

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

In the matter of an Appeal to the Court of Appeal against the Judgment and the Order dated 26th April 2024 of the High Court of Anuradhapura in terms of Section 331 of the Code of Criminal Procedure Act No.15 of 1979 as amended.

**Court of Appeal Case No:**

**CA /HCC/ 292-295/2024**

High Court of Anuradhapura

HC 43/2005

Attorney General

Attorney General's Department,

Colombo 12.

**Complainant**

**V.**

1. Kohona Koralalage Chandraratna  
Bandara
2. Konara Mudiyanseelage Nihal Premasiri  
Konara
3. Gane Thele Gedara Tissa Bandara
4. Rajapaksha Mudiyanseelage Ranaraja  
Bandara
5. Yagama Liyanage Somaratna

6. Thepuwanasinghe Mudiyansele  
Mayurasena
7. Kohona Koralalage Dayaratne Bandara
8. Rate Ralalage Senarath Bandara  
Madewela
9. Polwattage Jayaratna
10. Athukorala Kodituwakku Ramyasiri
11. Winnie Mudiyansege Bertie Samarasinghe
12. Senarath Mudalige Ajith Sisira Kumara
13. Konaratna Mudiyansele Lakmini  
Wijebandara

**Accused**

Konara Mudiyansele Nihal Premasiri  
Konara

**2<sup>nd</sup> Accused-Appellant**

Rajapaksha Mudiyansele Ranaraja  
Bandara

**4<sup>th</sup> Accused-Appellant**

Yagama Liyanage Somaratna

**5<sup>th</sup> Accused-Appellant**

Rate Ralalage Senarath Bandara  
Madewela

**8<sup>th</sup> Accused-Appellant**

V.

Attorney General

Attorney General's Department

Colombo 12

**Complainant-Respondent**

**Before :**     **B. Sasi Mahendran, J.**  
                  **Amal Ranaraja, J**

**Counsel:**     Neranjana Jayasinghe with Randunu Heellage and Imangsi Senarath  
                  for the 2<sup>nd</sup> and 8<sup>th</sup> Accused- Appellant

Shavindra Fernando, PC with Thivanka Attygalle, Nipun Samaratunga  
and Natasha Wijayasekara for the 4<sup>th</sup> Accused-Appellant

Priyantha Nawana, PC with Ravihansa Wijesinghe for the 5<sup>th</sup> Accused-  
Appellant

Y. Abeywickrema, D.S.G. for the Respondent

**Written**

**Submission:**   08.05.2025 (by the 4<sup>th</sup> Accused Appellant)  
**On**               08.05.2025 (by the 5<sup>th</sup> Accused-Appellant))  
                  30.04.2025 (by the 8<sup>th</sup> Accused-Appellant)  
                  07.07.2025 (by the Respondent)

**Argued On :**     31.07.2025

**Judgment On:**   10.09.2025

## JUDGMENT

### **B. Sasi Mahendran, J.**

Thirteen individuals, including the 2nd, 4th, 5th, and 8th Accused-Appellants, were indicted before the High Court of Trincomalee on 37 charges. The case was subsequently transferred to the High Court of Anuradhapura. At the time the indictment was served, the 7th Accused had passed away. A trial *in absentia* was ordered for the 1st Accused. Pursuant to an application made by the Attorney General under Section 194(1) of the Criminal Procedure Code, the 9th to 13th Accused were acquitted.

The Prosecution presented evidence from 36 out of the 78 listed witnesses and tendered documents and productions marked P1 through P28 before closing its case. Subsequently, the Defence was invited to present its case, during which the 2nd, 3rd, 4th, 5th, 6th, and 8th Accused made dock statements and called two witnesses in support of their defence.

Upon conclusion of the trial, the Learned High Court Judge delivered judgment on 26th April 2024. The 1st, 2nd, 4th, 5th, and 8th Accused were found guilty on the first count of the indictment and were accordingly sentenced to life imprisonment. They were acquitted of all remaining charges. Additionally, the 3rd and 6th Accused were acquitted of all counts in the indictment.

Being aggrieved by the said conviction, the Accused have preferred an appeal to this Court, setting out the following grounds in support of their challenge.

