

**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, as amended and read with Article 138 and 154 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/HCC/ 26-31/2020

HC Galle Case No: HC 4049/2014

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

1. Mawadawilage Niluksha Madhushan Jayalath
2. Halukeerthi Dinesh Kumara
3. Yassehi Nisal Chandana
4. Dadallage Gayan Sampath
5. Deneththi Aruna Priyantha alias Shantha
6. Agampodi Indika Prasad Kumara de Soyza

Accused

And now between

1. Mawadawilage Niluksha Madhushan Jayalath
2. Halukeerthi Dinesh Kumara
3. Yassehi Nisal Chandana
4. Dadallage Gayan Sampath
5. Deneththi Aruna Priyantha alias Shantha
6. Agampodi Indika Prasad Kumara de Soyza

Accused-appellants

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Complainant -Respondent

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

Amal Ranaraja, J

Counsel: Nalin Ladduwahetty, PC with Vajira Ranasinghe, Thusitha Ranasinghe and Kavithri Hirusha Ubeysekara for the 1st and 4th Accused Appellants
Kaneel Maddumage for the 2nd and 5th Accused-Appellants
Kapila Waidyaratne, PC, with Akila Jayasundera and Akhila Mathishi for the 3rd Accused- Appellant
Anuja Pramarathne, PC with Nayana Dissanayake for the 6th Accused-Appellant
Shanil Kularatne, ASG for the Respondent

Written 01.12.2021 (by the 1st Accused-Appellant)
Submission: 15.12.2021 (by the 2nd Accused Appellant)
On 01.12.2021 (by the 3rd Accused-Appellant)
01.12.2021 (by the 4th Accused-Appellant)
17.12.2021 (by the 5th Accused Appellant)
01.12.2021 (by the 6th accused Appellant)

Argued On : 03.10.2025

Judgment On: 25.11.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused–Appellants (hereinafter referred to as the 1st, 2nd, 3rd, 4th, 5th, and 6th Appellant) were indicted before the High Court of Galle on the following counts:

1. That on or about the 29th of January 2011 at Katudampe within the jurisdictional limits of this court above above-named Accused, being a member of an Unlawful Assembly with the Common Object of causing hurt to Galla Dehige Gaya Chaminda and thereby committed an offence punishable under section 140 of the Penal Code.
2. That at the same time, place and the same transaction as above Charge No. 01 caused the death of Galla Dehige Gaya Chaminda and thereby committed an offence punishable under section 296 read with section 146 of the Penal Code.

3. That at the same time, place and the same transaction as above Charge No. 01 cause voluntarily hurt to Kasthuri Alison and thereby committed an offence punishable under section 315 read with section 146 of the Penal Code.
4. That at the same time, place and the same transaction as above Charge No. 01 cause the death of Galla Dehige Gaya Chaminda and thereby committed an offence punishable under section 296 read with section 32 of the Penal Code.
5. That at the same time, place and the same transaction as above Charge No. 01 cause voluntarily hurt to Kasthuri Alison and thereby committed an offence punishable under section 315 read with section 32 of the Penal Code.

At the trial, the prosecution presented evidence through thirteen witnesses and marked productions P1-P6 and thereafter closed its case. At the closure of the prosecution's case, the counsel for the Appellants made an application under Section 200(1) of the Code of Criminal Procedure Act requesting the courts to acquit the Appellant without calling the defence, and the Learned High Court Judge has rejected the application.

Thereafter, the Learned High Court Judge directed the defence to call their witnesses. The 1st, 3rd, 4th, 5th, and 6th Appellants, in their defence, made dock statements, and the 2nd Appellant opted to remain silent. Additionally, the 1st and 3rd Appellants called 4 witnesses in their defence.

Upon conclusion of the trial, the Learned Judge of the High Court delivered judgment on 19 February 2020. All the Appellants were found guilty on the 1st, 2nd, and 4th counts of the indictment. For the 1st count, sentenced to six months' simple imprisonment and fined Rs. 2,500, with a default sentence of three months' rigorous imprisonment and on the 2nd and 4th counts, the sentence of death was imposed. Furthermore, the appellants were acquitted of the 3rd and 5th counts.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, all the appellants preferred an appeal before this Court. I have formulated the following grounds as urged by all the Appellants.

1. The Learned High Court Judge has failed to consider Omissions and Contradictions of the prosecution witnesses
2. Whether the High Court Judge failed to consider and evaluate the fact that deceased failed to identify the Accused and therefore he did not mention the names of the Accused to his wife.
3. Whether the prosecution has failed to prove the common object as required by section 146 of the Penal Code
4. Whether the High Court Judge failed to consider and evaluate the dock statements and evidence of witnesses called by defense.

The facts and circumstances of this case are as follows,

PW 2, Kasthuri Wimalawathi, the mother-in-law of the deceased, was residing with her daughter (PW 3), the deceased, their children and along with her parents on 29.01.2011. While she was watching the news around 8:30 p.m. together with the deceased, she had seen the 1st and 5th Appellant arriving in a three-wheeler and commencing a quarrel in front of the house. At that point, the witness's mother, PW 4, who is not summoned by the prosecution, intervened and stated: “මෙතන ගහ ගන්න එහා, අපිට සාක්ෂි දෙන්න වේවි” and the Appellant responded by verbally abusing her. The deceased then also intervened, saying: “මව. මෙතන ගහ ගන්න එහා, ඒ මතුස්සයා කියන්නේ ඇත්තනේ”. Immediately thereafter, the 1st Appellant struck the deceased with the belt. After the incident, the deceased remarked: “මට ගැහුවට කමක් නෑ, යන්න” and following his statement, the 1st and the 5th Appellant departed from the scene. The witness further testified that she had known both Appellants for a period of 7 to 8 years. Further, she stated that the 1st Appellant is also known as the son of SI Anura, who resides in ‘පලමුගොඩ රණවිරු ගෙදර’ and that the 5th Appellant was also known by the alias බලු අන්ඩා.

After about 30 minutes, a three-wheeler arrived carrying five individuals, shouting “ஏன்சீயே வரேவி.” The witness testified that among them she identified 4, but she revealed only the 1st, 3rd, and 6th Appellant, whose names were revealed to be Dinushka, Nisal, and Indika. The witness also stated that the 3rd Appellant is also known to her for a period of 7 to 8 years. We note that the witness identified all three Appellants by name and knew them for a long period of time.

Further, she stated that she didn't identify the other 2 people who came. The 1st, namely Dinushka, and 3rd, namely Nisal, Appellant then dragged the deceased, who had been seated on the veranda, and the 3 Appellant struck him with iron rods. Then she identified the 6th Appellant, who had struck him. She stated the PW 3 was with her in the veranda, and at the time, she could see them in the light of the veranda. The assault lasted for approximately 30 minutes, and each time the deceased attempted to rise, he was struck again. Around 9:00 p.m., the deceased was admitted to Karapitiya Hospital. According to her, when the Appellant attacked the deceased, PW 1 was in the kitchen.

