Sister of the deceasedIN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal made under 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.

CA/HCC/0011/2025

High Court of Embilipitiya

Case No. HCE/39/2015

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

Vs.

Geegana Kankanamge Wimaladasa

alias Hullankande Kiri Ayya

ACCUSED

AND NOW BETWEEN

Geegana Kankanamge Wimaladasa

alias Hullankande Kiri Ayya

ACCUSED-APPELLANT

Vs.

The Hon. Attorney General
Attorney General's Department
Colombo-12

COMPLAINANT-RESPONDENT

BEFORE	:	**P. Kumararatnam, J.** **Pradeep Hettiarachchi, J.**
COUNSEL	:	**Neranja Jayasinghe with Imangsi Senarath and Randunu Heellage for the Appellant.** **Akila Dalpadadu, SC for the Respondent.**
ARGUED ON	:	**03/09/2025**
DECIDED ON	:	**03/10/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General for committing the murder of Jagodage Indika Rangajeeva on 18/06/2010 which is an offence punishable under Section 296 of the Penal Code.

After a non-jury trial, the Learned High Court Judge has found the Appellant guilty as charged and had sentenced him to death on 20/11/2024.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent for this matter to be argued in his absence. However, at the time of argument, as the Appellant was receiving treatment at the Prison Hospital, he was not connected via Zoom platform from prison.

On behalf of the Appellant the following Grounds of Appeal are raised.

1. The Learned High Court Judge arrived at an erroneous conclusion that the Appellant with PW11 had committed the murder without any evidence. (vide pages 658 and 660 of the brief).
2. Consideration of the evidence led under Section 27 of the Evidence Ordinance regarding the recovery of the dead body is wrong in law.
3. The defence had been rejected on unreasonable grounds.

In this case, PW11, Jagodage Chaturika was arrested along with the Appellant. After a non-summary inquiry, on 09/01/2012, the Learned Magistrate of Embilipitiya had committed the case against the Appellant and PW11 to the High Court.

The Hon. Attorney General acting under Section 401 and the power vested on him under Section 396 of the Code of Criminal Procedure Act No.15 of 1979 and by his letter dated 18/05/2015, had quashed the committal against PW11 and had named her as PW11 in the indictment.

Background of the Case albeit briefly is as follows:

According to PW11, Deepani, the deceased is her maternal uncle and he had raped her when she was 10 years old. No complaint had been lodged at that time due to the familial bond that existed and due to the threats advanced by the deceased. As such, the deceased had continued to rape her till his death. The deceased had had a land dispute with PW11's parents and her father had disappeared in the year of 2006. Following his disappearance, when she attempted to lodge a complaint with the police, the deceased had threatened her stating that he killed her father and the same fate would be fallen on her as well should she proceed to go to the Police.

This witness had had a close relationship with the daughter of the Appellant. As such, she had been a frequent visitor at the Appellant's house and she said that she knew where the key to the Appellant's house was kept when the family left the house.

As she could not bear the sexual assault perpetrated by the deceased on her, she had sought help from the Appellant. Upon the instructions of the Appellant, PW11 had called the deceased to the Appellant's house on that fateful day so that the Appellant may advice the deceased. When the deceased arrived, the Appellant was at home. After the arrival of the deceased, PW11 had made tea for them. After drinking tea, both the deceased

and PW11 had felt faintish. When she was leaving the house, she had heard the deceased shouting and pleading not to assault him. After about 10 minutes, when she re-entered the Appellant's house, she had seen the deceased's body lying on the floor. Thereafter, she had requested the Appellant to drop her at the bus stand.

After about five days of the incident, she divulged this incident to her mother who is PW2 in this case. Thereafter, PW2 had informed the incident to PW3, the sister of the deceased. In the evidence of PW11, it is revealed that the deceased and the Appellant's were not in good terms. Importantly, the mobile phone of the deceased was recovered from PW11 by the police.

In her evidence, PW1 had told police that she had come to know where the dead body was buried from PW2 and PW11.

According to PW12, the JMO, who held the post mortem examination had noted three injuries on the deceased's body. One injury is compatible with manual strangulation and the injury number two is compatible with an injury caused by a blunt weapon. The JMO had opined that the death of the deceased had been caused due to the application of pressure on the neck, associated with gagging.