1. Judgment is against the weight of evidence and is contrary to the law
2. The High Court Judge erred in law by receiving evidence on a faulty indictment, on two separate unlawful assemblies contrary to the rules of joinder of charges
3. The High Court Judge erred in law by convicting the appellant when there was no evidence in relation to the constitution of an unlawful assembly
4. The High Court Judge misdirected himself and erred in law by his failure to apply the legal principles in relation to elements of unlawful assembly
5. The High Court Judge failed to consider and erred in law, as the prosecution had failed to lead evidence of unlawful assembly

6. The High Court Judge erred in law by his failure to consider that the appellant had a reason to be present at the scene.
7. The High Court Judge misdirected himself and erred in law on the object of unlawful assembly when the appellant had not subscribed to any unlawful object
8. The High Court Judge had misdirected himself on the burden of proof
9. The High Court Judge had failed to evaluate and adduce proper reasons for rejecting the dock statements.

The Learned Counsel for the Accused primarily contended that the Prosecution had not established that they all possessed a shared common object at the time the alleged offences were committed. That is to say, not all of the accused were present at the time of the incident. It is important to note that their convictions were limited solely to the offence of unlawful assembly.

**The facts and circumstances of the case are summarised as follows**

PW 03, Arumugam Nithya, testified that gunfire was heard from nightfall and continued into the following morning. She stated that her brother, Arumugam Segar (deceased), and her brother-in-law, Ponnambalam Kanakasabe (deceased), were abducted by a group of masked individuals and taken in the direction of a checkpoint located near their residence. Their bodies were later discovered inside a container. The witness confirmed that she was unable to identify any of the accused among those present on that morning.

PW 01, Ponnadure Kamawachchi Pille, stated that her son had gone to a neighbour's house, where he was abducted and subsequently murdered by unidentified individuals. PW 04, Udayakumar Jayakumari, testified that during a gathering held to celebrate their move into a new residence, armed individuals entered the premises the following morning around 6.00 a.m. and abducted six men. The bodies of the abducted individuals were later found deceased. The witness also confirmed that she was unable to identify any of the perpetrators. All three witnesses were unable to identify any of the accused as being among those responsible for the incidents described.

According to the testimony of Prosecution Witness (PW 37), Rathnayaka Musiyanselage Nawarathna Bandara served as a Reserve Police Constable and was stationed at the

Bharatipuram checkpoint on 31 January 1998. He stated that gunfire was directed from the jungle area over the checkpoint beginning at nightfall and continuing into the early hours of the following morning. The police returned fire, and no injuries were reported during the exchange.

Reinforcements arrived around 5:30 a.m., including PW 78 (Headquarters Inspector of Kantale), the 4th Accused, and subsequently the 2nd Accused. PW 37 was positioned near a Nuga tree directly opposite the checkpoint, from where he had a clear and unobstructed view of the area. Between 7:00 and 7:30 a.m., the 2nd Accused brought two civilians clad only in sarongs from the direction of Pokkurani and seated them near the checkpoint. These individuals were then placed under the custody of the 4th Accused, who proceeded to interrogate them. The 2nd Accused was not present during this questioning.

He later observed the civilians being dragged behind the checkpoint by a man dressed in civilian clothing, whose identity he could not ascertain and who was not among the accused present in court. Shortly thereafter, the witness saw the two civilians lying dead in a pool of blood behind the checkpoint. The witness further noted that several armed police officers were present at the scene, many of whom were dressed in civilian attire.

During cross-examination, PW 37 confirmed that both PW 78 and the 4th Accused were present together in the tea pantry. When questioned by Learned Counsel regarding an alleged omission in his police statement, specifically, that he had not mentioned the 4th Accused interrogating the two civilians, the witness firmly asserted that he had indeed included that detail.

PW 37 also noted the presence of an unidentified individual at the scene, although the indictment makes no reference to any such "unknown person." Upon reviewing the evidence, PW 37's testimony describes the 2nd Accused bringing a civilian and handing him over to the 4th Accused. This was followed by an unidentified person who arrived with the two deceased civilians and subsequently shot and killed them. There is no evidence to suggest that the 1st, 5<sup>th</sup> and 8th Accused were present at the time of the incident.

PW 38, Goramba Devayalaage Sunil Priyantha Jayaratna, also a Reserve Police Constable stationed at the Bharatipuram checkpoint, corroborated PW 37's account of the attack and the arrival of reinforcements from the Kanthale Police Station and nearby posts. The reinforcement team included the 2nd, 4th, and 8th Accused, as well as PW 78. A significant number of additional officers were also present to assist.

PW 38 testified that he saw the 5th Accused escort two civilians to the checkpoint. These individuals were then taken to Room No. 01 by the 2nd Accused, in the presence of the 4th Accused. He further stated that the civilians were restrained on a mattress. According to PW 38, the 1st Accused later removed one of the civilians from the room, took him to the rear of the checkpoint, and shot him from behind. The 1st Accused then returned to the room occupied by the 4th Accused, and shortly thereafter, took the second handcuffed civilian to the same location and shot him as well.