The witness identified the 1st, 2nd, 3rd, and 4th Appellant in the identification parade. According to her, the 2nd Appellant was there and did not assault the deceased but stated ‘ஏன்கிடம் பெண்வகுடி கியல்’. Later, she says that the 1st, 2nd and 3rd Appellants were attacking, 4th was there. Further, she has stated that the Appellant has left the scene with 2 three-wheelers. The deceased succumbed to his injuries on 02.02.2011, and on that day, she gave a statement to the police. The iron rods used in the attack were handed over to the police the following morning. We note that she has not mentioned how PW 1 got involved in the scene.

During cross-examination, the witness identified that her sister, Chandrika, came during the second incident. After the first incident, when the deceased son-in-law was struck and PW 4, the mother was verbally abused; the witness stated that she subsequently went back inside and watched television. The plausibility of such conduct is questionable, given the gravity of the situation. She affirmed in the cross-examination that only two people were involved with the first incident. She admitted

the fact that she had not gone to the police on that day, and the daughter, PW 3 and PW 4, the mother of the witness, had gone to the police. Defence suggested to the witness that no one had gone to the police, and the witness denied that statement.

PW 2 admitted the fact that she had given a statement to the police on 30.02.2011. Later, she denied the statement that with PW 4, she had gone outside to see the fight in the first incident. Further, the defence marked a contradiction arising from the police statement dated 30th, wherein it was recorded that on that day, when the witness and her mother (PW 4) came outside, they heard the words “මට ගහන්ත එපා, මාව බේරගන්ත”. The witness denied having made such a statement, and the defence accordingly marked this as Contradiction No. 1V1.

We note that she was not sure about the evidence she gave.

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පූ : තමුන් දැක්කේ නැහැ?

උ : මම කියන දේ නොවෙයි මට කියවෙන්නේ. උදේශ කැවෙන් නැහැ දැන් මට බඩිනි ස්වාමිනි.
පටියෙන් ගැහුවේ දිනුම්ක

At that stage, it is observed that the Court adjourned the proceedings.

The defence counsel also highlighted an omission in the police statement, specifically the phrase “තේ මරනවා තී විල් රඟය තුළදීම,” and the quarrel between the 1st and the 5th Appellant. Further, she admitted the fact that she made two statements to the police. The defence counsel highlighted the omission that in the police statement, there is no mention of the 1st Appellant hitting the deceased.

The defence suggested that, during the inquest, if the witness was certain that the 1st Appellant, Dinushka, had struck the deceased with a belt, she would have stated so at that stage. The defence argued that her failure to mention it was because the 1st Appellant had not in fact committed the act. In response, the witness replied as follows:

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පු : මම තමන්ට යෝජනා කරනවා. තමන් එහෙම කිවිවේ නැත්තේ තමන්ට දිනුෂ්ක තියලා මේ උසාවියේ හඳුනා ගන්න පුද්ගලයා ඔය ස්ථානයට පැමිණීම හෝ එවැනි ක්‍රියාවක් කළේ නැති නිසා කියලා?

උ : පිළිගන්නවා ස්ථානි.

We observe that if the witness was already familiar with the 1st Appellant, there would have been no necessity to identify him at the identification parade. Counsel further noted a contradiction in her testimony regarding the first occasion, where she stated that three individuals arrived in a three-wheeler. This account is inconsistent with her earlier statement, which has now been shown to be incorrect.

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පු : දැන් ඔබ කිවිවා මෙම ගරු අධිකරණයේ සාක්ෂි දෙන කොට මූල් අවස්ථාවේදී ත්‍රිවිල් එකෙන් දෙන්නෙක් ආවා කියලා, මූලින්ම පටියෙන් ගහපු අවස්ථාවේදී?

උ : ඔව්.

පු : එක ඇත්තනේ?

උ : දෙන්නෙක් නෙවෙයි තුන්දෙනෙක්.

පු : තමුන් මිට කලින් මූලිකව සාක්ෂි දෙනකොට මූල් වෙලාවේ ආවේ දෙන්නයි කියලා කිවිව එක වැරදියිද?

උ : ඒක වැරදියි.

When the Learned High Court Judge was considering the evidence of PW 2, he made the following observations:

1. According to the witness, in the first incident, only two individuals arrived and began to quarrel.

2. At that time, the 1st Appellant struck the deceased, though this fact was not mentioned in his testimony.
3. In the second incident, six persons came and attacked the deceased; however, the witness referred to only five individuals and, at the identification parade, identified the 1st, 2nd, and 3rd Appellant.

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‘මෙම සිද්ධියෙන් විනාඩි 30කට පමණ පසු 06 දෙනෙකුගේ කණ්ඩායමක් පැමිණ 05 දෙනෙකු සාක්ෂිකාරීයගේ නිවස ඉදිරිපිට තුළ එක අසලට පැමිණ උඩජ්ස අසල සිටි මරණකරු එලියට ඇදගෙන ඇවිත් පහර දුන් බවද අහියෝගයට ලක් නොවේ.’

We note that the Learned High Court Judge has rightly concluded that she had no clear recollection of when she made her statement to the police, rendering the timing of that statement questionable. According to her, the deceased had conveyed the names to his daughter, PW 3, and it was only through PW 3 that she came to know the names of the Appellant.

We note that according to the testimony of PW 6, the deceased did not provide any names in his police statement. If that is the case, the question arises as to how PW 3 came to know the names of the Appellant. This inconsistency calls for closer scrutiny. Accordingly, the focus now shifts to the testimony of PW 3.

PW 3, Kasthuri Kumari Kusumawathi, the wife of the deceased, testified that while they were watching the news along with her kids, the deceased and her grandparents, three individuals came and began fighting in front of their house. At that time, her grandmother, PW4, shouted, and the deceased also intervened, asking them not to fight. Thereafter, the 5th Appellant struck the deceased with a belt. However, it is noted that PW 2 had stated that the 1st Appellant struck the deceased. She identified the 1st, 3rd, and 5th Appellants as being there in the first incident.

Subsequently, a crowd arrived in a three-wheeler, and two individuals dragged the deceased, while another struck him with an iron rod. According to PW 3, the 2nd and 3rd Appellant were holding the deceased, but she did not identify the person who

delivered the blow. We note that PW 1 was also injured during the incident, but there is no indication from the witness regarding how and when they took him to the hospital. Thereafter, the deceased was taken to the hospital, where, according to her testimony, he succumbed to his injuries on 02.02.2011. According to the witness, before the death of the deceased, when she visited the hospital, the deceased disclosed to her the names of those who had assaulted him, namely Nilushka, Dinesh, Nisal, Anura, and Dinushka, on 30.02.2011. She confirmed that these individuals had been known to her since childhood.

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පු : එතකොට ඒ පහර දැන්න පිරිස කුවුද කියලා ඔබට කිවුවාද ?

උ : කිවුවා

පු : මොනවද කියපු නම්?

උ : ඔක්කොගේම නම කිවුවා

පු : ඒ කියපු නම වික අපිටත් කියන්න ?

උ : තිලුෂ්ක, දිනේෂ්, නිසල්, අනුර, දිනුෂ්ක

පු : ඒ කටටිය ඔබ අදුරන කටටියද?

උ : ඔවා

පු : කොහොමද අදුරන්නේ ?

