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

In the matter of an appeal under and in terms of section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Officer-in-Charge
Police Station,
Wellawatta.
Complainant

SC Appeal No. 82/2019
SC SPL LA No. 97/2019
High Court of Colombo
Case No HC MCA 67/2016
Magistrate's Court of Colombo
Case No. 13904/03

Vs.

Beminahennadige Krishantha Ranmal Pieris
No. 41, Mahavidana Mawatha,
Koralawella,
Moratuwa.
Accused

AND BETWEEN

Beminahennadige Krishantha Ranmal Pieris
No. 41, Mahavidana Mawatha,
Koralawella,
Moratuwa.
Accused- Appellant

Vs.

1. Officer-in-Charge
Police Station,
Wellawatta.

2. Hon. Attorney General
Attorney General's
Department,
Colombo 12.
Respondents

AND NOW BETWEEN

Beminahennadige Krishantha
Ranmal Pieris
No. 41, Mahavidana Mawatha,
Koralawella,
Moratuwa.
Accused- Appellant-Appellant

Vs.

1. Officer-in-Charge
Police Station,
Wellawatta.
2. Hon. Attorney General
AttorneyGeneral's
Department,
Colombo 12.
Respondent-Respoondents

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BEFORE : **PRIYANTHA JAYAWARDENA, PC.,J.**
S. THURAIRAJA, PC., J.
ACHALA WENGAPPULI, J.

COUNSEL : Isuru Somadasa instructed by Pramodya Thilakaratne for the Accused-Appellant-Appellant
Ganga Wakishta Arachchi DSG for the Respondent-Respondents.

ARGUED ON : 13th June, 2023

DECIDED ON : 27th February, 2024

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ACHALA WENGAPPULI, J.

This is an appeal preferred by the Accused-Appellant-Appellant, (hereinafter referred to as the Appellant) seeking to set aside the judgment of the Provincial High Court, dismissing his appeal against the conviction entered by the Magistrate's Court.

The Appellant was charged before the Magistrate's Court of *Colombo* for committing criminal intimidation of one *Lakna Somasiri* on 02.08.2014, an offence punishable under Section 486 of the Penal Code. He was also charged for using criminal force on her, in the course of same transaction, and thereby committing an offence punishable under Section 343 of that Code. The Appellant pleaded not guilty to both charges and proceeded to trial. The prosecution led evidence of *Lakna Somasiri, Sujeewa Gamage* and WSI *Perera* of *Wellawatta* Police Station. The Appellant gave evidence under oath, and called *Don Lewis Fernando, Dulani Madurangi Perera* and *Sinnadorai Kuvendra Rajah* as witnesses on his behalf.

The trial Court pronounced its judgment on 26.04.2016, and found the Appellant guilty to the 1st count, while acquitting him of the 2nd count. The Appellant was imposed a term of imprisonment of six months to serve, a fine of Rs. 500.00 with a default sentence of six months. The Appellant was also ordered to pay a sum of Rs. 30,000.00 to the virtual complainant as compensation coupled with a default sentence of six months.

Being aggrieved by the said conviction and sentence, the Appellant preferred an appeal to the Provincial High Court of *Colombo*. One of the grounds of appeal taken up in the petition of appeal by the Appellant was that the trial Court had failed to consider his *alibi*. In dismissing the appeal of the Appellant, the Provincial High Court, rejected the ground of appeal raised by him on *alibi.* The Provincial High Court, whilst affirming the conviction and the sentences imposed on the Appellant, decided to enhance the period of imprisonment imposed on him from six months to one year.

The Appellant sought leave to appeal against the judgment of the Provincial High Court. When the Appellant supported his application seeking leave to appeal on 06.05.2019, this Court granted leave on questions of law, as set out in paragraph 43(a) to (f) in his petition dated 22.03.2019. However, at the hearing of the appeal on 13.06.2023, learned Counsel for the Appellant confined his submissions only to the question of law, as set out in sub paragraph 43(f).

The question of law on which this Court was addressed on by the learned Counsel for the Appellant as well as the leaned Deputy Solicitor General was;

> Did the learned High Court Judge of *Colombo* and the learned Additional Magistrate of *Colombo* fail to properly consider the defence of *alibi* presented by the Appellant ?

