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

In the matter of an Application for Special Leave to Appeal in terms of Article 127 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

SC Appeal No.115/2014

SC (SPL) LA Application No. 36/2014

CA Appeal No. CA 02/2008

High Court Embilipitiya Case No.199/2006

1. Hiniduma Dahanayakage Siripala *alias* Kiri Mahaththaya.
2. Henapita Gamage Shantha.
3. Kandabige Priyantha *alias* Appuhami.
4. Karivila Kandhage Upul Priyashantha.

Accused

And Now

1. Hiniduma Dahanayakage Siripala *alias* Kiri Mahaththaya.
2. Henapita Gamage Shantha.

Accused-Appellants

Vs.

The Hon. Attorney General

Attorney General's Department,

Colombo12.

Respondent

And Now Between

1. Hiniduma Dahanayakage Siripala *alias* Kiri Mahaththaya.

2. Henapita Gamage Shantha.

Both presently at

Welikada Prison,
Baseline Road,
Borella.

Accused- Appellants-
Petitioners- Appellants

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent-
Respondent

Before: Buwaneka Aluwihare, PC. J.

Priyantha Jayawardena, PC. J.

Murdu N. B. Fernando, PC. J.

Counsel: Indica Mallawarachchi with K. Kugaraja for the 1st and 2nd Accused-Appellants-Appellants.

Priyantha Nawana, PC, ASG with Nayomi Wickremasekara, SSC for the Complainant-Respondent-Respondent.

Argued on: 14.01.2019

Decided on: 22.01.2020

JUDGEMENT

Aluwihare PC. J.,

Introduction

1. This case concerns a challenge to the sustenance of the conviction of the Accused-Appellants due to non-compliance with Section 196 *(Arraignment of Accused)* of the Code of Criminal Procedure Act No. 15 of 1979 as amended (hereinafter referred to as "CCPA"), on the basis that the procedure stipulated under the said provision of the CCPA is a fundamental requirement.

Factual Background

2. The 1st and 2nd Accused-Appellants-Appellants, (hereinafter referred to as the "Appellants") in these proceedings impugned the judgment of the Court of Appeal dated 19.02.2014 and were granted Special Leave to Appeal by this court.

3. The Appellants (along with two others) had been indicted in the High Court of Embilipitiya on three counts, namely; murder, causing grievous hurt and theft. At the conclusion of the trial, the learned trial Judge had convicted the Appellants on the counts of murder and grievous hurt, and had sentenced them accordingly. Being aggrieved by the said judgment, the Appellants preferred an appeal to the Court of Appeal. A divisional bench of three Judges by majority decision dismissed the appeal.

The Issue

4. It is the contention of the Appellants, that the divisional bench of the Court of Appeal, by its majority judgement dated 19.02.2014 had failed to consider and/or appreciate the preliminary objection raised on behalf of the Appellants that, "*the Learned trial Judge had not complied with section 196 of the Criminal Procedure Code (hereinafter also referred to as the CCPA) and as such the conviction could not be sustained"* (Paragraph 4 of the Petition).

5. The Appellants contend that when an Accused appears/is brought before the High Court on an indictment, it is imperative that the learned High Court Judge, before commencing the trial, read and explain the indictment to the Accused and also ask whether he or she is guilty or not guilty of the offence that he or she is indicted for. It was further contended that, since adherence to the procedure laid down in Section 196 of the CCPA is a fundamental and a mandatory requirement, the failure to comply with that requirement vitiates the conviction.

6. Thus, the Appellants state that the Learned trial Judge had misdirected himself in law, causing a grave miscarriage of justice. They state that their Lordships who delivered the majority judgment of the divisional bench of the Court of Appeal erred in law in dismissing the above preliminary objection. Hence, the Appellants contend that the judgment of the learned High Court Judge and the majority judgment of the Court of Appeal should be set aside, and the dissenting judgment- setting aside the convictions of the Appellants and ordering a retrial- should be upheld.

7. Special Leave to Appeal was granted by this Court on the questions of law set out in paragraph 12 (i) and (ii) of the Petition of the Appellants, as well as question number (iii) as suggested by the learned Additional Solicitor General, which was permitted by this Court. The questions are reproduced verbatim;

(I) Is it imperative for the learned High Court Judge, before the commencement of the trial, to read and explain the indictment to the petitioners and also ask whether they are guilty or not of the charge?