උ : පූංචි කලේ ඉදලා ඒ ගොල්ලන්ගේ ගෙවල් ගාවින් තමා යන්නේ

She identified in court the 1st, 2nd, 3rd, 4th, 5th, and 6th Appellants, consistent with the statement attributed to the deceased. She further stated that she knew the 5th Appellant as "Balu Anda." Further, the witness has admitted that her mother's sister had given evidence to the police, and she herself confirmed that she provided her statement the following morning. At the identification parade, she recognized Nilushka (1st Appellant), Nihal (3rd Appellant), and Dinesh (2nd Appellant). She

also confirmed that three individuals had assaulted the deceased. She admitted that she lodged her complaint on the same day. It is noteworthy that, during the first incident, the deceased addressed the Appellant as “machan.” The witness has admitted the fact that the deceased was familiar with those individuals, and that was why he addressed them as “machan.” If that was indeed the case, a serious question arises as to why the deceased did not disclose their identities to the police when reporting the incident.

This witness admitted that the 5th Appellant was known by other names such as “Balu Anda,” “Anura Priyantha,” or “Anura Shantha”. However, any of the names were mentioned in her police statement. She further stated that she made her statement on the 30th, but this was not corroborated by the police witnesses. It is also noted that she mentioned the 1st and 3rd Appellant as holding the deceased, yet she did not observe who actually struck him. Later contradicting the witness’s earlier statement, she stated that one individual held the deceased while two others attacked the deceased, which was marked as contradiction 1V5 by the defence.

This witness admitted that she had only seen five people in total in the second incident. She further took the position that, following the first incident, all of them remained outside. When the question was put to the witness, she contradicted her earlier statement and stated that 5 people came and dragged the deceased, which was marked as contradiction 1V8.

It is to be noted that PW 2 had testified that, while they were inside, the Appellant came and dragged the deceased. This contradiction was highlighted during the inquest, where she made a statement before the Magistrate confirming that the Appellant had come and dragged the deceased. Further, the defence suggested that, during the inquest, she had not mentioned the name of “Balu Anda,” although he was known to her. This omission was marked, as in her statement dated 30.02.2011, she did not mention any names.

Furthermore, the defence counsel suggested that the 3rd appellant, Nisal Chandana, was known to the witness, and that on 30.02.2011, after the deceased had disclosed his name, she failed to mention it to the police because he had not been present. The witness denied this suggestion. She nevertheless admitted that she had not disclosed the name of Nisal Chandana during the inquest either.

PW 3 admitted during the inquest that the 3rd Appellant was holding the hand of the deceased. We note that, in her original testimony, she stated that the 3rd Appellant had come. However, she later altered her position, saying that she had only seen him during the second incident, which was marked as omission O3 by the defence.

Further, she admitted that in both incidents the 4th Appellant was not present.

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පූ : දැන් සාක්ෂිකරු තමුන්ට විශේෂීත වගයෙන් 4 වන විත්තිකරු සම්බන්ධයෙන් මම අහන්නේ
තමුන් කොයිම අවස්ථාවකටත් මෙම 4 වන විත්තිකරු පලළවෙනි සිද්ධියේදීවත් දෙවන සිද්ධියේදීවත්
ඉන්තව තමුන් දැක්කේ නැහැ?

සේ : දැක්කේ නැහැ ස්වාමිනි

Furthermore, when questioned by counsel regarding the 5th Appellant, she denied the suggestion that she had made no reference to him in her police statement. She stated that she had mentioned the name “Balu Anda” or “Anura Priyantha” to the police. The defence marked this as omission O4.

The defence primarily contended that, upon evaluating the testimony of PW2 and PW3, the court should find their evidence wholly unreliable and devoid of credibility. The central objection was that the Learned High Court Judge failed to properly address the contradictions and omissions that cast serious doubt on the truthfulness of these witnesses.

Although the defence counsel highlighted certain contradictions and omissions, the Learned High Court Judge found them immaterial and provided the following

reasons. It is noteworthy to refer to the portion of the judgment of the Learned High Court Judge.

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“මෙම සිද්ධියේ සිද්ධිමය ක්‍රියාභාවය තුළ ක්ෂේකව වෙනස් වන විවිධ අවස්ථාවන් සම්බන්ධයෙන් පරස්පරතාවයන් සහ උග්‍රතාවයන් ඇතිවිමද සාමාන්‍ය බුද්ධියක් ඇති නුවණැති පුද්ගලයෙකට අවබෝධ කර ගත හැක.”

Before analysing the contradictions and omissions highlighted by the defence, it is necessary to first consider how our courts have traditionally approached such inconsistencies when assessing the credibility of witness testimony.

It would be relevant to reproduce the relevant portion about the contradictions expressed in Sir John Woodroffe and Amir Ali, in the book of *Law of Evidence*, 18th Edition, Vol. I, page 425,

“(6) CONTRADICTIONS AND OMISSIONS

In regard to appreciation of evidence regarding the contradictions and omissions, they generally arise under s 162, Cr PC 1973. In Ponnusami Chetty v Emperor, Burn J of the Madras High Court took an extreme position and observed:

Whether it is considered as a question of logic or of language, 'omission and 'contradiction' can never be identical. If a proposition is stated, any contradictory proposition must be a statement of some kind, whether positive or negative. To contradict means to 'speak against' or in one word to 'gainsay'. It is absurd to say that you can contradict by keeping silence. Silence may be full of significance, but it is not 'diction' and therefore it cannot be 'contradiction'... The same conclusion follows from a consideration of s 145, Evidence Act. If it is intended to contradict the witness by the writing, his attention must be called to those parts of the writing which are to be used to contradict him. It would be sheer misuse of words to say that you are

contradicting a witness by the writing, when what you really want to do is to contradict him by pointing out omissions from the writing...A witness cannot be confronted with the unwritten record of an unmade statement...It is impossible to state a case in which an omission amounts to a contradiction...s 162 can only be used in order to show that the witness in the box is contradicting something he had said before...It is not permissible to use such statements in order to show 'development' of the prosecution case; it is only permissible to use them to prove contradictions...

.....

In State v Ram Bali, the Allahabad High Court expressed the same principle and observed:

A statement recorded by the police under s 162 can be used for one purpose and one purpose only and that of contradicting the witness. Therefore, if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter cannot be used at all. If a witness deposed in court that a certain fact existed but had stated under s 162, either that fact had not existed or that the reverse and irreconcilable fact had existed, it is a case of conflict between the deposition in the court and the statement under s 162 and the latter can be used to contradict the former. But if he had not stated under s 162, anything about the fact, there is no conflict and the statement cannot be used to contradict him. In some cases, an omission in the statement under s 162 may amount to contradiction of the deposition in court; they are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence. If the statement under s 162 can be reconciled with the deposition in court and can stand with it, there is absolutely no conflict. An omission is not a contradiction unless what is said actually contradicts what is omitted to be said. The test to find out whether an omission is a contradiction or not, is to see whether one can point to any sentence or assertion which is irreconcilable with the deposition in the court. It would be quite meaningless to say that the entire statement under s 162

contradicts the deposition: therefore, one cannot point to the entire statement as being irreconcilable with the deposition.”