Subsequently, the witness testified that the 8th Accused, accompanied by unidentified officers, brought another group of civilians to the checkpoint. While the witness stepped away to drink tea, he heard gunshots and later discovered three more civilian bodies. Although he confirmed the presence of the 8th Accused at the scene, he did not identify any other accused individuals in connection with this incident.

Upon reviewing the evidence, it is clear that the witness's testimony specifically confirms the presence of only the 1st and 5th Accused. No other individuals named in the indictment were identified by the witness, and there is no indication that all four accused were present together or arrived at the scene simultaneously. The Learned High Court Judge duly noted that, according to the witness, the 5th Accused was not present at the time the shootings occurred.

During cross-examination, the credibility of the witness's account regarding the 8th Accused was challenged, leading to a dispute between the accused and the witness. The witness, however, firmly denied any inconsistencies in his testimony.

According to the testimony of PW 48, he was instructed by an officer dressed in civilian attire to escort the civilians to the rear of the checkpoint, a directive he refused to comply with.

Later, he heard single gunshots emanating from behind the checkpoint and subsequently observed that the civilians had been killed at that location.

PW 78, Wasantha Nanda Kumara Silva Wijayawantha Wickremasinghe, who held the position of Headquarters Inspector (HQI) of Kantale, identified the 5th Accused as the Officer-in-Charge of the Thambalagamuwa police checkpoint. They have gone to the checkpoint because they got information regarding a terrorist attack. But he has not seen any incident at that point.

As the witness approached the Bharathipuram police checkpoint, he reported hearing gunfire. He remained at the location for roughly two hours, during which he encountered no individuals but continued to hear shots being fired from behind the checkpoint. Once the gunfire ceased, he emerged to find seven bodies near the police post and an additional body on the opposite side of the road.

All 4 accused denied the charge against them. The Learned High Court Judge acquitted all the accused of every charge except for the first count, which pertains to the offence of unlawful assembly. It is therefore pertinent to reproduce the particulars of the first count for clarity and context.

“වර්ෂ 1998 ක් වූ පෙබරවාරි මස 01 වන දින හෝ ඊට ආසන්න දිනකදී මෙම අධිකරණයේ බල සීමාව තුළ පිහිටියා වූද, සංශෝධිත මහජන ආරක්ෂක පනතේ 02 වන වගන්තිය යටතේ කරන ලද හදිසි නීති ප්‍රකාශයක් අදාළ වන්න වූද, භාරතිපුරම් හිදී යුෂ්මතූන් දණ්ඩ නීති සංග්‍රහයේ 138 වෙනි වගන්තිය අර්ථකථනය කොට ඇති අන්දමේ වූ මිනීමැරීමේ පරමාර්ථ කරගත් නීති විරෝධී රැස්වීමක සාමාජිකයකු වීමෙන් වර්ෂ 1994 ක්වූ නොවැම්බර් මස 04 වන දිනැති අංක 843/12 දරණ ශ්‍රී ලංකා ජප්‍රජාත්‍රාන්තික සමාජවාදී ජනරජයේ ගැසට් පත්‍රයේ (ඇති විශේෂ ප්‍රකාශිත 1994 අංක 4 දරණ හදිසි අවස්ථා (විවධ විධි විධාන හා බලතල ) නියෝගයන්හි 26 (1) (ආ) නියෝගය සමග කියවිය යුතු 26 (1) (ඉ ) නියෝගයේ විධි විධාන ප්‍රකාර වරදක් සිදු කල බවද, එබැවින් යුෂ්මතූන් එකී නියෝගයන්හි 26 නියෝගය යටතේ දඬුවම් ලැබිය යුතු වරදක් සිදු ලක බවය.”

The charge sheet contains no express reference to any individuals, other than the named accused, being part of the alleged unlawful assembly, nor does it suggest the involvement of



persons unknown to the prosecution. Accordingly, it was incumbent upon the prosecution to establish that the named accused in the indictment were themselves members of an unlawful assembly formed with the common object of committing murder.