(II) Is that a fundamental requirement in terms of Section 196 of the CCPA and does the non-compliance of the said provision vitiate the conviction?

(III) (a) In the circumstances of this case does the non appearance of the words "indictment read and explained" in the record and the non recording of the plea of guilty or not guilty amount to non-compliance of section 196 of the Criminal Procedure Code.

(b) Would any such omission amount to an illegality or is it a mere irregularity?

8. For the reasons set out in this judgement, the above questions of law are answered as follows in the same numerical order;

(I) It is imperative under Section 196 of the CCPA to have the indictment read and explained to the Accused and to ask the Accused whether he or she is guilty or not guilty of the offence charged.

(II) The non-compliance with Section 196 of the CCPA alone *by itself* will not vitiate the conviction. If the conviction is to be vitiated, the Appellant is required to satisfy the court that such non-compliance has "*caused prejudice to the substantial rights of the Accused*" or has "*occasioned a failure of justice*" as stipulated in the proviso to Article 138(1) of the Constitution.

(III) (a) Non-appearance of the words "*indictment read and explained*" in the record and the non-recording of the plea of guilty or not guilty may amount to a non-compliance of section 196 of the Code of Criminal Procedure Act.

(b) In the context of this case, the omission referred to, is an irregularity.

9. For ease of reference, the **Section 196** of the Code Criminal Procedure Act and the **proviso to Article 138(1)** of the Constitution respectively, are reproduced below;

Section 196:-

"When the court is ready to commence the trial, the Accused shall appear or be brought before it and the indictment shall be read and explained to him, and he shall be asked whether he is guilty or not guilty of the offence charged."

Proviso to Article 138(1):-

"Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice." (Emphasis added)

The dissenting Judgement

10. In view of the contention on behalf of the Appellants that the minority judgement of the Court of Appeal should be upheld, I shall consider the conclusions reached in the dissenting judgment, in the Court of Appeal.

11. His Lordship, in the said dissenting judgment, has made a pertinent observation that the wording of Section 182 of the CCPA is almost identical to that of Section 196 of the Code. Section 182 reads as follows;

Section 182(1): -*"Where the Accused is brought or appears before the court the Magistrate shall, if there is sufficient ground for proceeding against the Accused, frame a charge against the Accused."*

Section 182(2): -*"The Magistrate shall read such charge to the Accused and ask him if he has any cause to show why he should not be convicted."*

In the dissenting opinion, three decisions of this court have been considered in holding that compliance with Section 182 of the Code is mandatory and failure to do so vitiates the conviction. In doing so, his Lordship has disagreed with the State's position that no prejudice had been caused to the Accused as a result of the indictment not being read to him. The minority opinion, however, does not *elaborate* the prejudice, if any, suffered by the Appellants.

12. The judgements referred to in the minority opinion are, **David Perera v. The Attorney General** (1997) 1 SLR 390, where his Lordship the Chief Justice, G.P.S. De Silva held: *"Compliance with Section 182 (1) and (2) of the Code of Criminal Procedure Act is imperative. When an amended plaint is filed, a fresh charge sheet should be framed and read out to the Accused. Failure to do so vitiates the conviction."*

The second judgement referred to by his Lordship is **Withanage Gunawardena v. The Attorney General** CA 22/2002 (CA Minutes of 12.11.2003) where her Ladyship Justice Tilakawardane referred the case back to the original court for retrial on the ground that the *"charge had not been read to the Accused."*

In the third case cited, **Abdul Sameem v. The Bribery Commissioner** (1991) 1 SLR 76 his Lordship Justice A. De Z. Gunawardena had held: *"that the failure to frame a charge as required under Section 182 (1) is a violation of a fundamental principle of criminal procedure and is not a defect curable under Section 436 of the Code of Criminal Procedure Act No.15 of 1979."*

13. I am not in any way, at variance with those conclusions reached in the three cases referred to above. However, with all due respect, I take the view that, although **Section 182** ('Particulars of the case to be stated to Accused') under Chapter XVII- 'the Trial of Cases Where a Magistrate's Court has the Power to Try Summarily', and **Section 196** ('Arraignment of an Accused') under Chapter XVIII- 'Trials by High Court' of the CCPA are almost identical, **they differ substantially in relation to their application. The resulting position is that the two provisions resonate**

equally contrasting impacts, and a common approach cannot be taken in evaluating the prejudice that may result due to non-adherence to those statutory provisions.