In relation to the said question of law, learned Counsel for the Appellant submitted that the learned Judges of the Magistrate's Court as well as of the Provincial High Court misdirected themselves in adopting the view that a plea of *alibi* should create a serious doubt in the prosecution and it is for him to prove his *alibi*. He invited attention of Court to the relevant instances where both Courts, in their respective judgments, used the words "*failure to prove*" when his plea of *alibi* being considered.

The contention of the Appellant on the imposition of a burden by the Courts below to "*prove*" an *alibi* on him are based on certain terminology used in the impugned judgments in dealing with his plea of *alibi*. Hence, the said contention should be considered in the context in which those references were used in the impugned judgments and should also be assessed in the totality of the evidence presented by the parties for its validity.

In view of the said solitary question of law that should be decided in the instant appeal, I shall confine myself to dealing with the evidence relating to the *alibi*.

Perusal of the evidence of the virtual complainant, *Lakna Somasiri,* indicates that the incident of intimidation had taken place at about 12.30 or 1.00 p.m. on 02.08.2014, along *Marine Drive* near the *KFC* outlet at *Wellawatta*. She was returning home after her classes at ACBT campus in a vehicle driven by one of her relatives. When the vehicle became stationary for some time due to heavy traffic jam near the *KFC* outlet, the Appellant came up to the vehicle and threatened her with death. His verbal threat was to the effect that if the complainant and her family were to appear in Court, they all would be killed. Driver of the vehicle, *Sujeewa Sampath* corroborated the virtual complainant.

The reason for the issuance of such a threat was attributed to the two criminal matters that were pending in Courts against the Appellant. They were initiated by the virtual complainant. He was accused of committing rape on virtual complainant (who was a minor at that point of time) in one, while in the other, he was accused of committing cheating in respect of gold jewellery worth Rs. 1,600,000.00.

It was revealed during the evidence of the virtual complainant that she and the Appellant were in a relationship for some time and, when she became pregnant as a result, he refused to marry her. It was also revealed that by then the Appellant was already married and had two children from that marriage. Thereupon, she lodged a complaint against the Appellant resulting in the said two prosecutions.

Despite the lengthy cross examination of the virtual complainant by the Appellant on several other aspects of her evidence, in respect of his *alibi,* the Appellant merely suggested to her that by 1.00. p.m. on the day

of the alleged incident he was nowhere near that place (“ **ඔය කියන සිද්ධිය වූ දවසෙ ප.ව.1.00 වෙද්දි මෙම විත්තිකරු ඔය කියන ස්ථානය අසලකවත් සිටියෙ නැහැ කියල යෝජනා කරනවා?**”) She totally rejected that suggestion. Strangely, this suggestion was not put to the other prosecution witness called by the Appellant. However, it is noted that the Appellant had elicited from the WSI *Sanjeewani Perera* that, in his statement to the Police, he had taken up the position that he was “*elsewhere*” (**සිටියෙ වෙන තැනක**). The official witness’s reply was the Appellant was well within the *Wellawatta* Police area.

The Appellant gave evidence under oath. In his evidence the Appellant stated that he was employed as a supervisor at the *Ocean Colombo* Hotel during the relevant time. He had reported to work on the day of the incident at 8.00 a.m. and worked for continuous twelve hours until his sign off at 8.00 p.m. He was emphatic that after reporting to work, he had no way of leaving his workplace. He added that his movements could be checked from CCTV camera footage and one could even make enquiries from his department head, whether he left workplace during any time.

During cross examination by the prosecution, the Appellant maintained the position that even in an emergency he was not allowed to leave his workplace. According to the Appellant, an employee could leave in an emergency only after properly applying for leave. He conceded that there was only a distance of two kilometres between *KFC Wellawatta* and his place of work. He also admitted that when the Police wanted to record his statement over this incident, he was represented by an Attorney-at-Law.