State of Uttar Pradesh v. M.K. Anthony, reported in Supreme Court Journal 1984 (2) page 498,

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.”

Further, Jayasuriya J held in **Banda & others v AG** 1999 (3) SLR page 172

“Having regard to the omission proved, in evaluating the testimony of a witness, a Court would be guided by principles of common sense and by certain tests of credibility that are employed to assess credibility. When one goes through proceedings, it is evident that the learned defence counsel had closely looked at the statement made by Andrayas to the Police and also looked at the inquest evidence Andrayas had given before the Magistrate and had attempted to mark contradictions in relation to that statement and the inquest evidence. Vide pages 126 and 129 of the record, where there is a specific reference to contradictions marked 5VI and 5V2. These contradictions certainly do not cause any dent whatsoever on the testimonial trustworthiness of witness Andrayas. Thus, after the aforesaid attempt failed the resulting position in regard to the Police statement and inquest evidence is that the test of inconsistency and consistency echoes in favour of the witness' credibility. Besides, there are no contradictions and inconsistencies in his evidence per se or inter se.

.....

By proving omissions is another method of assailing the testimonial trustworthiness of a witness."

Chandra Ekanayake, J in *Padmatilake (Sgt) V. Director General, Commission to Investigate Allegations of Bribery/Corruption* 2009 2 SLR Page 151, Held that;

"It has to be stressed here that credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the Judge. When witnesses make inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses is unreliable and in the absence of special circumstances, no conviction can be based on the testimony of such witnesses. On the other hand, one cannot be unmindful of the proposition that Court cannot mechanically reject the evidence of any witness."

In light of the foregoing judgments, our attention now turns to the evidence of PW2. The defence has highlighted the following contradictions in her testimony.

Page 190 of the brief – 1V1,

පු : ඔබ 30 වෙනිදා පොලිසියට දෙන ප්‍රකාශයේ මෙහෙම කිවිවද? "පසුව මමත් මාගේ අම්මත් එලියට පැමිණ බලනවීට මෙම ත්‍රිවිල් රථයේ පැමිණි අයෙකු මට ගහන්න එහා මාව බේරගන්න කියා කැ ගැනුවා"?

උ : නෑ . මරණ කතාව තමයි කිවිවේ.

Page 211 of the brief - 1V2,

පු : දැන් ඔබට ඔබ දැන් කියන හැටියට පටියෙන් ගහපු කෙනා ගැන කිසිම සැකයක් නැතේ දිනුෂ්කන් තමුන් කියන හැටියට. ඔබ මෙහෙම කිවිවාද මරන පරික්ෂණයේදී. දිනුෂ්ක තමයි පටයෙන් ගැනුවේ කියලා ඔබ කියලා පැහැදිලිව පිළි අරගෙන තිබෙනවා "එම රණ්ඩුවේ සිට කෙනෙක් පම් පාරවල් 5ක් ගැනුවා" එහෙම කියලා කිවිවද මරණ පරීක්ෂණයේදී සාක්ෂි දෙනකොට?

උ : මතක නෑ ස්වාමීනි.

පු : මම තමන්ට යෝජනා කරනවා තමුන් මෙම ගරු අධිකරණයේ දැන් කියපු සාක්ෂි එකින් එක පරස්පර බව ඔබ මිට කලින් කියපුවා මතක් කරලා දෙනකොට මතක නැති බව තමන් ඉතාමත් ව්‍යාජ විදියට අධිකරණය නොමග යවන්න මතක නෑ කියලා කියන්නේ අධිකරණය නොමග යවන්න කරන ත්‍රියාවක් කියලා?

උ : පිළි ගන්නේ නෑ ඒක මම.

පු : දැන් ඔබ පිළි ගන්නවා ඔබ මතක් කරලා දුන්න ඔබ නඩුකාර හාමුදුරුවේ ඉස්සරහා කියපු වා තමයි මතක් කරලා දෙන්නේ මේ වාගේ. ඔබ පිළිගන්නවාද උසාවියේ සටහන් වෙලා තිබෙනවා නම් මරණ පරික්ෂණයේදී ඔබ සාක්ෂි දෙනකොට "එම රණ්ඩුවේ සිටි කෙනෙක් පටි පාර වල් රක් ගැහුව" කියලා. එහෙම ඔබ කිවිව බව පිළි ගන්නවාද?

උ : පිළි ගන්නේ නෑ මම.

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පු : දෙවැනි අවස්ථාවේ තමුන් කිවිවා ර දෙනෙක් ආවා කියලා ?

උ : ඔවුන්.

පු : එහෙම නම් ඒ ආපු පස් දෙනාගෙන් දෙනෙනෙක් පහර ගැසීම සිදු කළේ නැහැ? ඒක හරිනේ?

උ : හරි.

පු : තමුන් කිවිවා යකඩ පොලු වලින් තමයි පහර දුන්නේ කියලා එක හරිනේ ?

උ : හරි.

පු : එතකොට තමුන් කියන සාක්ෂි අතුව එහෙම නම් අර අල්ල. හිටිය දෙන්නා නැතුව වෙත අය තමයි පහර දෙන්න ඕනෑම එහි ? ඒක හරිද?

උ : හරි.

පු : එතකොට පහරදීම පස් දෙනාම සිදු කරන්නේ නැහැ ඒක හරිද?

උ : ඔවුන්.

පු : දැන් තමුන් මූල් වරට මූලින්ම 1 වැනි ප්‍රකාශයේ පොලිසියට දුන් ප්‍රකාශයේ මෙහෙම කිවිවද? "මෙම පස්දෙනාම යකඩ පොලුවලින් පහර දුන්නා" කියලා කිවිවාද? '

උ : නැහැ.

Defence has pointed out the following 6 omissions during the cross-examination of PW 2.

Page 191 of the brief – O1,

පු : ඒ අනුව තමුන්ට ඇහුනේ නෑ මට ගහන්න එපා මාව බෙරගන්න කියන එකක් ඇහුනේ නැහැ?

උ ; එක ඇහුනේ නැහැ. තෝ මරණවා කියන එක තමයි මට ඇහුනේ.

පු : තමුන් පොලිසියට කිවිවාද මේ තෝ මරණවා. තෝ ත්‍රිවිල් එක ඇතුළේ මරණවා කියලා මට ඇහුණා පොලිසියට කිවිවාද? මූල් වෙළාවේදී රේට පස්වෙතිදා පැය ගණනක් ඇතුළත දෙන ප්‍රකාශයේදී කිවිවාද එහෙම?

උ : කිවිවා.

පු : මම තමුන්ට යෝජනා කරනවා තමුන් තෝ මරණවා ත්‍රිවිල් එක ඇතුළේ කියලා කිසීම ප්‍රකාශයක් ඒ මූල් වෙළාවේදී පොලිසියට දෙන ප්‍රකාශයේ කියලා නෑ කියලා?

උ : පිළි ගන්නේ නෑ.