14. In terms of Section 182 read with Section 139(1) of the CCPA, the Magistrate, upon forming the opinion that there is sufficient ground for proceeding against the Accused, is required to frame a charge (Section 182(1)) and the same is also required to be read to the Accused (Section 182(2)). Reading out the charge to the Accused under Section 182(2) is of essence primarily because it is at that stage that the Magistrate informs the Accused of the allegation against him; it is **the solitary opportunity** which an Accused is afforded to have notice of the offence he is charged with. There is no other procedural provision in the CCPA through which the Accused gets to be informed of the nature of the offence with which he is charged, nor is there a statutory requirement to notify the Accused of the charge in writing. Hence, if the provisions in Sections 182(1) and (2) are not adhered to, then the Accused would be completely deprived of knowing the accusation against him. He would be in no better position than a man blindfolded.

15. At the same time, one also needs to be mindful of the fact that legal representation of an Accused in the Magistrate's Court is not mandatory. The compound effect of all these factors would be that, if there is no record of compliance with Section 182 of the CCPA, it is entirely reasonable to conclude that such failure/non-compliance would prejudice the ***substantial rights*** of the Accused and even cause a failure of justice. The simplest reason being that, it is fundamental for one to know the allegation against him or her beforehand, in order to defend oneself at the trial.

16. In contrast, it is Section 195 of the CCPA that triggers the procedure in the High Court, upon the court receiving an indictment. A duty is cast on the High Court judge to cause the Accused to appear before him, cause a copy of the indictment with its annexes to be served on the Accused, and inform the Accused of the trial

date. In addition, the Accused must be asked by the court and upon asking, if the Accused so requests, an Attorney-at-Law must be assigned to the Accused.

17. Thus, it is clear from the above provision that, in the High Court, the Accused is put on notice of the offence or the offences as the case may be, by the service of the indictment and the other relevant documents relating to the case. More importantly, he or she would not be required to answer any of the charges at the point of service of the indictment and the annexes. Furthermore, the Accused is also afforded adequate time to obtain legal advice if he or she so desires, between the service of the indictment and the date on which he or she is called upon to plead to the indictment.

18. [1]Apart from Section 195, consideration of the proviso to **Section 197 (of the CCPA)** also would be relevant, for the reason that the Accused in this matter were indicted on a count of murder as well. The proviso to the said section reads as follows;

> "*Provided that when the offence so pleaded to is one of murder, the Judge may refuse to receive the plea and cause the trial to proceed in like manner as if the accused had pleaded not guilty."* (Emphasis added)

19. With the amendment to the Code of Criminal Procedure Act in 1988 [Code of Criminal Procedure (Amendment) Act No. 11 of 1988] the *mandatory requirement* to have the offences referred to in the Second Schedule to the Judicature Act No. 2 of 1978 to be tried by a Jury before a judge was removed. Thereafter, it became the rule that all prosecutions on indictment instituted in the High Court should be tried by a judge of that court. **Trial by a jury,** before a judge in relation to an offence set out in the Second Schedule to the Judicature Act was made *optional*. Thus, even a charge of murder (a Second Schedule offence), which hitherto could only be tried before a jury, became triable before a judge sitting without a jury. The drafters of the CCPA had placed Section 205 under the heading

[1] Minor changes were made to paragraphs no. 18 and 19 of this judgement by order of Court dated 14.02.2020 to rectify a few errors both typographical and inadvertent.

"TRIAL BY JURY" for the reason that a charge of murder (before the amendment) was exclusively to be tried by a jury. But, with the changes that were brought about to the procedure of the original enactment, in 1988 and 2005, the proviso to section 197 of the CCPA, which was originally under Section 205 and hitherto applicable only to jury trials, now applies *both* to jury and non-jury trials.

20. The point I wish to make here is that, irrespective of how the Accused had pleaded in the case before us, the court would not have any other option, but to proceed to try the Accused *as if he had not pleaded guilty* for the count of murder, as mandated by the proviso referred to above.