The Magistrate's Court, in consideration of the evidence relating to the plea of *alibi,* devoted a separate segment in its judgment under that heading to reason out the conclusions it had reached. The trial Court, on its part had guided itself with the applicable principles of law in relation to dealing with an *alibi* and reproduced citations from a long list of judicial precedents. Having rejected the Appellant's evidence, the trial Court arrived at the conclusion that no reasonable doubt had arisen on the case presented by the prosecution ("මෙම නඩුවට අදාලව පැමිණිල්ලේ නඩුව පිළිබඳව කිසිදු සැකයක් මතුවී නැති අතර, පැමිණිල්ල විසින් විත්තිකරුට එරෙහිව තම ස්ථාවරය තහවුරු කර ඇත. එසේ ඔප්පු කොට ඇති බවට මම තීරණය කරමි."). It is clear from this quotation, the trial Court correctly stated the applicable law and its decision as "පැමිණිල්ලේ නඩුව පිළිබඳව කිසිදු සැකයක් මතුවී නැති අතර,".

However, the Appellant referred instances in the 90-page judgment of the trial Court, where references were made relating to the *alibi* of the Appellant, which tends to indicate that it had taken the view that the Appellant had failed to raise a reasonable doubt in the prosecution case. In page 215 of the appeal brief the finding of Court that "පැමිනිල්ල පිළිබඳව අන්‍යාස්ථනියභාවය පදනම් කර ගෙන සැකයක් මතු කිරීමට සමත් වී නොමැති බවද සඳහන් කල යුතුය" could be found. In addition, at page 218, another finding to the effect " එසේම පැමිණිල්ලේ නඩුව පිළිබඳ සැකයක් මතු කිරීමට විත්තියේ සාක්ෂි මගින් පදනමක් ඉදිරිපත් නොවේ නම් අධිකරණයට පැමිණිල්ලේ ස්ථාවරය පිලිගැනීමට හැකි බව පහත සඳහන් කොටසෙන් පෙනී යයි" is followed by " ඒ අනුව විත්තිය කිසිදු ආකාරයකට පැමිණිල්ලේ නඩුව පිලිබඳ සැකයක් මතු කිරීමට සමත් වී නැත" .

The Provincial High Court, in dealing with the ground of appeal raised by the Appellant on his *alibi,* considered the question whether the Appellant presented any evidence to satisfy Court of his *alibi* (අධිකරණය

සැහීමකට පත්වන අයුරින්) and thereupon concurred with the conclusion reached by the trial Court that the Appellant failed to substantiate his *alibi*.

Learned Counsel for the Appellant heavily relied on the wording used by the trial Court as well as the appellate Court, in order to impress upon this Court that in fact there was an undue burden imposed by the Courts below. He sought to buttress the said contention by stating that he was convicted by the trial Court due to his failure to raise a reasonable doubt and that too by substantiating his *alibi*.

The principles of law that are applicable in an instance where an accused takes up an *alibi* had been laid down by superior Courts in multiple judicial pronouncements. Suffice to quote one such instance, where a divisional bench of this Court in ***Mannar Mannan v Republic of Sri Lanka*** (1990) 1 Sri L.R. 280, held (at p. 285) that *"… it was sufficient for the appellant to have raised a reasonable doubt as to the truth of the case for the prosecution, namely that it was the appellant who shot and caused the death of the deceased; that there was no burden whatsoever on the appellant to prove his denial " or to prove that he was elsewhere at the time of the shooting".*

Despite clear pronouncements made by the Courts of Record as to the applicable legal principles, the determinations made by trial Courts on plea of *alibi* are regularly challenged in appeal. As evident from the instant appeal, the primary reason for challenging the determination of the trial Court is not its application of those principles to the given set of circumstances but the way in which the trial Court described its process of reasoning by using certain terminology. The Appellant before us too relies on such references in support of his contention of imposition of a burden.

After perusing the judgment of the trial Court, for the reasons given below, I am of the view that the pronouncements reproduced above were made regarding nature of the evidence presented by the Appellant on his *alibi.*

When the Appellant put across his *alibi* to the virtual complainant, he merely suggested that he was nowhere near the place of the alleged incident. The Appellant did not suggest to any of the prosecution witnesses that he remained within his place of work, *Ocean Colombo* Hotel premises, during the time he was said to have seen near the *KFC*. Only in his examination in chief did the Appellant disclose for the first time where he was during the relevant time.