Accordingly, it was incumbent upon the prosecution to establish that the identified individuals—namely the 1st, 2nd, 4th, 5th, and 8th accused—were the actual participants in the alleged unlawful assembly, as others were acquitted of the charges by the Learned High Court Judge. Through the testimony of Prosecution Witnesses Nos. 36 and 37, the 1st, 2nd, 4th, 5th, and 8th accused were identified. Notably, PW 38 stated that the 8th accused arrived at the scene at a later stage. However, there is no evidence to suggest that all the Accused namely the 2nd, 4th, 5th, and 8th accused, were present at the time the 1st accused allegedly shot and killed the civilians.

Despite this evidentiary gap, the Learned High Court Judge concluded that all five accused were members of an unlawful assembly. The principal contention raised by the accused-appellants is that the Learned Judge misdirected himself in arriving at this conclusion, particularly in the absence of evidence demonstrating the simultaneous presence of all the accused at the time of the shooting. While it is true that a witness observed the 1st accused escorting and shooting the civilians, the critical issue remains whether the 2nd, 4th, 5th, and 8th accused, without direct evidence of their participation in the group at the material time, could be said to have shared the common object of committing murder.

The question is whether the prosecution successfully established the existence of an unlawful assembly in the present case. To assess this, we examine key scholarly commentary and relevant judicial precedents that define its essential elements.

***Dr. Sir Hari Singh Gour's Penal Code of India***, 11th Edition, Volume 4, at page 1296;

8. Mere presence in assembly not sufficient.

*“All persons who convene or who take part in the proceedings of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without taking any part in the proceedings are not guilty of that offence, even though those persons possess the power of stopping the*

*assembly and fail to exercise it. Mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Sec. 142, I.P.C. It would appear that the place of occurrence is surrounded on all sides by the houses of appellants. If members of the family of the appellants and other residents of the village assembled, all such persons could not be condemned ipso facto as being members of that unlawful assembly. It would be necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or been committing some overt act in prosecution of the common object of the unlawful assembly. Where the evidence as recorded is in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, like guns, spears, pharsas, axes, lathis, etc. this kind of omnibus evidence has to be very closely scrutinized in order to eliminate all chances of false or mistaken implication. Simply because certain members are present in a crowd at the time of a riot by the certain members of their community, it cannot be said that they also, who used no violence, were guilty of the riot.”*

Further His Lordship Weerasuriya J in **Samy and Others v. Attorney General**, 2007 (2) SLR 216, at page 226, held that:

*“It is well settled law that mere presence of a person in an assembly does not render him a member of an unlawful assembly, unless it is shown that he has said or done something or omitted to do something which would make him a member of such an unlawful assembly or where the case falls under section 139 of the Penal Code. Dr. Gour in Penal Law of India discusses the law in respect of unlawful assembly as follows: (Vol I page 1296-11th Edition) "All persons who convene or who take part in the proceeding of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without talking any part in the proceedings are not guilty of that offence, even though those persons possess the power of stopping the assembly and fail to exercise it.”*

The issue is further elucidated in the following passage extracted from Ratanlal and Dhirajlal, *The Law of Crimes, Ninth Edition*, at page 321."

*"2. 'Common object'. -The essence of the offence is the common object of the persons forming the assembly. Whether the object is in their minds when they come together, or whether it occurs to them afterwards, is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, that they should all be aware of it and concur in it. It seems also that there must be some present and immediate purpose of carrying into effect the common object; and that a meeting for deliberation only, and to arrange plans for future action is not an unlawful assembly."*

Prof. G.L. Peiris in *Offences Under the Penal Code of Sri Lanka* on page 36:

*"There are three basic elements in the definition of an unlawful assembly in our law. These relate to (a) the number persons constituting the assembly; (b) the existence of a common object among the members of the assembly; and (c) the nature of the common object."*

The foregoing principle has been examined and applied in the following judicial decisions.

In *Rex v. Dias*, Ceylon Law Record Volume 17, page 16, at page 18, His Lordship Soeretsz, J held that:

*"The offence of being a member of an unlawful assembly is an offence that can be laid against each of five or more persons who come together with any of the objects enumerated in the Section of the Penal Code constituting the offence and once there is evidence to show that there were five or more people assembled with the objects referred to, an indictment can be presented against any one of them on the footing that he was a member of an unlawful assembly and that in that capacity he committed the offences he is charged with. Surely, such an accused person cannot take advantage of the fact that his associates were unidentified and contend that as he alone was identified, it cannot be said that he was a member of an unlawful assembly. It is purely a question of fact whether there was an unlawful assembly or not, and again it is purely a question of fact who the units of that unlawful assembly were."*

In *Police Sergeant Kulatunga v. Mudalihamy*, 42 NLR 33, His Lordship Chief Justice Howard held that:

*“Both charges involved the proof of an unlawful assembly. It had, therefore, to be proved by the prosecution that there was an unlawful assembly with a common object as stated in the charges. So far as each individual accused was concerned it had to be proved that he was a member of the unlawful assembly which he intentionally joined. Also that he knew of the common object of the assembly.”*

In *Andrayas v. The Queen*, 67 NLR, 425 at page 430, His Lordship Justice T. S. Fernando held that:

*“It was, in our opinion, necessary for the trial judge to have given an adequate direction to the jury that mere membership of an unlawful assembly did not render each member of that unlawful assembly criminally liable for an offence committed by some other member thereof. It was not, in our opinion, a correct direction of the jury that mere membership of an unlawful assembly, without more, rendered each member of that unlawful assembly criminally liable for an offence committed by some other thereof. Such liability arose at law only when the existence of a certain other element or elements specified in section 146 of the Penal Code had been established.”*

In the recent case of *Samy and others v. Attorney General (Supra)*, it was held that:

*“Therefore, the vital ingredient of the offence of being a member of an unlawful assembly is the intention to join the assembly with a particular common object. The onus of proving the ingredient lies on the prosecution.”*

It is noted that the appellants, namely the 2nd, 4th, 5th, and 8th accused, were acquitted of the additional charges relating to murder and abduction committed with the common intention to murder. However, the Learned High Court Judge concluded that the prosecution had successfully established that these accused were active participants in an unlawful assembly, formed with the common object of committing the murder.

The central question is whether there is sufficient evidence to establish that all the accused were present at the time of the incident. Only then can it be inferred that they shared a

common object. Although the Learned High Court Judge formed the view that the accused were members of an unlawful assembly with murder as its common object, he nevertheless acquitted them of the charge of murder committed in furtherance of that unlawful assembly. The reasons for this conclusion were set out as follows:

Page 1216 of the brief;

“02 සිට 09 දක්වා වූ චෝදනාවන් ගොනු කර ඇති ආකාරය සලකා බැලීමේදී ඒ ඒ මරණකරු සාකච්ඡා කරන ලද අවස්ථාවේ 02,04,05 සහ 08 වූදිනයිත් කුමන ස්ථානයක සිටියාද යන්න සම්බන්ධයෙන් නඩු විභාගයේදී පැහැදිලි සාක්ෂි ඉදිරිපත් වීමක් සිදුවී නොමැති බව සඳහන් කළයුතු ව ඇත. ඒ අනුව අදාළ මරණය සිදුකරන අවස්ථාව වන විට 02,04,05 සහ 08 වූදිනයිත් එම රැස්වීමේ සාමාජිකයින්ව සිටියාද යන්න තහවුරු කිරීමට පැමිණිල්ල සමත් වී නැත. එනම් විශේෂයෙන්ම පළමු වූදින වෙඩි තැබීම සිදුකරන අවස්ථාව වන විට අනෙකුත් වූදිනයිත් කුමන ස්ථානවල සිටියාද යන්න අනාවරණය වී නොමැති බව සඳහන් කළයුතුව ඇත. එම හේතුව මත අධි චෝදනා පත්‍රයෙහි සඳහන් 02 සිට 09 දක්වා වූ චෝදනාවන් සාධාරණ සැකය නැති මිනීමෙන් ඔබ්බට ඔප්පු කිරීමට පැමිණිල්ල සමත් වී නොමැති බව සඳහන් කළයුතුව ඇත. ඒ අනුව 02-09 දක්වා වූ චෝදනාවලින් සියලුම වූදිනයන් නිදොස් කොට නිදහස් කරමි.”

According to testimonies of PW37 and PW38, it is evident that the prosecution has failed to establish that the Accused acted in concert as members of an unlawful assembly with a shared common object to commit murder. The evidence presented reflects a series of discrete and uncoordinated actions by the individual Accused, devoid of any indication of collective intent.

In fact, the Learned High Court Judge has observed that the gathering was for a lawful purpose at first, namely, to protect against a potential terrorist attack.

On Page 1213 of the brief;

“ඒ අනුව මුල් අවස්ථාවේ වූදිනයන් සියලු දෙනා රැස්වූ අවස්ථාවේ එකී රැස්වීම කිසිදු අයුරකින් නීති විරෝධී රැස්වීමක් නොවූ බව ඉතාම පැහැදිලිය.”