The threshold to be satisfied to obtain relief from the Court of Appeal in Appeals;

21. With the promulgation of the 1978 Constitution, if relief is to be obtained in an appeal, a party must satisfy the threshold requirement laid down in the **proviso to Article 138(1)**, which is placed under the heading "The Court of Appeal". The proviso to the said Article of the Constitution lays down that;

> "*Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice*". (Emphasis is mine.)

22. The proviso aforesaid is couched in mandatory terms and the burden is on the party seeking relief to satisfy the court that the impugned ***error, defect or irregularity*** has either **prejudiced the substantial rights of the parties or has occasioned a failure of justice.** It must be observed that no such Constitutional provision is to be found either in the '1948 Soulbury Constitution' or the 'First Republican Constitution of 1972'.

23. The Constitutional provision embodied in Article 138(1) cannot be overlooked and must be given effect to. None of the decisions (made after 1978) relied upon

by the Appellants with regard to the issue that this court is now called upon to decide, appear to have considered the constitutional provision in the proviso to Article 138(1). It is a well-established canon of interpretation, that the Constitution overrides a statute as the grundnorm. All statutes must be construed in line with the highest law. Judges from time immemorial have in their limited capacity, essayed to fill the gaps whenever it occurred to them, in keeping with the contemporary times, in statutes which do not align with the Constitution. However, such interpretations are not words etched in stone.

24. As the respected American jurist, Justice Benjamin N. Cardozo said, *"The rules and principles of case law have never been treated as final truths, but as working hypotheses, continually retested in those great laboratories of the law, the courts of justice. Every new case is an experiment; and if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered"* (**'The Nature of the Judicial Process', 1921**).

25. The learned counsel on behalf of the Accused-Appellants had heavily relied on a number of decisions handed down by this court as well as by the Court of Appeal, in support of the proposition that the trial should be declared a nullity in view of the non-compliance with Section 196 of the CCPA. However, I am of the view that these decisions need to be *revisited* in light of the Constitutional provision referred to above. As such I wish to deal with the decisions relied upon by the learned counsel for the Appellants.

26. The Court of Appeal, in the case of **Withanage Gunawardena v. The Attorney General** (*supra*) neither made reference to the proviso to the Article 138(1) of the Constitution, nor considered as to whether the non-compliance has occasioned a failure of justice.

27. In the case of **B.S.H Kodithuwakku v. The Republic** 2010 BLR 167(CA 144/2005), relief was granted to the Accused-Appellant due to lack of credible evidence against the Accused-Appellant, and not as a result of non-compliance with section

196 of the CCPA. The decision, therefore is not of direct relevance here. Their Lordships having commented that compliance with Section 196 of the CCPA is imperative, had gone on to hold that "*the error made by the trial Judge on 14.02.2005 had been rectified on 22.02.2005 and that there is sufficient compliance under Section 196 of the CPC*". In view of the said finding, the Court of Appeal had not proceeded to consider the impact the non-compliance would have had on the Accused, nor had the court made reference to Article 138 of the Constitution.

28. The learned counsel for the Accused-Appellants also cited the case decided by the Court of Appeal, **Rajakaruna and another v. The Attorney General** CA 206-207/ 2010. It must be said at the outset, that their Lordships did not consider the effect of the proviso to Article 138(1) of the Constitution while deciding this matter, and furthermore relied on the decision of **David Perera v. The Attorney General** (*supra*) which dealt with the non-compliance with Section 182 of the CCPA. As I have referred to earlier, the effect of non-compliance with Section 182 is not the same as the effect of non-compliance with Section 196 and therefore they have to be treated separately.

29. **Amaratunga Arachchige Nimal Sarathchandra v. The Attorney General** (2008) 2 SLR 35 (CA 169/2003) is of interest to the present discussion. In this case, their Lordships held that the non-compliance with Section 196 has occasioned a failure of justice. Initially, the Accused-Appellant was indicted along with another for having committed the murder of one Nimal. After the trial, the learned High Court Judge convicted the Accused-Appellant but acquitted the other Accused who was indicted along with him. In appeal, the Court of Appeal referred the case against the Accused-Appellant for retrial. When the second trial commenced, he was neither furnished with an amended indictment nor was the charge read over to him. It is to be observed that when the Accused-Appellant faced the second trial, due to the acquittal of the other Accused who was originally indicted along with him, the complexion of the case had changed. Therefore, he ought to have been informed of that fact, either by furnishing an amended indictment, or by reading

over the fresh charge. None of these steps had been taken in the said case. Accordingly, making reference to the proviso to Article 138(1) of the Constitution, the Court of Appeal had evaluated the chronology of that case and satisfied itself that the non-compliance with section 196 of the CCPA has occasioned a failure of justice. The non-compliance with section 196 of the CCPA in that case transcended a mere irregularity and struck at the very root of the Accused's ability to defend himself. In the case before us, however, the Accused-Appellants were tried on the very indictment that was served on them. As such, the case cited can be distinguished from the instant case.