According to the investigating officer, the dead body, an axe and a motor bike belonging to the deceased had been recovered upon the statement made by the Appellant.

After the conclusion of the prosecution case, the defence was called and the Appellant gave evidence from the witness box. According to him, when he was not at home, PW11 had called him to come home. When he came home PW11 had told him " අන්න රෑට කරන්ඩ ඕනෑ වැඩේ අපි කළා. ඒකට කරන දෙයක් කරන්ඩ. මාව ගිහින් දාන්නයි කිව්වා බස් එකට".

Under the first ground of appeal the Appellant contends that the learned High Court Judge arrived at an erroneous conclusion that the Appellant

together with PW11 had committed the murder without any evidence. (vide pages 658 and 660 of the brief).

The Learned Counsel for the Appellant submits that the Learned Trial Judge misdirected himself by concluding that the Appellant along with the principal witness as an accomplice committed the murder of the deceased and that PW11's testimony consisted of visible improbabilities.

In the evidence provided by PW11, she had been raped by the deceased just before he died at the Appellant's house while the room door had been kept open. It was the position of PW11 that the deceased had met the Appellant at the house. It was highly doubtful whether the deceased would have raped PW11 in an open room in the house of the Appellant. This position clearly supports the stand taken by the Appellant that he was not at home when the incident had taken place.

According to PW11, she too had consumed the tea which had made both of them feel faintish. But in her evidence, she had said that after drinking tea both had had some rice and the Appellant had smoked a Cannabis cigar. As correctly contended, it is highly improbable to believe that PW11 was moving and observing the events that had taken place after she felt faintish.

The Learned High Court Judge, after considering the evidence given by PW11 and PW2, had accurately held that that their evidence is untrustworthy and cannot be believed completely. The relevant portion is re-produced below:

Page 641 of the brief.

කරුණු එසේ හෙයින් ඔවුන්ගෙන් යමෙක් හෝ දෙදෙනාම සිදු වූ සිද්ධිය සම්බන්ධව සම්පූර්ණ සත්‍ය ප්‍රකාශ කරන අයවළුන් ලෙස සැලකිය නොහැකි අතර, සත්‍ය ප්‍රකාශ කරන අයවළුන් නම් නම් උක්ත කාරණාව වැනි අදාල සිද්ධි දාමයට සම්බන්ධ විශේෂ කරුණකට සම්බන්ධ ඔවුන්ගේ සාක්ෂිය විචලනය වීමට හේතුවක් නැති අතර, අසත්‍ය ප්‍රකාශ කිරීමට ද හේතුවක් නැත.

එබැවින් විත්තියේ ලිඛිත දේශනය මගින් පෙන්වා දී ඇති පරිදිම පැ.සා. 11 ගේ හෝ ඇයගේ මවගේ සාක්ෂිය සම්පූර්ණ ලෙසම විශ්වාස කල හැකි ආකාරයේ සාක්ෂි නොවන බවට සඳහන් කල යුතුව තිබේ.

Later, the Learned High Court Judge in his judgment at pages 658-659 re-assessing the evidence giving by PW11 and PW2, come to the conclusion that PW11 is an accomplice in this case. The relevant portion is re-produced below:

Pages 658-659 of the brief.

විශේෂයෙන්ම පැ. සා. 11, මරණකරු ඝාතනය කිරීම සම්බන්ධයෙන් ඇයට චෝදනාවක් එල්ල නොවන ආකාරයට සාක්ෂි ලබා දීමට උනන්දුවක් ඇති තැනැත්තියකි.

එබැවින් චූදිත විසින් මරණකරු ඝාතනය කොට ඇත්තේ ද යන්න තීරණය කිරීමේදී පැ. සා. 2 ගේ හා පැ.සා. 11 ගේ සාක්ෂි ඉතා ප්‍රවේශමෙන් සලකා බැලිය යුතු අතර, ඔවුන්ගේ සාක්ෂි චූදිතට එරෙහිව අනුකූල කර ගැනීම ප්‍රවේශමෙන් කල යුතුව තිබේ.

