Criminal Investigation Department. PW48 obtained the video (which was recovered from the scene) from the Magistrate's Court on 9.1.2009. The photograph marked P1 has been extracted from this video.

According to the evidence of PW48, he had received information that the suspect was at Maha Siyambalagaskada Wewa, Madawachchiya, on 07.02.2009. After that, the witness went to look for the suspect named

Umar Hakthab, but he failed to find the suspect. He had received information about the suspect that he was not born in that area; he was from the Muslim village of Ikirigollawa, and his father was a Tamil person. This witness also received information that the suspect had visited the residence of the mayor of Gampola. Later, he learned that the suspect was in a house at Indra Mawatha, Kalubowila.

The appellant was arrested at a place in Kalubowila, and there they found the appellant's driving licence, national identity card, and civil security identity card, which was issued to him under the signature of OIC Madawachchiya Police Station, a document granting permission to go via Madawachchiya barrier issued by ASP, road barrier, a revenue licence for NCJF 6544, insurance certificate, two mobile phones and two other additional SIM cards. This witness also found a cyanide capsule inside the switch board of the suspect's house at Maha Siyambalagaskada Wewa, based on the statement of the appellant. This cyanide capsule was probably the one that was kept by the suicide bomber (Thambi).

The defence cross-examined PW 48 as to why the video had been kept in his private possession and raised the possibility of tampering or editing while it was in PW48's private possession. However, the mere fact of the video being in private possession is not enough to raise concerns; rather, the concern would be valid only if there is evidence of tampering or editing while it was held privately. The video was played in the High Court of Anuradhapura on 29.03.2016. However, no allegations had been made at the trial as to the accuracy of the said video, alleging that it was altered or tampered with.

The defence never suggested to PW48 or to any other witness that the video was tampered with. The defence never suggested to any witness if the video was tampered with or how such tampering could be helpful to the prosecution's case. The video was used only to identify the suicide bomber and to make P1 and P2 photographs.

Section 4(5) of the Evidence (Special Provisions) Act No.14 of 1995 ensures that duplicates of evidence are admissible under the same conditions as the original evidence.

Section 4(5) of Evidence (Special Provisions) Act No.14 of 1995 states as follows:

Where evidence is admissible under the preceding provisions of this section, a duplicate of such evidence shall be admissible in the same manner and to the same extent as the source from which the duplicate is made.

In view of the above circumstances, the contention of the defense Counsel that the video evidence was improperly admitted is without merit and I reject that contention.

The main ground of appeal argued for the appellant is that the evidence of PW13 is not reliable and should not have been believed to convict the appellant. However, the Learned Trial Judge carefully considered the evidence of PW13 along with the evidence of the other witnesses and found that it was consistent with the evidence of other witnesses.

Ajit Samarakoon v The Republic (Kobaigane Murder Case) 217 [2004] 2 Sri L R209, F.N.D. Jayasuriya, J. stated as follows:

In this context, it is relevant to consider the issue of the credibility of the witness Chulasiri in the light of the principles enunciated by Lord Roch in Bhojraj v Sita Ram- Lord Roche has set out the real test for rejecting or accepting on the basis of testimonial trustworthiness in these words:

“How consistent is the story with itself? (consistency per se). How does it stand the test of cross-examination? (stability under cross-examination) How far it fits in with the rest of the evidence and the circumstances of the case (inconsistency 260 inter se)”.

The evidence of PW13 is neither contradictory per se, nor contradictory inter se. Having perused the entirety of PW13's evidence I find his testimony to be reliable.

PW 132 Judicial Medical Officer (JMO) performed a post-mortem examination of 30 deceased persons, including 29 known persons and one unknown person. This witness had visited the crime scene with the Magistrate. The JMO was of the opinion that the position of the dead bodies and the damage caused to them suggested that there had been a bomb blast. The JMO has further observed two unknown legs, believed to be of one person's, on the floor of the crime scene and a crushed head.

The evidence of the JMO proved the fact that the 29 people, including Major General Janaka Perera, had died consequent to a bomb blast.

PW 116 was a police inspector at the time of the incident, and he was assigned to investigate the bomb blast on 06-10-2008. He had provided a detailed description of the surroundings of the crime scene. He had prepared a rough sketch of the crime scene marked as P47. He also noticed 22 dead bodies and two legs spread around the floor. According to this witness, the Magistrate, the JMO and the Government Analyst had visited the crime place. Also, the witness had observed certain parts which could be identified as a blasted bomb and the pieces of the shirt, iron balls and parts of the bomb jacket.