30. It is observed that, although there is a string of authorities on the subject, as referred earlier, most of those judgements have not considered the threshold requirement to succeed in an appeal laid down in Article 138(1) of the Constitution. This requirement was considered by this Court in **Sunil Jayarathna v. The Attorney General**, SC 97/09 (SC Minutes of 29.07.2011) where it was observed that, "*when considering the Proviso to Article 138(1) of the Constitution, it is evident that the judgment of the Learned High Court Judge need not be reversed or interfered on the account of any defect, error or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice".* An Accused would therefore only be entitled to relief if it is shown that the irregularity complained of, had *in fact* prejudiced the substantial rights of the parties or has occasioned a failure of justice. A *mere statement* to that effect would certainly not be sufficient, but it must be shown as to how the failure of justice resulted, as in the case of **Amaratunga** (*supra*).

31. Now I wish to consider the steps taken by the Court in the present case, at the point where the indictments were served on the Appellants, and steps taken thereafter in order to ascertain as to whether any failure of justice was caused to the Appellants due to non-compliance with Section 196 of the CCPA;

a) The journal entry dated 18.10.2002 reflects the receipt of the indictment in the High Court of Rathnapura and that the court ordered that summons be issued on the four Accused with a direction to appear before the court on 13.12.2002.

b) According to the proceedings of 13.12.2002, all four Accused had been present and were represented by their counsel Mr. Justin, Attorney-at-Law. It is also recorded that the indictment and the annexes were handed over to them and the trial was fixed for 05.03.2003-providing them with a gap of almost three months.

c) On 05.03.2003, the trial was postponed to 19.05.2003 and after two other postponements the trial was fixed on 29.09.2003. On the said date, an application was made on behalf of the Accused to have them tried without a jury.

d) On the 20.08.2003 and 03.05.2004, two motions were filed along with the list of defence witnesses on behalf of the Accused and upon entertaining both, the court had directed to have summons issued on the defence witnesses.

e) Consequent to the opening of the High Court of Embilipitiya, the journal entry of 26.06.2006 reflects that the Accused had been directed to appear before the High Court of Embilipitiya on 14.09.2004.

f) On 19.06.2007 the trial had commenced before the High Court of Embilipitiya, with the recording of the evidence of witness no. 2, which was almost five years after the indictment was served on the Accused, and right throughout the Accused had had legal representation. The record, however, does not bear the plea of the Accused.

32. Apparently, there is no record of the indictment being read to the Accused as required in terms of Section 196 of the CCPA. As referred to above, a period of almost five years had elapsed since the indictment was served, before the trial finally commenced and throughout the trial, the Accused had been represented by an Attorney-at-Law.

33. At this point I wish to consider the decision in the case of **R v. Williams (Roy)** (1977), 1 All ER 874, as the issue that came up for adjudication in the said case appears to be almost identical to the case before us, namely ***the omission of formal arraignment.*** The matters that were dealt in the said case were, *the intention of the accused to plead not guilty - no plea taken from Accused - trial proceeding on the basis of a plea of not guilty - omission of arraignment not vitiating trial if a plea of not guilty vicariously offered or tacitly conveyed or if arraignment impliedly waived.*

34. As what transpired in the case of **Williams** (*supra*) bears a resemblance to the case before us, for ease of understanding the rationale in the said case, it would be pertinent to outline briefly its facts to the extent required.