ඒ අනුව එකී සාක්ෂි අනුකූල කරගත යුතු වන්නේ එම සාක්ෂි අනෙකුත් සාක්ෂි මඟින් තහවුරු වන ප්‍රමාණයට වේ.

එපමණක් ද නොව, මෙම නඩුවේ පැ. සා. 11 ගේ සාක්ෂිය සලකා බැලීමේ දී ඇයට මරණකරු වන ජාගොඩගේ ඉන්දික රංගජීව යන අය ඝාතනය කිරීමේ වුවමනාවක් නොතිබුනු බවටත්, චූදිතගේ නිවසට ඔහුව කැඳවගෙන ගියේ එවැනි අරමුණකින් නොවන බවටත් ප්‍රකාශ කලද, ඉදිරිපත් සාක්ෂි සමස්ථයක් ලෙස සලකා බැලීමේ දී ඇය විසින් ඒ සම්බන්ධයෙන් ලබා දී ඇති ඇතැම් කාරණාවලට අදාල සාක්ෂි වියහැකිභාවයෙන් හා විශ්වාසනීයත්වයෙන් තොර අසත්‍ය සාක්ෂි වේ.

විශේෂයෙන්ම එකී අභියෝගයට ලක්ව ඇති සාක්ෂි මෙම නඩුවේ ඉසව්ගත කාරණයක් වන ජාගොඩගේ ඉන්දික රංගජීව මරණයට පත් වූ අවස්ථානුගත කරුණු වලට සෘජුවම සම්බන්ධ ඒවා බැවින් එකී කරුණාට අදාල ඇයගේ සාක්ෂිය අභියෝගයට ලක්ව ඇත්තේ තමාට මරණකරුගේ ඝාතනයට සම්බන්ධයක් නැති බවට පෙන්වා දීමට අසත්‍ය ප්‍රකාශ කිරීම මත බවට සැකයක් නැත.

මේ බව ජාගොඩගේ ඉන්දික රංගජීව යන අයට සිදුව ඇති තුවාල හා ඔහුගේ මරණය සිදුව ඇති අවස්ථානුගත කරුණු සම්බන්ධව හා ඒ සම්බන්ධව ඇය ලබා දී ඇති සාක්ෂිය මඟින් වඩාත් තහවුරු වේ.

ඒ අනුව පැ. සා. 11 ගේ සමස්ථ සාක්ෂිය හා ඉහත කරුණු සලකා බැලීමේදී ඇය චූදිත සමඟ එක්ව මරණකරු ඝාතනය කිරීම සඳහා කරන ලද සැලසුමක් ප්‍රකාරව ඔහුව චූදිතගේ නිවසට කැඳවා ගෙන එකී අරමුණු ඉටුකර ගැනීම සඳහා එම අයගේ මරණය සිදු කිරීම සඳහා ඔවුන් අතර නුවමාරු කරගත් චේතනාවෙන් යුතුව පහරදී, ඔහුගේ ගෙල සිරකොට, කටට පාංකඩ ඔබා ඔහුගේ මරණය පත්කොට ඇති බවට සැකයක් නැත.

එබැවින් තමාට චූදිතගේ මරණය සිදුකිරීමේ උවමනාවක් හෝ සම්බන්ධයක් තිබී නොමැති බවට ප්‍රකාශ කලත් එය තමාට මරණකරුගේ ඝාතනයට සම්බන්ධයක් නැති බවට පෙන්වා දීමට ලබා දී ඇති සාක්ෂි බවට ද සැකයක් නැත.

කරුණු එසේ හෙයින් විත්තියේ ලිඛිත දේශණය මඟින් පෙන්වා දී ඇති පරිදිම පැ. සා. 11 චූදිත සමඟ එක්ව අදාල අපරාධය කර ඇති අයෙකු බැවින් ඇය අපරාධ සහයකයෙක් වේ.

ඒ අනුව එකී සාක්ෂිය මෙම නඩුවට අදාල කර ගැනීමට බාධාවක් තිබේද යන්න සලකා බලා ඒ අනුව එකී සාක්ෂිය මත කටයුතු කල යුතුව තිබේ.