The evidence of the above witness verifies the fact that there was a bomb blast, and many people died as a result of it.

PW163, an assistant controller of the Department of Immigration and Emigration, identified document P58 as an application for a passport, and accordingly, a passport was issued to Abdul Ahmed Umar Hakthab under the number N2218676 dated 10.11.2008. PW13 testified that he travelled to

India with the appellant after the bomb incident. This is probably to evade arrest.

The appellant was convicted for conspiring to commit or abet along with the deceased suicide bomber known as Wasanthan alias Thambi, to cause the deaths of 29 persons with the intention of killing Major General Janaka Perera and also causing religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups, offences punishable under section 2(1)(g) and 3(a) of the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 as amended by Act No.10 of 1982 and Act No.22 of 1988 read with sections 113B,102 of the Penal Code.

Section 113A(1) of the Penal Code states as follows:

If two or more persons agree to commit or abet or act together with a common purpose for or in committing or abetting an offence, whether with or without any previous concert or deliberation, each of them is guilty of the offence of conspiracy to commit or abet that offence, as the case may be.

In the case of the King v. Cooray 51 N.L.R. 433, the Supreme Court held that *The commission of the offence of conspiracy is established within the meaning of section 113A of the Penal Code in one or the other of the following circumstances:*

(a) if two or more persons agree, with or without any previous concert or deliberation, to commit an offence or to abet an offence, or (b) if two or more persons agree, with or without any previous concert or deliberation, to act together with a common purpose for or in committing or abetting an offence.

In the case of The King v. Andree et alit was stated as follows:

“....In regard to this contention, under our law the position appears to be, as I have pointed out, that it is not necessary to prove agreement, either directly or

inferentially. It is sufficient to prove that the accused acted together with a common purpose for or in committing an offence....”

The Learned Counsel for the appellant submitted that the Learned High Court Judge accepted the evidence without evaluating it judicially and also admitted inadmissible evidence, which prejudiced the appellant.

The evidence clearly indicates that who the suicide bomber was and the appellant knew the suicide bomber for a considerable period before the incident. During the time that the suicide bomber was at PW13's place, the expenses for travelling with the suicide bomber were borne by the appellant. The Government Analyst described the nature of the bomb blast, and it was such that it could affect many people's lives in the surroundings. The above evidence is sufficient to come to the conclusion that the appellant deliberately facilitated the assassination of Major General Janaka Perera, and the other persons died from the bomb blast.

The prosecution has established that the appellant and the suicide bomber, Wasanthan alias Thambi, came together to Anuradhapura on 06.10.2008. According to the evidence of PW13, the appellant and the suicide bomber had come to Anuradhapura from the appellant's father's house on the appellant's motorcycle. PW13 also came from that house to Anuradhapura by bus. The appellant, the suicide bomber and PW13 had tea together at a place near the old bus stand in Anuradhapura. The appellant had gone somewhere and came back while PW13 and the suicide bomber were at the tea kiosk. The evidence of PW14 confirms that the appellant was at the main gate of Major General Janaka Perera's house on the date of the bomb blast. The appellant himself admitted that he had gone to that place in the morning and met Mrs. Perera. PW14 also stated that he had seen the appellant at some other meetings of Major General Janaka Perera, held previously.

The evidence indicates that the appellant and the suicide bomber had pre-planned to assassinate Major General Janaka Perera. According to the

evidence of PW13, the appellant asked PW13 to provide lodging at his place to a person who was later identified as the suicide bomber. The appellant came to Anuradhapura on the day of the incident with the suicide bomber, and he had directed the bomber to go for his mission.

When considering the above-mentioned evidence as a whole, the conviction was based on sufficient evidence. The allegation that the Learned High Court Judge accepted the evidence without evaluating it judicially has no merit; thus, I reject that argument.

For the reasons enumerated in the judgment, we do not see sufficient grounds to interfere with the judgment of the Learned High Court Judge dated 21.05.2019. Therefore, the appeal of the appellant is dismissed.

However, considering the time the appellant has been in custody up to date, we order that all sentences of imprisonment to run concurrently. We make no other changes to the punishments imposed by the Learned High Court Judge.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.