35. The Appellant (Roy Brian Williams) appeared before the Crown Court to stand trial on an indictment. He entered the dock and acknowledged his identity, but before the indictment was put to him and he was called upon to plead to it, counsel for the prosecution intervened to request for an adjournment as one of the key prosecution witnesses was too ill to attend court. As the counsel for the Appellant had no objection to the application made on behalf of the Crown, the trial was postponed. On the next date of trial, not only had the case come up before a different judge, there had been a different clerk, and to make matters worse, different counsel appeared representing both the Crown and the Appellant. The clerk did not ask the Appellant to plead, presumably under the impression that the plea had been taken on the previous trial date, but proceeded to read the indictment to the jury and informed them that Williams had pleaded not guilty to

the indictment. The Appellant had not demurred and the trial proceeded in the normal way as if Williams had pleaded not guilty. The outcome of the trial was that the jury returned a verdict of guilty and Williams was sentenced to a term of imprisonment.

36. The question of law that came up for consideration in **Williams** (*supra*) was, "…*whether the proceedings which resulted in the Appellant's conviction were not a mistrial and a nullity, in that he had never been called on to plead"* (at page 876).

37. The court considered the conduct of the Accused in the course of the trial, in order to ascertain as to whether a plea of not guilty was *"vicariously offered or tacitly conveyed"* by the Accused.

38. Lord Justice Shaw at page 877 in **Williams** (*supra*) made the following observation, which I am of the view is very valid in the context of the case before us, "*It does not seem to this court, at any rate, at the present day, that the same fundamental objection* (that the trial is a nullity) *exists where a plea of not guilty is vicariously offered or tacitly conveyed. It is difficult to conceive what possible prejudice to an Accused person could derive from such procedure.*"

39. Lord Justice Shaw went on to state that, "*Insistence on an express plea of not guilty by the defendant himself is no longer a necessary safeguard of justice where that is the intended plea and where the ensuing proceedings are precisely what they would have been if the Accused had himself made the plea in plain terms.*" While holding that there was an irregularity in the proceedings, Lord Justice Shaw went on to hold that, "*it was not a material irregularity and would afford no ground for setting aside the verdict of the jury*".

40. As I have referred to earlier, the Accused-Appellants were served with the indictment and annexes almost five years prior to the commencement of the trial

proper. In the course of the proceedings on two distinct occasions, lists of defence witnesses were filed and at one point the court was informed that the Accused wished to change their earlier election and now wish to be tried by the judge without a jury. Throughout the proceedings, they had the services of counsel of their choice and when the prosecution commenced leading evidence, neither the Accused-Appellants nor the counsel raised any issue. All these factors are a clear indication that the Accused-Appellants had acted as if they had tendered a plea of not guilty or that they were desirous of tendering such a plea. Furthermore, as referred to earlier, the statutory provision (Section 205 of the CCPA) would have required the court to proceed with the trial, even if the Accused-Appellants had pleaded guilty, in view of the charge of murder. The irregularity relating to the arraignment apart, the proceedings which began, on 19.06.2007 had all the elements of a duly-constituted trial.

41. The learned counsel for the 1st and 2nd Accused-Appellants strenuously argued the importance of trial Judges adhering to the procedure laid down under the law. I fully agree with this view. But as Alexander Pope once said, *"to err is human*". Judges erring in their human capacities is but an inevitable fact of the justice system. What we must be conscious of, is the need to rectify such mistakes and lapses in every such instance where they have caused prejudice to the rights of the parties or have subverted the course of justice. At the same time, we must caution against attaching too great a meaning to a mistake, lest we provide a person with a free ticket out of a conviction which the evidence fully warrant. In this present appeal, no justification was made in regard to any prejudice to the substantial rights of the Accused-Appellants or that the irregularity has occasioned a failure of justice, which are constitutional requirements if the Accused-Appellants are to be granted relief in this case.

42. While the omission of a formal arraignment was unfortunate and regrettable, having taken into account the facts and circumstances peculiar to the case before us, it cannot be said, in my view, that it had prejudiced the substantial rights of

the Accused-Appellants, nor can it be said that it had occasioned a failure of justice. In the circumstances, I have answered the questions of law in the manner detailed in paragraph 8 of this judgement and hold that the procedural irregularity referred to, does not have the effect of vitiating the trial.

43. Considering the above, I see no reason to set aside the majority judgement of the Court of Appeal.

44. For the foregoing reasons the Appeal is dismissed.

Appeal dismissed

JUDGE OF THE SUPREME COURT

JUSTICE PRIYANTHA JAYAWARDENA PC

I agree.

JUDGE OF THE SUPREME COURT

JUSTICE MURDU FERNANDO PC

I agree.

JUDGE OF THE SUPREME COURT