According to Section 133 of the Evidence Ordinance an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.
According to Section 114 (b) of the Evidence Ordinance, accomplice is unworthy of credit unless he is corroborated in material particulars.

In the case of **De Saram v. The Republic of Sri Lanka** 2002 [1]SLR 296 the Honorable Judge states that Section 133 of the Evidence Ordinance is an absolute rule of evidence while Section 114 (b) is a rule of guidance. Additionally, in the aforementioned case it is stated that in order to take a witness in light of Section 114(b) and Section 133 of the Evidence Ordinance, the court should first clarify whether the said witness can be considered as an Accomplice.

In the case of **King v. Peiris Appuhamy** 43 NLR 412 it is was held that:

> *"Even assuming that after the murder had been committed the witness had assisted in removing the body to the pit and that he could have been charged with concealment of the body under S.198 of the Penal Code that was an offence perfectly independent of the murder and the witness could not rightly be held to be either a guilty associate with the accused in the crime of murder or liable to be indicted with him jointly.*

The witness was therefore not an accomplice and the rule of practice as to be corroborated had no application to the case."

Similarly, in **Queen v E.H Ariyawantha** 59 NLR 241 it was stated that,

"burden of proving a witness to be an accomplice for the purpose of inducing jury to presume that he is unworthy of credit unless corroborated in material particulars, is upon the party alleging it".

According to **E. R. S. R. Coomaraswamy** in his book titled "The Law of Evidence Vol. II, Book I at page 364, it is stated with approval the following passage from Wharton on Criminal Evidence 11th Ed. Vol. II at page 1229 –

"An accomplice is a person who knowingly, voluntarily and with common intent with the principal offender unites in the commission of a crime. The term cannot be used in a loose or popular sense so as to embrace one who has guilty knowledge or is morally delinquent or who was an admitted participant in a related but distinct offence. To constitute one an accomplice, he must perform some act or take some part in the commission of the crime, or owe some duty to the person in danger that makes it incumbent on him to prevent its commission."

In this case as the Learned High Court Judge already held that PW11 is an unreliable witness, her evidence needs to be corroborated in material particulars. The Learned High Court Judge placed his reliance on the evidence given by the investigating officer with regard to the recovery done under Section 27(1) of the Evidence Ordinance.

From here onwards, the second ground of appeal also considered along with the first ground of appeal. According to the evidence given by PW1, she had gotten to know the place where the dead body was buried from PW11 and PW2. Thereafter, PW1 had lodged the first complaint with the police. Although, PW13, the investigating officer had given evidence that the dead

body was recovered upon the statement made by the Appellant, the fact had already been known to the police via PW1's statement.

The Learned High Court Judge had wrongly concluded that the recovery of the dead body was made as a result of the statement made by the Appellant and it is admissible under Section 27 of the Evidence Ordinance. The relevant portion is re-produced below:

Page 648 of the brief.

2017.10.16 දින ප.ව. 1.00 සිට පැ.සා. 13 ගේ සාක්ෂි සටහන් 05 පිටුව (හරස් ප්‍රශ්න)

ප්‍ර : ඉන් අනතුරුව ජාගොඩගේ දීපානි චතුරිකයි, මේ විත්තිකරුයි දෙන්නම එකතු වෙලා ඔය ඉන්දික රංගජීවගේ මෘත දේහය ගේ පිටු පස්සේ තිබූ වලේ දෙන්නම එකතු වෙලා වල දැම්මා කියලා යෝජනා කරනවා ?

පැ.සා. 13 ගේ සාක්ෂියත් විත්තියේ උක්ත යෝජනාවක් අනුව චූදිතට මෘත දේහය තිබූ ස්ථානය සම්බන්ධව දැනීමක් තිබී ඇති බවට එකී කාරණයෙන් පැහැදිලි වන අතර, එමඟින් වැඩිදුරටත් පැ.සා. 13 ගේ සාක්ෂිය මඟින් ඊට අදාලව ලකුණු කල "X-1" උධෘතයේ ඇතුලත් චූදිතගේ ප්‍රකාශය මඟින් චූදිත අදාල කරුණා අනාවරණය කර ඇති බවට ද තහවුරුව තිබේ.