The Appellant also called the Human Resource Manager of *Ocean Colombo* Hotel, *Madhurangi Fernando,* to give evidence on his behalf. During her evidence, the witness stated that the registers maintained at *Ocean Colombo* Hotel indicate that the Appellant had reported to work on 02.08.2014 at 8.00 a.m. and left at 8.00 p.m. She tendered a copy of an attendance sheet marked as V2, into which the Appellant himself had entered the said details. She further stated that if an employee were to leave the Hotel during office hours, he could do so only after informing the security post located at the rear entrance, being the only exit point available for employees other than the main entrance.

The prosecution, during its cross examination of the defence witness, elicited that she had joined the said establishment at a later point of time and could only state in evidence what the documents indicate. Importantly, she conceded that any employee could leave the workplace

during lunch break. She was unable to state from the records whether or not the Appellant had left the premises during daytime on 02.08.2019.

It appears that the purpose of calling the Human Resource Manager was to support the fact that the Appellant did report to work on 02.08.2019 and left his workplace only at 8.00 p.m. However, the witness conceded to the suggestion by the prosecution that she is unable to provide any evidence whether the Appellant remained within his workplace during 12.30 p.m. to 1.00 p.m.

Interestingly, the efforts made by the Appellant in his evidence to emphasise that it is a near impossibility to leave his workplace during office hours were botched by his own witness, *Madhurangi,* when she conceded to the position suggested by the prosecution that one could leave workplace during office hours without formally applying for leave. She, however, offered a clarification that one could go out in like manner in instances such as to buy a packet of lunch.

On the other hand, the prosecution presented clear unambiguous evidence that the incident had taken place around 12.30 p.m. or 1.00 p.m. near *KFC Wellawatta*. The Appellant himself conceded that there was only a distance of two kilometres from his workplace to the place of the incident. He was also content with merely stating to Court that if needed his position could be verified by viewing CCTV footage and also with his sectional head.

The prosecution that must discharge its burden of proof, in establishing a criminal charge by which it alleged the Appellant had committed an offence. Of the many factors the prosecution must establish

in this regard, the identity of the accused is an important element, which must be established beyond reasonable doubt. In other words, the prosecution must establish that it was the accused, who is present in Court, committed the alleged criminal acts or omission at the crime scene. When a prosecution witness identifies an accused in Court and states that it was that accused, who committed the acts or omissions which constitute the alleged offence, it is inbuilt in that testimony that the accused was physically present at that place to commit the alleged offence.

The question that arises in these circumstances is whether the evidence relating to the *alibi* was sufficient to raise reasonable doubt in the prosecution case ?

When the prosecution alleged that the Appellant was present at the place of the incident to commit the alleged offence, and if the Appellant takes up the plea of *alibi,* that would make his alleged presence at the crime scene, inconsistent with the prosecution claim. The place where the accused claims to be in during the relevant time therefore becomes a relevant fact in issue. This conflict could be termed as an instance of "inconsistent fact" in terms of Section 11 of the Evidence Ordinance.

Illustration (a) of Section 11 of the Evidence Ordinance reads thus;

> "*The question is whether A committed a crime at Colombo on a certain day. The fact that on that day A was at Galle is relevant. The fact that near the time when the crime was committed A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.*"

In relation to the instant appeal, the fact in issue is whether the Appellant was on *Marine Drive* at about 12.30 or 1.00 p.m. near *Wellawatta KFC* threatening the virtual complainant. The prosecution alleges that he was, but that would be inconsistent with the position of the Appellant, who said to have remained within the premises of *Ocean Colombo* Hotel during that time.

The *alibi* set up by the Appellant should be in relation to the place and time period the prosecution had alleged he was. *Coomaraswamy,* in his treatise titled *Law of Evidence* (Vol I, page 278) describing the underlying rationale as to why an *alibi* succeeds as an exception to criminal liability, states thus;

> "*If the element of the time of the crime is definitely fixed, and the accused is shown to have been at some other place at that time, the two facts are mutually inconsistent and the truth of the charge cannot be established.*"

In this context, learned author added that "*[T]he alibi should cover the time of the alleged offence, so as to exclude presence at the place of the offence.*"

It is already noted that there was only a distance of two kilometres between the place of offence and the Appellant's workplace and he could have reached there within a half an hour. In such a situation, the requirement insisted by *Coomaraswamy* assumes greater significance. If the distance between the two places itself makes it impossible for the accused to be present at the scene during the relevant time period, the specifics of time might lose some of its significance. Perhaps this factor could be clarified with an example.