Page 192 of the brief- O2,

පු : කිවිවාද පොලිසියට මම ජනේලය ලහ සිට බලන කොට ත්‍රිවිල් එක ඇතුළේ දිනුෂ්ක සහ ගාන්ත ගහ ගත්තා කියලා කිවිවාද?

උ : කිවිවා.

පු : මම යෝජනා කරනවා දිනුෂ්ක සහ ගාන්ත එවැනි ත්‍රිවිල් එක ඇතුළේ ගහ ගත්තා කියලා කිසීම ප්‍රකාශයක් සිද්ධියක් වුනා කියලා පැය ගණනක් ඇතුළත මූලින්ම පොලිසියට දෙන ප්‍රකාශයේ කියලා නෑ කියලා?

උ : පිළි ගන්නේ නෑ.

Page 194 of the brief – O3,

පු : තමුන් බෑනට 3 වතාවක් පටියෙන් පහර දෙනවා තමුන් දැක්කා කියලා පොලිසියට කිවිවාද?

උ : කිවිවා. පහර ගාන කිවිවේ නැහැ පටියෙන් ගහපු බව කිවිවා.

පු : පොලිසියට කිවිවා පටියෙන් ගහපු බව?

උ : කිවිවා.

පු : මම යෝජනා කරනවා එක වචනයක්වත් තමුන්ගේ බැණව පටියකින් පහර දුන් බව මූල් අවස්ථාවේදී පොලිසියට කියලා නැහැ කියලා. එක වචනයක්වත් කියලා නැහැ?

උ : පිළිගන්නේ නැහැ.

Page 207 of the brief - O4,

පු : මම තමුන්ට කියනවා තමන් මේ සිද්ධිය වෙලා පැය ගානක් ඇතුළත තමුන්ට හොඳ මතකය තියෙදී වෙවිව සිදුවීම පිළිබඳව පොලිසියට කියපු ප්‍රකාශයේ බැණව ප්‍රථම වතාවට කරපු පහර දීම පිළිබඳව දිනුෂ්ක කියලා තමුන් කියන තැනැත්තා පොලිසියට කියල නැ කියල?

උ : එක පිළිගන්නේ නැ මම.

Page 221 of the brief - O5,

පු : දැන් නඩු පොතේ නිසල් ආවා කියලා මරණ පරීක්ෂණයේදී කියලා නැහැ. එහෙම සටහන් වෙලා නැත්තම් තමුන් පිළිගන්නවාද තමුන් කියලා නැහැ කියලා?

උ : පිළිගන්නේ නැහැ.

Page 222 of the brief – O6,

පු : දැන් ඔය ප්‍රකාශයන් දෙකක්ම තමුන් නිසලුයි දිනුෂ්කයි ඇදලා ගත්තේ නැහැ කියලා එකක් සටහන් වෙලා නැත්තම් තමුන් කියලා නැහැ කියලා පිළිගන්නවාද ?

උ : පිළිගන්නවා.

පු : ර්ට අමතරව ර්ට පස්සේ මරණ පරීක්ෂණයේදී කිවිවාද දිනුෂ්කයි නිසලුයි තමුන්ගේ බැනා අදාලා ගත්තා කියලා කිවිවාද ?

උ : මතක නැහැ ඒ වෙළාවේ කිවිවාද නැද්ද කියන්න

පු : තමුන් ඒ මරණ පරීක්ෂණයේ සටහන්වල ලියවිලා නැත්තම් තමුන් පිළිගන්නවාද තමුන් කියලා නැහැ කියලා දිනුෂ්කයි නිසලුයි තමුන්ගේ බැනා ඇඟාල ගත්තා කියලා ?

උ : මම පිළිගන්නේ නැහැ.

These contradictions and omissions strike at the very root of the case, undermining the credibility of the witness. Upon analysis, her testimony reveals a lack of consistency, which reflects unfavorably on her reliability. The inconsistencies further weaken the trustworthiness of her evidence.

When we consider the evidence of PW 2 after the incident, she has not indicated any names in her statement. Although she knew the Appellant, she could not name them. Further, we note that when we analyse her evidence with PW 3, there is a discrepancy between them. Also, we are mindful that according to her, the deceased has told PW 2, who is the daughter of this witness, the names of the Appellants. This evidence is totally false. It is pertinent to refer to PW 6.

PW 6, Gamini Ihalawela, the police officer who supervised the investigation on 04.02.2011, arrested the 4th Appellant and the 1st Appellant, who is the son of SI Anura. Further, he stated that the hospital police at Karapitiya recorded a statement from the deceased before his death.

During cross-examination, the witness stated that the first complaint was lodged on January 30, 2011, by Kusuma, PW4, the wife of PW1. We note that this witness was not summoned by the prosecution. Until that time, the hospital police had not provided any information regarding the deceased. On 02.02.2011, when they filed the B report, there was no mention of the names of the suspects. It shows that PW 4, when giving evidence to the police, did not mention any names.

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පු : දැන් ඔය අඩුම තරමින් දෙවැනි මාසේ 2 වැනිදා කරන පලළවනි බේ වාර්තාවේ වත් කවුරුවත් අත්අඩංගුවට ගෙන ඉදිරිපත් කිරීමක් වෙලා නැහැතේ?

ලේ : නැහැ උතුමාණකි.

පු : එතකොට දැන් මහත්මයා රත්ගම පොලිසියේ ස්ථානාධිපතිවරයා හැටියට කොට්ටුවර කාලයක් 2011 ජනවාරි මාසේන් පස්සේ සේවය කළාද?

ලේ : අවුරුදු 3 ක් පමණ කාලයක්.

පු : ඒ කියන්නේ 2014 වර්ෂය වෙන කල් මහත්මයා තමයි තිබේයි ?

උ : එහෙමයි.

The witness further testified that PS 19864 Waharathanthri Anura recorded the statement of the deceased on 30.01.2011 at 9.35 a.m. Further witness admitted that he obtained and read the statement from the hospital police. The hospital police subsequently informed the police station of this statement on 31.01.2011 via telephone call. In that communication, it was noted that the deceased had said he could identify six individuals as having assaulted him, though he did not mention any names.

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පු : තුවාල පිළිබඳ විස්තර විතරද ප්‍රශ්න කරා කියලා තියෙන්නේ? ප්‍රශ්න කරලා අනාවරණය කර ගත්තා කියලා තියෙන්නේ තුවාල පිළිබඳව විස්තර විතරද?

උ : දුටුවෙන් හඳුනන පූද්ගලයින් හය දෙනෙක් කියලා තියෙනවා.

පු : කියන්න ඔව මොනවද?

උ : නමින් නොදැන්නා...

පු : නමින් නොදැන්නා දුටුවෙන් හඳුනන ඊට පස්සේ?

උ : හය දෙනෙක් යකඩ පොලු වලින් පහර දුන් බව.

Further stated where he recorded it.

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පු : ඔබ පරික්ෂා කරලා කියන්නේ ඒ වෝද්‍යා පත්‍රයේ. ඔබ ඔය වම්පික කියන පූද්ගලයා අත් ආඩංගුවට අරගෙන ඔහුට විරුද්ධව වෝද්‍යාවක් ගොනු කරලා තිබෙනවාද කියලා?