Therefore, the only evidence available against the Appellant is the other recoveries made upon the statement of the Appellant. According to the investigating officer, a motor bike and documents belonging to the deceased had been recovered upon the statement made by the Appellant.

In **Heen Banda v. The Queen 75 NLR 54**, the court held that:

> *"Where part of a statement of an accused person is put in evidence under section 27 of the Evidence Ordinance, it is the duty of the Trial Judge to explain to the Jury that such a statement is only evidence of the fact that the accused knew where the article discovered could be found, and nothing more."*

In **Ranasinghe v. Attorney General** (2007) 1 Sri L.R 218, it was held that:

> *"…discovery in consequence of a section 27 statement only leads to the conclusion that the accused had the knowledge as to the weapon being kept at the place from which it was detected."*

The Learned High Court Judge had arrived at the wrong conclusion that the Appellant is guilty of the charge acting only under Section 27(1) of the Evidence Ordinance.

Although, PW11 had stated that she did not have any intention to kill the deceased, the contradictions marked from her police statement clearly show that she had a very strong motive to do so. The relevant portions of PW11's evidence is re-produced below:

Page 233 of the breief.

ප්‍ර : 2006.07.06 වැනිදා ඇඹිලිපිටිය පොලිසියට තමන් ලබා දුන් ප්‍රකාශයේ මෙහෙම කිව්වාද "මම එහෙම කිව්වාට මම හිතින් හිතුවා තෝ අහු වෙන්නේ කවදාද තොට පාඩමක් උගන්වනවා කියලා හිතුවා." එහෙම පොලිසියට කිව්වාද ?

උ : නැහැ.

එම කොටස පරස්පරතාවයක් ලෙස වි.05 වශයෙන් ලකුණු කිරීමට අවසර පතනවා.

Page 235 of the breief.

ප්‍ර : තමන් 2010.07.06 වැනිදා ඇඹිලිපිටිය පොලිසියට මෙහෙම කිව්වාද "නමුත් මගේ කන්‍යාභාවය ඉන්දික මාමා විනාශ කලා. අම්මාට කිව්වාම රන්ඩු ඇති වන නිසා මම කාටවත් මේ ගැන කිව්වේ නැහැ. නමුත් ඒ වෙලාවේ මම හිතා ගත්තා කවදා හරි උඹෙන් පලි ගන්නවා" කියලා?

උ : නැහැ. මම හිතන් හිටියේ කවදා හරි හිරේ දාලා දඩුවම් දෙනවා කියලා.

එම කොටස පරස්පරතාවයක් ලෙස වි.06 වශයෙන් ලකුණු කිරීමට අවසර ඉල්ලා සිටිනවා.

Pages 235-236 of the brief.

ප්‍ර : 2010.07.06 වැනිදා ඇඹිලිපිටිය පොලිසියට ලබා දුන් ප්‍රකාශයේ දී මෙහෙම කිව්වාද "කොහොම හරි ෂේප් එකේ ඉඳගෙන උඹව මරනවා යන චේතනාවෙන් මම ඔහුව අත්හැරින්න වැඩිය උත්සහ කලේ නැහැ" කියලා කිව්වාද?

උ : මට උවමනාව වුනේ ඌරුබොක්ක පොලිසියට ගිහිල්ලා හරි මේවා නතර කරන්න. එයින් වැඩක් නැති නිසා මාතරට ගිහිල්ලා කිව්වා. තාත්තා ගැන නම් අපි හොයන්නම් කියලා කිව්වා. ඒත් හෙව්වේ නැහැ.

"කොහොම හරි ෂේප් එකේ ඉඳගෙන උඹව මරනවා යන චේතනාවෙන් මම ඔහුව අත්හැරින්න වැඩිය උත්සහ කලේ නැහැ" කියන කොටස වි.07 වශයෙන් ලකුණු කිරීමට අවසර ඉල්ලා සිටිනවා.

Pages 254-255 of the breief.