If the Appellant had taken up the position that he was in *Jaffna* in that morning and if there was evidence, which tends to support that position, then that *alibi* might have been sufficient to raise a reasonable doubt in the prosecution's allegation that he was at *Wellawatta.* This is because of the physical impossibility of the Appellant being present in the two given locations during the same time interval, due to sheer distance between the two places. But here is a situation where the Appellant could walk up to *Wellawatta KFC* from his workplace within a matter of and return to the workplace in less than thirty minutes, as his witness conceded. The Appellant did not specifically claim that he was at the Hotel during the relevant time interval. He expected the Court to infer that fact from his evidence. The witness called by him did not clearly support this position either. In fact, her evidence could be taken to be consistent with that of the prosecution.

It is this aspect that the trial Court had commented on by stating **"මෙම නඩුවේ දී විත්තිකරු අදාල ස්ථානයට නොගිය බවට තහවුරු කිරීම සඳහා තමා සේවය කලා වූ ආයතනයේ නිලධාරිනියක් සාක්ෂියට කැඳවා ඇති නමුත් එම සාක්ෂිකාරියගේ සාක්ෂියෙන් පැමිනිල්ල පිළිබඳව අන්‍යාස්ථනියභාවය පදනම් කර ගෙන සැකයක් මතු කිරීමට සමත් වී නොමැති බවද සඳහන් කල යුතුය."**

Furthermore, the requirement of "*[T]he alibi should cover the time of the alleged offence, so as to exclude presence at the place of the offence"* too received consideration of the trial Court. The trial Court, by reproducing the reasoning of the judgment of the Court of Appeal in ***Rupasinghe v Republic of Sri Lanka*** (CA Appeal No. 179/2005), concluded that the said

requirement is not fulfilled by the Appellant in adducing evidence on *alibi*. The Court stated thus;

> " එය පැමිණිල්ලෙන් විස්තර කරන සිද්දිය සිදු වන වේලාවේ ඔහු එම සිද්ධිය සිදු වූ ස්ථානයේ නොව වෙනත් ස්ථානයක සිටි බවත්, එකි විස්තර කරන වේලාවේ ඔහුට එම ස්ථානයට ලඟා වීමට හැකියාව නොමැති තැනක සිටි බවත්, අධිකරණයට අනුමිතියක් ඇති වන ආකාරයෙන් ප්‍රබල සැකයක් විය යුතු බව සඳහන් කර ඇත."

The trial Court, although used the terms such as "ප්‍රබල සැකයක්" and " සැකයක් මතු කිරීමට සමත් වී නොමැත" in translating the quoted text from the judgments, unwittingly left room for the Appellant to contend that a burden was imposed. What the Court really expected from the Appellant was to place sufficient evidence which might create a reasonable doubt in the prosecution case. The process of reasoning adopted by the Court, in to finding the Appellant guilty to the 1st count, negates any such apprehensions that it imposed a burden on him. The relevant pronouncement is reproduced below;

> "පැමිණිල්ලේ නඩුව පිළිබඳ සැකයක් මතු කිරීමට විත්තියේ සාක්ෂි මගින් පදනමක් ඉදිරිපත් නොවේ නම් අධිකරණයට පැමිණිල්ලේ ස්ථාවරය පිලිගැනීමට හැකි බව ... පැමිණිල්ලේ පැසා 01, පැසා 02, පැසා 03, යන සියලුම සාක්ෂිකරුවන්ගේ සාක්ෂි මගින් වුදිතගේ අනන්‍යතාවය සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කර ඇත."

Having carefully perused the impugned judgment of the trial Court, it is my considered view that it had not imposed any burden on the Appellant on his *alibi* and rightly applied the applicable burden of proof beyond reasonable doubt on the prosecution to prove its case before arriving at the verdict of guilty.

It is a fundamental tenet in Criminal Law, that the prosecution must prove its case beyond reasonable doubt while the accused remain silent as there is absolutely no burden on him to establish anything, unless he relies on a general exception. The fact that an accused opted to cross examine the prosecution witnesses, made suggestions to them or even opted to offer evidence does not ordinarily mean that he is obliged to do any of these. The purpose of cross examination of prosecution witnesses by an accused is to provide material for the Court to properly evaluate credibility and reliability of the evidence presented by that witness and not an attempt to "raise" a reasonable doubt in the prosecution case. Upon the material elicited from prosecution witnesses through cross examination by an accused, a Court may or may not entertain a reasonable doubt in the prosecution's case.