උ : නැත උතුමාණෙනි. ඒ අවස්ථාවේ දුන්නේ ඒ කටටිය සම්පූර්ණ නම් ගම දුන්නේ නැ.. ඒ අනුව තමයි ඒ අවස්ථාවේදී ක්‍රියා කළේ. පසුව තමයි ඒ ගැන දැන ගත්තේ.

After obtaining and reading the statement, the witness confirmed the details that had been conveyed in the earlier call. Subsequently, the hospital police informed the

witness of the death of the deceased on 02.02.2011. The witness admitted that the first B report was filled based on information given by Jayasena. When filling the B report, the witness admitted the statements of Walage Kusuma and Kasthuri Wimalawathi.

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පු : ඒ වෙනකොට කාගේ කාගේ ප්‍රකාශයන්ද සටහන් කරගෙන තිබුණේ?

සේ : වලගේ කුසුමාවත් සහ කස්තුරි විමලාවත් යන අයගේ

පු : ඒ කියන්නේ වලගේ කුසුමා කියන තැනැත්තියගේත්, පැමිණිල්ල ඉදිරිපත් කළා කියන කස්තුරි විමලාවත් කියන තැනැත්තියගේ ප්‍රකාශයක් පමණයි සටහන් කරලා තිබුණේ?

සේ : එහෙමයි.

පු : එනකොට ඒ මත තමයි ඒ වෙනකොට විමර්ශන කටයුතු සිදු කරලා තියෙන්නේ?

සේ : එහෙමයි උතුමාණෙනි.

The witness admitted the fact that he arrested the 3rd Appellant on 09th September 2011. Further, in the 1st B report, the names of the 1st and 3rd Appellants were not included. The witness admitted the fact that the Wimalawathi statement was recorded before the 1st B report was filed. The witness also testified that PW 2 had stated, “පලමිගොඩ බස් නැවතුම පල අසල නිවසේ සිටිය ඇය” and based on that disclosure, he proceeded to arrest the 1st Appellant. Furthermore, defence counsel inquired whether any names had been mentioned by any witness, to which the witness responded that Chandrika Damayanthi had disclosed certain names in her statement dated 02.02.2011.

In the B report, the witness stated that the name of a suspect, called Champika, is there.

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පු : ඒ බී වාර්තාවේ ඔබ භෞතික සැකකරුවෝ අතරේ වම්පික කියන සැකකාරයෙක් ඉන්නවා කියල අත් අඩංගුවට ගන්න ඔබ අධිකරණයට කිවිවා ?

උ : එහෙමයි උත්තමාණකි.

පු : ඒ ඩී වාර්තාවේ ඒක පැහැදිලිව සටහන් කරල තිබෙනවා?

උ : එහෙමයි.

This person is not indicted as an Appellant in the indictment.

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පු : තමුන් දැක්කේ නැහැ?

උ : මම කියන දේ නොවෙයි මට කියවෙන්නේ. උදේශ කැවත් නැහැ දැන් මට බඩිනි ස්වාමිනි. පටියෙන් ගැහුවේ දිනුෂ්ක.

The witness admitted the fact that the witnesses had failed to mention any names. It is noted that this witness effected the arrest of the Appellants only after conducting an investigation. This indicates that the witnesses had not disclosed or identified any names beforehand. But according to PW 2, she has stated that her husband, the deceased, disclosed the names of the Appellants.

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පු : මොනවද කියපු නම්?

උ : ඔක්කොගේම නම කිවුවා

පු : ඒ කියපු නම වික අපිටත් කියන්න ?

උ : නිලුෂ්ක, දිනේෂ, නිසල්, අනුර දිනුෂ්ක

It should be observed that her statement was recorded only after the death of the deceased. This raises a pertinent question: how did she inform the police of the names of the Appellants when her husband himself had not disclosed any names? The only reasonable inference this Court can draw is that the names were disclosed to her by interested parties for reasons not otherwise apparent. This creates doubt about her truthfulness of the evidence.

Furthermore, we note the following contradictions and omissions, as highlighted by the defence during trial, arising from the statement made to the police and the evidence given at the inquest testimony of PW3, which were not considered by the Learned High Court Judge. Now we refer to the contradictions marked by the defence during the cross-examination of PW 3.

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පු : තමුන් පොලීසියට දෙන ලද ප්‍රකාශයේ එහෙම කිවිවාද ? "එතකොට ඒ ආපු අයගෙන් එක් අයෙකු අඟේ මහත්තය අල්ලා ගත්තා තව දෙන්නෙකු විසින් යනව යකඩ පොලෝක් කැබෙන කම් අඟේ මහත්තයාට ගැහුවා, එහෙම කිවිවාද?

උ : ස්වාමීනි මම එහෙම කිවේ නැහැ. දෙන්නෙක් අල්ලන් හිටියා. එක්කෙනෙත් ගැහුවා කියා මම කට උත්තර දුන්නේ.

පු : පොලීසියට තමුන් දුන්න ප්‍රකාශයේ එහෙම කියා තියෙනවා නම් වැරදිද?

උ : වැරදියි. මම එහෙම කිවිවේ නැහැ. ඒක මම පිළිගෙන්නේ නැහැ.

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පු. එතකොට එක්කෙනයිනේ යකඩ පොල්ලෙන්ගැහුවේ?

උ : එහෙමයි ස්වාමීනි.

පු : ඒ ප්‍රකාශයේම නැවත වතාවක් මෙහෙම කිවිවද ? " මහත්තයට දෙවනි පාර ගහන විට එක් අයෙක් මහත්තයගේ අතින් අල්ලාගෙන හිටියා. අතින් දෙන්නා තමයි යකඩ පොල්ලෙන් ගැහුවේ".

උ : එහෙම සාක්ෂියක් දුන්නා කියල මතක නැ ස්වාමීනි මට.

පු. වෙවිව සිද්ධි අනුව කිවිවොත් ඒ කියලා තිබෙන එක වැරදියි?

උ : වැරදියි.

Page 355 of the brief – 1V6,

පු : 1 වෙනි වතාවෙන් පසුව පලවෙනි සිද්ධියන් පසුව එලියට කියපු තමුන්ලා ඒ එලියේ ඉන්දේදීම පහර දුන්නා කියන එක තමයි ඔබ මේ ගරු අධිකරණයේ දිවුරුම් පිට කියපු ඇත්ත දේ?

උ : එහෙමයි ස්වාමීනි.

පු : ඒක වෙනස් වෙන්න හේතුවක් නෑ. හරිනෙ ?

උ : එහෙමයි ස්වාමීනි.

පු : කොයි වෙලාවකවත් විනාඩි 15 කින් ත්‍රිවිල් එක ආවට පස්සේ ඔබගේ මහත්තයා ගේ ඇතුලේ ඉදන් එලියට ආවෙ නැනෙ. ත්‍රිවිල් එකක් ආවා කියල කියාගෙන?

උ : මතක නෑ ස්වාමීනි මට.

Page 360 of the brief - 1V7,

පු : පොලිසියට කියනවා ඒ පස් දෙනා එනකොට ගේ ඇතුලේ ඉදලා මහත්තයා ආවා. එයාගේ පස්සේන් සියාත් ආවා?