ප්‍ර : ඔය ඉන්දික රංගජීව මිය යෑම සම්බන්ධයෙන් තමුන් 2010.07.06 වෙනිදා ඇඹිලිපිටිය පොලිසියට දුන්න ප්‍රකාශයේ තමුන් මෙහෙම කිව්වා ද? "ඉන්දික මරන්න හිත දුන්නේ ඔහු මාව දූෂණය කල නිසයි." එහෙම කිව්වා ද?

උ : නැහැ.

ප්‍ර : එහෙම කිව්වේ නැහැ.

උ : නැහැ.

ප්‍ර : එහෙනම් ඒක වැරදියි ?

උ : ඔව්.

ගරු මැතිණියනි, මේ අවස්ථාවේ දී **"ඉන්දික මරන්න හිත දුන්නේ ඔහු මාව දූෂණය කල නිසයි."** යන කොටස වි.10 පරස්පරතාවක් ලෙස ලකුණු කිරීමට අවසර ඉල්ලා සිටිනවා.

Further, PW11 had stated that her relations forced her to implicate the Appellant to the crime. The relevant portion is re-produced below:

Page 248-249 and 251 of the breief.

උ : මාමයි, අපි කවුරුත් එක්ක වාහනයේ ආවේ. ඊට පස්සේ මට වාහනේ ඇතුලෙදි ම කිව්වා කිරි මාමා තදවෙන විදිහටම කියපං කියලා මට තර්ජනය කරලා කිව්වා. ඊට පස්සේ අපි බැස්සා. අපි තේවත්තෙන් ආවේ. ඒ ආවට පස්සේ ඉස්සරහා පැත්තෙන් පොලීසියෙන් ඇවිල්ලා තිබුණා.

ප්‍ර : තමුන්ට කවුද තර්ජනය කළේ ?

උ : විපේ මාමා.

ප්‍ර : විපේ මාමා විතර ද?

උ : විපේ මාමා, ලොකු මාමා, පුංචිලයි.

Hence, her evidence is tainted with improbabilities and with visible ambiguity. Therefore, acting on PW11's evidence will certainly prejudice the Appellant's rights.

In this case, the Learned Trial Judge has initially disbelieved the evidence given by PW11 and PW2 but later misdirected himself by placing total reliability on the most unreliable witness PW11 who had displayed a complete lack of creditworthiness especially when the defense counsel proceeded to highlight several material contradictions.

The importance of contradictions in criminal trials has been discussed in several judicial decisions by the Appellate Courts of our country. It is pertinent to discuss whether the above-mentioned contradictions have any adverse effect on the evidence given by PW11 in this case.

In the case of **The Attorney General v. Sandanam Pitchi Mary Theresa** (2011) 2 Sri L.R. 292 it was held that,

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgement on the nature of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance".*

Considering the totality of evidence provided by PW11 the contradictions highlighted by the Counsel for the Appellant certainly go to the root of the prosecution's case. Further, PW11 had admitted that she implicated the Appellant upon the instructions given by her relations.

In the final ground of appeal, the Appellant contends that the Learned Trial Judge misdirected himself while analysing the evidence by completely failing to consider the defence evidence and thereby failed to afford substance of a fair trial and adhere to established Legal principles when arriving at the conclusion of convicting the Appellant. The Learned Counsel for the Appellant argued that this has caused miscarriage of justice and thereby the conviction is unsafe and bad in Law.

The Learned High Court Judge, although arriving at the conclusion that the prosecution witnesses No.11 and No.02 are unreliable witnesses and should be considered with great caution, had completely disregarded this conclusion, and had admitted the evidence given by PW11 as reliable and convicted the Appellant solely on that evidence. This has caused not only a great prejudice but also denied a fair trial to the Appellant.

For the reasons stated above, I am of the view that there is merit in the grounds of appeal urged by the counsel for the Appellant.

As the prosecution had failed its duty to prove this case beyond a reasonable doubt, I set aside the conviction and sentence imposed by the Learned High Court Judge of Embilipitiya dated 20/11/2024 on the Appellant. Therefore, he is acquitted from this case.

Accordingly, the appeal is allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Embilipitiya along with the original case record.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree

JUDGE OF THE COURT OF APPEAL