Cross examination also is a tool for an accused to elicit from a prosecution witness that there could have been another version to the narrative, as spoken to by that witness. Having suggested a different version to the one presented by the prosecution; an accused may opt to give evidence in support of the positions he suggested. If he failed to offer any evidence in support of the suggestions put to the prosecution, those suggestions would lose its value both in its consistency and content.

Thus, the decision to enter a conviction against the Appellant by the Magistrate's Court as well as the decision to affirm that conviction by the Provincial High Court were made, based on the consideration of the totality of the available evidence. Both Courts found the prosecution evidence to be credible and reliable and opted to reject the Appellant's version of events.

The use of the terms "**ප්‍රබල සැකයක්**" and " **සැකයක් මතු කිරීමට සමත් වී නොමැත**" by the trial Court should be considered in the light of the context in which they were used. Here the trial Court commenting on the insufficiency of the evidence presented before that Court by the Appellant to arise a reasonable doubt in the prosecution version. Similarly, the Provincial High Court too, having identified the issue to be determined in the appeal as whether there was sufficient material presented before Court in relation to plea of *alibi,* went on to state that ("**එකී නොහැකියාව හෝ අන්‍ය ස්ථානිකභාවය පිළිබඳව අධිකරණය සෑහීමකට පත්වන අයුරින් වුදිත වෙනුවෙන් කරුණු ඉදිරිපත් වී තිබේද යන්න සලකා බැලිය යුතුවේ.**")

Learned Deputy Solicitor General, during her submissions referred to the judgment of this Court in ***Asela De Silva & Others v Attorney General*** (SC Appeal No. 14 of 2011 – decided on 17.01.2014). In that appeal, the High Court, commenting over the failure of the appellants to go to the Police and state that they were elsewhere, used the words ("**ඔවුන්ගේ නිර්දෝෂී භාවය ඔප්පු කරන්නට**").

It was contended on behalf of the appellants in that appeal, these words clearly indicative of a serious misdirection on the part of the High Court over the question of burden of proof of an *alibi*. Rejecting this contention, *Marsoof J* stated that " *[I]t is clear from a fuller reading of the judgment of the High Court that the learned High Court Judge was conscious of the fact that the burden of proof was on the prosecution to prove its case beyond reasonable doubt and that in particular the Judge was mindful of the principles of law applicable to the proof of alibi. It is trite law that in a case where an alibi has been pleaded, the Court has to arrive at its finding on a consideration of all*

evidence led at the trial and on a full assessment of all that evidence" and proceeded to dismiss their appeal .

However, in the instant appeal, in relation to the Appellant's evidence, no similar words that are indicative of any imposition of a burden of proof were used by either of the two Courts. Those references referred to earlier on in this judgment were made only when commenting on the nature of evidence that had been adduced by the Appellant on his plea of *alibi*. It is preferable if the Courts used the words " සාධාරණ සැකයක් මතු නොවීයැ", instead of using "සැකයක් මතු කිරීමට" or "මතු නොකළේය" leaving room for similar challenges. However, when considered in the proper context in which they were used by the Courts below, it is evident that these references were made only to signify the fact that no reasonable doubt had arisen in the prosecution case and not to justify an attempt to impose any burden of proof on the Appellant.

In view of the reasoning contained in the preceding paragraphs, I proceed to answer the question of law on which the instant appeal was argued, namely; did the learned High Court Judge of *Colombo* and the learned Additional Magistrate of *Colombo* fail to properly consider the defence of *alibi* presented by the Appellant? in the negative.

Accordingly, the Judgments of the Magistrate's Court as well as of the Provincial High Court are affirmed along with the enhanced sentence imposed by the appellate Court on 13.03.2019. The order made by this Court on 06.05.2019, in enlarging the Appellant on bail pending appeal is hereby vacated.

The appeal of the Appellant is dismissed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC.J.

I agree.

JUDGE OF THE SUPREME COURT

S.THURAIRAJA, PC.J.

I agree.

JUDGE OF THE SUPREME COURT