උ : අධිකරණයට කියපු එක නිවැරදියි.

පු : එහෙම නම් තමුන් ඒ පස් දෙනෙක් ආපු අවස්ථාවේදී දෙවන වතාවට මහත්තයාගේ පස්සේන් සියා පැමිණියා කියන එක පොලිසියට කියපු එක වැරදියි?

උ : වැරදියි ස්වාමීනි.

Page 362 of the brief – 1V8,

පු : දැන් මම අහන්නේ අර මරණ පරික්ෂණයේදී 2011.02.25 වැනිදා තමයි ඔබ මරණ පරික්ෂණයේ සාක්ෂි දිලා තියෙන්නේ ඔබ මෙහෙම කිවිවාද "එ අවස්ථාවේ පස් දෙනෙකු එතනට ආවා. ඒ ඇවින් මගේ මහත්තයා ආපහු එලියට ගන්තා" එහෙම කිවිවාද?

උ : එහෙම කිවිවේ නැහැ ස්වාමීනි

Page 362 of the brief – 1V9,

පු : තමුන් මරණ පරික්ෂණයේදී මෙහෙම කිවිවාද "ඒලියට අරන් එක් අයෙක් අතින් අල්ලා ගත්තා තුන්දෙනෙක් එයාට ගැහුවා" එහෙම කිවිවාද?

උ : මතකයක් නැ ස්වාමීනි.

පු : එහෙම කියලා තිබෙනවා නම් ඒක හරිද?

උ : ඒක වැරදියි.

Page 385 of the brief – 1V10,

පු : තමුන් පොලිසියට කළ ප්‍රකාශයේ "ඒ ගහපු අය පාලම්ගොඩ රත්ශම පදිංචි ධනුෂ්ක සහ එයාගේ මල්ලි නිලුෂ්ක යන අයයි. ඒ දෙන්නා එස්.අයි. අනුරගේ පුතාලා දෙදනායි" එහෙම සටහන් වෙලා තියෙනවා නම් හරිද?

උ : එහෙමයි ස්වාමීනි.

පු : එහෙම නම් ධනුෂ්ක කියා කෙනෙක් ගැන කියා තිබෙන්නේ අසත්‍යක් ?

උ : මම කිවිව එයාගේ මල්ලි කියා. එයාගේ නම සඳහන් කළා.

පු : ඇයි පුතාලා දෙදනායි කියා 2 වන වාක්‍යයේ කිවිවේ.. එහෙම නම් කියන්න ඕන පුතෙක් කියලා?

උ : උත්තරයක් නැතු.

පු : තමුන් මේ වාක්‍යය මේ විදියට කිවිවේ නැහැ කියාද තමුන් කියන්නේ?

උ : මම එහෙම කිවේ නැහැ ස්වාමීනි.

Page 388 of the brief – 1V11,

පු : ඔබ මරණ පරික්ෂණයේදී මෙහෙම කිවිවාද, "පසුව මගේ මහත්තයා මම ගේ ඇතුළට එක්කගෙන ආවා" එහෙම කිවිවාද?

උ : මට මතක නෑ ස්වාමිනි.

පු : එහෙම සටහන් වෙලා තියෙනවා නම් තමුන් එහෙම කියලා තියෙනවා කියලා පිළි ගන්නවාද?

උ : මම පිළි ගන්නේ නෑ ස්වාමිනි.

Page 390 of the brief – 1V12,

පු : ත්‍රිවිල් එක ඇතුලේ හිටපු අය ත්‍රිවිල් එක ඇතුලේ ඉදලා ගැහුවා බෝතල් වලින් ?

උ : ත්‍රිවිල් එක ඇතුලේ ඉදගෙන ගැහුවාද කොහේ ඉදලා ගැහුවාද දන්නේ නෑ. පාරෙ ඉදන් තමයි බෝතල් පාරවල් ආවේ.

පු : ත්‍රිවිල් එක ඇතුලේ ඉදන් ගැහුවද කොහේ ඉදන් ගැහුවද තමුන් දන්නේ නෑ?

උ : නෑ

පු : ඒක ඇත්ත නො?

උ : එහෙමයි ස්වාමිනි.

පු : ඒ ත්‍රිවිල් එක බෝතල් එක්කෙනෙක් ගැහුවාද දෙන්නෙක් ගැහුවද එහෙම කියන්න තමුන් දන්නෙත් නෑ?

උ : එව්වර දෙයක් මතක නෑ ස්වාමිනි.

පු : දැන් ඔය තමුන්ට මතක නැති එක නොවයි තමුන් කලින් කිවිව බෝතල් කොතැන ඉදන් කවුරු කොහොම ගැහුවද කියලා දැක්කේ නෑ කියලා නො?

උ : ඒක තමයි ස්වාමිනි.

පු : දැන් මතක නැති ඒවා පොලිසියට කියන්න විදියක් නැත්තේ. ඒ වෙලාවේ ගහපු කොනා දැක්කෙ නැත්තම් බෝතල්වලින් කොහොම ගැහුවද කියලා පොලිසියට විස්තර කරලා කියන්න තමුන්ට හැකියාවක් තියෙන්න විදියක් නැත්තේ. තමුන් මෙහෙම කිවිවාද පොලිසියට පොලිසිය පැමිණිල්ල දෙනකොට. "ත්‍රිවිල් එක් සිටි දෙදෙනාගෙන් එක් අයෙකු බෝතලයකින් දමලා ගැහුවා"? එහෙම කිවිවද පොලිසියට?

උ : මම එහෙම කිවිවා කියලා පිළි ගන්නේ නෑ ස්වාමිනි.

Omissions marked by the defence are as follows,

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පු : ස්වාමි පුරුෂයාට අද උදෙන් බලන්න ගියා රෝහලට බලන්න ගියා රෝහලට බලන්න ගිය වෙලාවේද මේ නම් සඳහන් කළා ඔහුට ගහපු බව පොලිසියට කිවිවද?

උ : කිවිවා ස්වාමිනි.

පු : තමා එක නමක් මේ ගරු අධිකරණයේදී කියපු විත්ති කුඩාවේ සිට හඳුනාගත් එක නමක් ස්වාමි පුරුෂයා තමුන්ට කිවිව බවට පොලිසියට කියා නැති බව?

උ : කිවිවා ස්වාමිනි.

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පු : තමුන්ට මම යෝජනා කළේ අවසාන වරට අර මරණ පරීක්ෂණයේදී ස්වාමිපුරුෂයා රෝහලේදී තමුන්ට ඔහු හඳුනන තමුන් මේ ගරු අධිකරණයේදී කියපු විත්තිකරුවන්ගේ නම කියපු බව එම නම් වලින් කියපු බව සහ එම නම් සඳහන් කරලා නැහැ කියලා මම තමුන්ට යෝජනා කරනවා තමුන් කියලා නැහැ කියලා?

උ : මතක නැහැ.

පු : එහෙම මරණ පරීක්ෂණයේදී තමුන් දිපු සාක්ෂිවල එය සටහන් වෙලා නැත්තාම් එවැනි කිසිම දෙයක් ඔබ පිළිගන්නවා ඔබ කිවිවේ නැහැ කියලා?