From the foregoing observations, it is evident that the Learned High Court Judge concluded that, at the time of the killing of the civilians, there was no evidence establishing the presence

of the 2nd, 4th, 5th, and 8th accused. It is noteworthy, however, that under the first count of the indictment, their conviction was based on the allegation that they were members of an unlawful assembly, the common object of which was to commit murder. For an unlawful assembly to be constituted, there must be five or more individuals present at the relevant time. The question is whether they were assembled together at the time of the incident.

Further, he has stated that the 2<sup>nd</sup> Accused took the civilians to the checkpoint, and then an unknown person took them to the backside of the checkpoint. We note that the presence of an unknown person was noted; however, the first charge of the indictment contains no reference to any "unknown person."

On Page 1214 of the brief;

“ඉන් සුළු මොහොතකට පසු පැමිණිල්ල නොදත් වෙනත් පුද්ගලයෙකු එකී සිවිල් පුද්ගලයින් දෙදෙනා මුරපොල පිටුපසට රැගෙන ගොස් ඇත”

The Learned High Court Judge considered the fact that the 1st Accused escorted the civilians to the rear of the checkpoint and shot both of them. It is noted that the 1st Accused was absent throughout the trial proceedings, and accordingly, no defence was presented on his behalf.

Accordingly, the Learned High Court Judge further observed that the 1st, 2nd, 4th, 5th, and 8th accused were engaged in an unlawful assembly. However, it must be noted that there is no evidence establishing that all five accused were present at the time the killings occurred.

Page 1214 of the brief ;

“එම කරුණද අභියෝගයට ලක්වී නොමැත. එසේ රැගෙන එන පුද්ගලයින්ගේ මල සිරුරු ද පසු අවස්තාවක භාරතිපුරම් පොලිස් මුරපොල සහ ඒ අවට තිබී හමුවී ඇත. ඔවුන් ද මියගොස් ඇත්තේ වෙඩි වැදීම හේතුවෙන්ය. එකී කරුණු සියල්ල සලකා බැලීමේ දී පොලිස් නිලධාරීන් වන මෙම නඩුවේ පලවන, දෙවන, හතරවන, පස්වන සහ අටවන වුදිතයින් එනම් එකී වුදිතයින් පස්දෙනා පසු අවස්තාවක භාරතිපුරම් මුරපොලට ඉතා ආසන්න නිවෙස්වල සිට රැගෙන එන ලද සිවිල් වැසියන් මරණයට පත් කිරීම පොදු අරමුණ කරගත් රැස්වීමක සාමාජිකයන් ව සිට ඇති බව ඉතාම පැහැදිලිය. ඒ අනුව එම රැස්වීම ලංකා දණ්ඩ

නීති සංග්‍රහයේ 138 වෙනි වගන්තියේ අර්ථකථනය කර ඇති පරිදි නීති විරෝධී රැස්වීමක් වූ බවද ඉතාම පැහැදිලිය. ඔවුන් සියලු දෙනා එකී සිවිල් පුරවැසියන්ගේ මරණය සිදු කිරීමේ අරමුණ ඇතිව රැස්ව සිටිමින් කටයුතු කර ඇති බව ඉතාම පැහැදිලිය. තවද, ඔවුන් එකී සියලු සිවිල් පුරවැසියන්ගේ මරණය සිදුකිරීම එසේ එක්ව සිටි සියලු දෙනාගේ පොදු අරමුණ බව දැන සිටිමින් රැස්ව සිට ඇති බව ද ඉතා පැහැදිලිය. ඒ අනුව ඉහත කී පළමුවන, දෙවන හතරවන, පස්වන සහ අටවන වූදිනයිත් මිනීමැරීම පරමාර්ථ කරගත් නීති විරෝධී රැස්වීමක සාමාජිකයින් ව සිටි බව පැමිණිල්ල විසින් සාධාරණ සැකයෙන් ඔබ්බට ප්‍රබල ලෙස ඔප්පු කර ඇති බව තීරණය කරමි.”

There is no evidence establishing that all the accused were present at the time of the incident. It is therefore submitted that the Learned High Court Judge misappreciated the factual matrix and arrived at a conclusion that is legally unsustainable.

We hold that the Learned High Court Judge has misdirected himself in applying the legal principles governing unlawful assembly, having failed to appreciate that the prosecution did not lead any cogent or credible evidence establishing the existence of such an assembly as defined in law. There was no other evidence to establish all were present at the time of the incident or that they shared an unlawful object or coordinated conduct, which falls short of the statutory threshold.

For the said reasons, we set aside the conviction and the sentence against the said Accused imposed on 26.04.2024.

Appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**