උ : මතක නැතුව පිළිගන්න බැහැනේ ස්වාමිනි.

පු : සටහන් වෙලා නැත්තාම් නැත්තාම් ඔබ පිළිගන්නවා නේද ඔබ කිවිවේ නැහැ කියලා?

උ : මතක නැතුව කියන්න අමාරුයි ස්වාමිනි.

පු : තමුන් රෝහල් සේවකාවක් නේද රජයේ වැඩ කරන ?

උ : එහෙමයි.

පු : අර නඩු පොතේ ලියවිලා නැත්තම් තමුන් කියන ඒවා ලියවිලා නේද තියෙන්නේ, තමුන්ගේ අත්සනත් පෙන්තුවා නේද? එහෙම කියලා නැත්තම් තමුන් පිළිගන්නවාද තමුන් කියලා නැහැ කියලා?

ලු : සාක්ෂිකාරීය හඩමින් සිටි.

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පු : එතකොට දැන් මේ නිසල් වන්දන අත්දෙකින් අල්ලන් තිරිය බව තමුන් දැක්ක නමින් අදුනන ඒ වෙලාවේ එතකොට අර මරණ පරික්ෂණය වෙන කොට මරණ පරික්ෂණය දෙන ද්‍රවස් අධිකරණයේ ඉන්න ගමන් කිවිවේ නැහැ නිසල් වන්දන අත් දෙකෙන් අල්ලන් තිරියා කියලා?

ලු : පිළිතුරක් නැත.

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පු : එම සිදුවීම සම්බන්ධයෙන් පොලිසියට ලබා දුන් ප්‍රකාශයේදී තමුන්ගේ ස්වාමිපුරුෂයාට බලු අණ්ඩා නමින් පූද්ගලයෙක් පහරදීමක් කළා කියලා සඳහන් කිරීමක් කරාද?

ලු : එහෙමයි ස්වාමිනි.

පු : මම තමාට යෝජනා කරනවා තමුන් පොලිසියට දුන් ප්‍රකාශයේ කිසිම තැනක බලු අණ්ඩා කියන නමක් සඳහන් කරලා නැහැ කියලා.

ලු : මම පොලිසියට බලු අණ්ඩා නොගොත් අනුර ප්‍රියන්ත කියා සඳහන් කළා ස්වාමිනි.

පු : තමුන් එහෙමවත් කියලා නැහැ කියා මම යෝජනා කරනවා?

ලු : මම එහෙම කිවිවා.

We further note that during the cross-examination, she totally denied that she had seen the 4th Appellant in the scene.

When we analyse the evidence, her evidence is not consistent. We observe there is a contradiction between PW 2 and PW 3. PW 2 states that in the 1st incident, she has identified 2 people, namely 1st and the 5th Appellants. But PW 3 states that she identifies the 1st, 2nd and 5th Appellants. But according to her, she knows the name of the 5th Appellant, but she has not disclosed the name to the police.

With respect to the second incident, PW 2 testified that five individuals arrived in a vehicle. The 1st and 3rd Appellants entered the house and dragged the deceased outside. While they restrained him, the 6th Appellant delivered the blow. However, we note that the PW 2 made no reference to the 4th and 5th Appellants. It is also noted that PW 1, though injured, was unable to identify any of the assailants. However, according to PW 2 and PW 3, all the accused are from the same locality.

The contradictions and omissions noted above, coupled with the fact that the deceased was unable to identify any of the Appellants by name, have undermined the credibility of the eyewitnesses.

Also, we are mindful that the Learned High Court Judge failed to analyse the common intention. He has failed to describe how each individual participated. We are conscious that mere presence at the scene, without active participation, is not sufficient to establish guilt. Also, there is a doubt whether 5 or 6 people came in the second incident. According to PW 3, she has identified only 3 people among them. In the said indictment, there is no mention of the unknown person being also involved. And she further stated that two people hold the deceased, Dinesh Kumara, 2nd Appellant and Nisal Chandana, 3rd Appellant. But she has not identified any other person who hit the deceased.

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පූ : දැන් ඔබ තුන් දෙනෙක් ගැන සඳහන් කර නො. දෙන්නෙක් මහත්තයට අල්ලාගෙන හිටියා.
අනෙක් එක්කෙනා පහර දුන්නා කියලා කිවිවා?

සේ : ඔවුන්

පු : එතැන තව කට්ටිය හිටියද ?

උ : ඒ කට්ටිය මට අදුරගන්න බැර උනා. මම මහත්තයා දිහා බලාගෙන හිටියේ.

පු : ඒ ගොල්ලෝ මීට කළින් දැකලා තියෙනවද ?

උ : නැහැ

The Learned High Court Judge failed to take this version into account. Subsequently, PW2 stated that the deceased had mentioned the names of the Appellants. In relation to her testimony, she asserted that during the first incident, she identified the 1st and 5th Appellant. In the second incident, she claimed that five individuals arrived in a three-wheeler, yet she identified only four of them, and among those, she mentioned merely three names.

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පු : කවුද ඒ පස් දෙනා කියලා තමුන් අදුන ගත්තාද?

උ : භතර දෙනයි හඳුන ගත්ත හමු වුනේ.

පු : කවුද ඒ තමුන් නමින් දන්න අය හිටියද?

උ : මුණෙන් දැක්කම අදුන ගත්තහැකියි

පු : නමින් දන්න පූද්ගලයෝ හිටියද?

උ : ඔව්

පු : කවුද ඒ අය?

උ : දිනුෂ්කයි, නිසලයි, ඉන්දිකයි

Furthermore, she stated that she knew them by name, as they had been known to her for more than seven years, and also that they are from ‘පලමෙනාට’. However, we note that the witness only identified the 1st Appellant, the 3rd Appellant, and the 6th Appellant. She further stated that the 1st and the 3rd Appellants dragged the deceased from the house, and Indika 6th Appellant, only attacked him. She identified the 1st, 2nd, 3rd and 4th Appellants in the identification parade. She stated that the 2nd

Appellant was assisting the 1st Appellant, and the 4th was standing. However, we note that the 2nd and 4th Appellants' names were transcribed after the leading questions were asked by the state.

Upon analysing the testimony of PW 3, it is evident that there is no indication of participation by all six Appellants. Nevertheless, the Learned High Court Judge concluded that each of them was a member of the unlawful assembly.

Upon consideration of the entire body of evidence, I find that the testimony presented before the Learned High Court Judge, particularly that of PW2 and PW3, is wholly devoid of credibility and cannot be accorded any degree of trustworthiness.

I hold that the evidence led by the Prosecution is insufficient to establish the guilt of the Appellants beyond a reasonable doubt. Accordingly, for the reasons set out above, the judgment of the Learned High Court Judge dated 19.02.2020 is hereby set aside.

Consequently, this appeal is allowed. The convictions entered, and the sentences imposed upon the 1st, 2nd, 3rd, 4th, 5th, and 6th Appellants are set aside. The said Appellants are acquitted of the 1st, 2nd, and 4th charges.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL