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

In the matter of an application for Special Leave to Appeal to the Supreme Court in terms of Articles 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC APPEAL NO.16/2020

SC SPL LA No. 68/2017

Court of Appeal No. CA 122/2010

High Court of Nuwara-Eliya: 11/09.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT

VS

Jayasinghe Mudiyanselage Roshan Bandaranayaka,

144/B, School Lane,

Kumbalagamuwa,

Walapone.

ACCUSED

AND

Jayasinghe Mudiyanselage Roshan Bandaranayaka,

144/B, School Lane,

Kumbalagamuwa,

Walapone.

ACCUSED-APPELLANT

VS.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT

AND NOW BETWEEN

Jayasinghe Mudiyanselage Roshan Bandaranayaka,

144/B, School Lane,

Kumbalagamuwa,

Walapone.

ACCUSED-APPELLANT -APPELLANT

VS.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

COMPLAINANT-RESPONDENT-RESPONDENT

BEFORE : **S. THURAIRAJA, PC, J;, J;**
YASANTHA KODAGODA, PC, J &
MAHINDA SAMAYAWARDHENA, J.

COUNSEL : Dimuthu Senarath Bandara instructed by Savithri Fernando for the Accused-Appellant-Appellant.
R. Abeysooriya, PC, ASG for the Complainant-Respondent-Respondent.

WRITTEN SUBMISSIONS: Accused-Appellant-Appellant on 9th November 2010.
Complainant-Respondent-Respondent on 9th November 2023.

ARGUED ON : 20th September 2023.

DECIDED ON : 13th December 2023.

S. THURAIRAJA, PC, J.

The Accused-Appellant-Appellant preferred this appeal against the judgment of the Court of dated 17th February 2017 and the special leave was granted on 13th February 2020 on the questions of law set out in paragraphs 12(i), 12(iv) and 12(vii) of the Petition dated 29th March 2017. On the argument day, the Counsel for the Appellant and learned Additional Solicitor General submitted that they would confine their submissions to questions of law no. (i) and (vii) of paragraph 12 of the Petition stated as follows.

> *12(i) Did the learned Trial Judge err in law by failure to consider that the items of circumstantial evidence placed before him were not sufficient to prove the prosecution's case against the appellant beyond reasonable doubt?*

12 (vii) Did their Lordships of the Court of Appeal err in law in holding that the Trial Judge was correct in disbelieving and rejecting the dock statement in the light of the prosecution evidence?

I find it pertinent to set out the material facts of the case prior to addressing the question of law before us.

The Accused-Appellant-Appellant (hereinafter referred to as the "Appellant") to the present appeal, Jayasinghe Mudiyanselage Roshan Bandaranayake, was indicted before the High Court of Nuwara Eliya (hereinafter referred to as the "High Court") by the Honourable Attorney General on the charge of committing the murder of Wakwella Liyana Arachchige Neela Malani Wakwella on or about 27th February 2005 an offence punishable under Section 296 of the Penal Code.

The said Appellant opted to be tried before the High Court without a jury. After the conclusion of the prosecution case, the Appellant chose to make a dock statement and closed his case. The learned High Court Judge convicted the Appellant on the indictment and sentenced him to death. Being dissatisfied with the said conviction and sentence, the Appellant had preferred an appeal to the Court of Appeal and raised the following grounds of appeal.

(i) The items of circumstantial evidence are not sufficient to prove the prosecution's case against the Appellant beyond reasonable doubt.

(ii) *The rejection of dock statement is wrongful and the learned High Court Judge has failed to correctly apply principles governing the evaluation of a dock statement.*

After the conclusion of the arguments, the learned Judges of the Court of Appeal delivered the judgment on 17th February 2017, dismissing the Appeal and affirming the conviction and sentence of the learned High Court Judge. Being aggrieved by the said judgment of the Court of Appeal, the Appellant had preferred the present appeal before the Supreme Court.

As per the submitted facts of the case, the deceased Neela Malani Wakwella was the legally married wife of the Appellant, and according to the evidence of the mother of the Appellant, Kumarihamy (PW2), who was called as a prosecution witness at the High Court trial, the deceased and the Appellant lived in a house in close proximity to the house of Kumarihamy. The Police had commenced the investigation into the sudden death of the deceased Neela Malani Wakwella as a case of suicide by strangulation, but later, her husband (the Appellant) was arrested as the suspect for committing murder of the said deceased.

The entirety of the prosecution's case is based on circumstantial evidence placed before the High Court; therefore, it is important to conduct a proper evaluation of the said circumstantial evidence in order to address the first question of law submitted in this present case. During the trial before the High Court, the prosecution had relied on the evidence of the witnesses namely Godella Waththa Arachchilage Ranjith Dharmasiri (PW 1), Jayasinghe Mudiyanselage Kumarihamy (PW 2), Weerasinghe Mudiyanselage Podi Appuhamy (PW 6), Doctor Ashoka Bandara Senevirathne Consultant Judicial Medical Officer Kandy (PW 16), Retired Inspector of Police Marabedde Rathnayake Tiyunis Gunathilake (PW 9) and Widyarathne Ganithayalage Wasantha Kumari Premaratne (PW 8).

According to the evidence of Kumarihamy (PW 2), who is the mother of the Appellant, the deceased was living alone with the Appellant, on the day the incident occurred. As narrated by PW 2, at around 8.30 pm on the day of the incident, the Appellant had visited her on his way to the paddy field to borrow a torch from her. She further testified that upon hearing the cries of the Appellant around 11.30 pm following his return from the paddy field, she had hastily made her way to the Appellant's house to inquire. At this juncture, PW1 had seen a piece of wire hooked onto the beam of the house and another piece of wire that encircled the deceased's neck. She further testified that she held the deceased by her legs, and when she attempted to bring her down, the wire

from which the deceased was hanging was broken. During this time, the Appellant was outside the house crying for help from the neighbours.

According to the evidence of witness Dharmasiri (PW 1- the Grama Seva Niladhari), he had gone to the house of the deceased on the day in question around midnight on information received from a neighbour. PW 1 found the Appellant seated on a mat outside the house, and discovered the deceased collapsed near a chair, with one of her legs still propped on the said chair. He also observed a piece of wire tied to the roof. He was informed that the deceased had committed suicide by hanging herself. He then had taken steps to the Police about the death by telephone.

The above descriptions of the scene were confirmed by the evidence of the Inspector of Police Gunathilake, who was attached to Walapane Police Station. According to his evidence, the information with regard to the suicide of Wakwella Liyana Arachchige Neela Malani Wakwella was received by the police station around 2.40 A.M. from the Grama Niladhari Dharmasiri, and he had gone to the scene of crime around 3.10 A.M. with a team of police officers consisting of PC 40442, PC 15890, RPC 37718 and the Inquirer into Sudden Deaths (hereinafter sometimes referred to as the "ISP") of the area. Whilst confirming the position of the dead body with the Grama Niladhari, this witness had further observed a piece of wire near the body of the deceased in addition to the wire hanging from the roof. This witness had further observed a wallet with several letters kept on a cabinet closer to the body. Since the witness had observed some significance with the said wallet, he had inspected it and found 27 well-packed love letters written by one Kumari to the Appellant, Roshan Bandaranayake. He had taken the said letters into his custody, and the said letters were identified at the trial before the High Court. According to the witness, the wallet was empty save for the letters.

Even though he had arrived at the scene with the ISP, he felt suspicious of the nature of the wires and the letters found inside the wallet. Thereby, he requested the inquirer to refer the matter to a Magisterial Inquiry.

The prosecution had relied on the evidence of Wasantha Kumari Premarathne (PW 8) to explain the 27 love letters found in close proximity to the dead body of the deceased. According to the evidence of Wasantha Kumari, she had an affair with the Appellant, Roshan Bandaranayake, in or about 2003 and admitted to writing letters to him. PW 8 had identified the letters produced before the court by the prosecution. However, according to this witness, she was unaware of the fact that the Appellant was a married person when she engaged in the affair. When the wife of the accused (the deceased in this case) visited her along with her mother to confront the witness, on her father's advice PW 8 worshipped the deceased to apologise and express her regret, promising to end the affair with the Appellant. According to the witness, since then, she has never written or maintained any relationship with the Appellant, and the letters she received from the Appellant were burnt by her.

As it was submitted, the most important evidence of the prosecution was the evidence of the Consultant Judicial Medical Officer A.B. Seneviratne (PW 16), who held the post-mortem inquiry of the deceased Neela Malani Wakwella. At the post-mortem, Dr. Senevirathne stated that a total of 21 wounds were discovered on the body of the deceased, and there were multiple abrasions on both sides of the neck of the deceased. The Judicial Medical Officer (hereinafter referred to as 'the JMO'), in giving evidence at the trial, confirmed that the death was caused by manual strangulation.

ප්‍ර: ගෙලෙහි තිබූ බාහිර තුවාල සම්බන්ධයෙන් අභ්‍යන්තර තුවාල සම්බන්ධයෙන් නිරීක්ෂණය කළේ මොනවාද?

උ: ගෙලෙහි ඉදිරිපිට ඇති මාංශපේශි වලට ඇති වූ රුධිර වහනය නිසා ඇති වූ තුවාලය. ඉදිරිපස ඇති මාංශපේශි වල ඉහළ භාගයේ මෙම තැළීම් දක්නට ලැබුණා. එමෙන්ම රුධිර ගැලීම් වටා වැඩිපුර දක්නට ලැබුණා. ගෙලෙහි දකුණු පැත්තේ එමෙන්ම ඉදිරිපස ගැඹුරින් පිහිටා තිබූ මාංශපේශි වල තැළීම් හේතුකොට ගෙන තැලීම් තුවාල තිබුණා. තයිරොයිඩ් වල වම් පැත්තේ ඉහලට නෙරා ඇති කොටස බිඳී තිබුණා.

ප්‍ර: ඒ ආකාරයෙන් තුවාළ සිදුවිය හැක්කේ කවර ආකාරයෙන්ද?

උ: ස්වාමීනී, 1-9 දක්වා මා සඳහන් කර තිබෙනවා, ගෙලෙහි වම් පැත්තේ සහ දකුණු පැත්තේ යටි හනුවේ කෝණයට පහළින් පිහිටා තිබූ සීරීම් තුවාළ සම්බන්ධයෙන්. ඊට

අමතරව ඊට යටින් ඇති මාංශ පේශි වල තැලීම් සහ උගුරු දණ්ඩෙහි වම් පස බග්නයක් මා සඳහන් කළා. ඒ ආකාරයට තුවාළ සිදු වී තිබුණේ ගෙල හිර කිරීමෙන්ය.

ප්‍ර: ඔබතුමාගේ පශ්චාත් මරණ පරීක්ෂණ වාර්තාවේ මරණයට හේතුව ලෙස හඳුනාගෙන ඇත්තේ මොකක්ද?

උ: අතින් ගෙල සිර කිරීමක්.

In his evidence, the JMO categorically rejected the contention that this death was a suicide.

ප්‍ර: මෙය එල්ලීමෙන් සිදුකර ගනු ලැබූ සිය දිවි නසා ගැනීමක් ලෙස ඔබට සාක්ෂි හමු උනා ද?

උ: නැත.

ප්‍ර: ඔබතුමාගේ ඒ මතයට පදනම් වූ හේතුවක් තිබෙනවාද?

උ: එසේය.

ප්‍ර: ඒ මොකක්ද?

උ: මා ඉහතින් සඳහන් කළ ආකාරයට ඇයගේ ගෙලෙහි සීරීම් තුවාල දක්නට ලැබුණා. ඉදිරිපස සිට පැත්තට වන්නට. ගෙලෙහි වම් පැත්තට වන්නට සීරීම් තුවාල වැඩි ප%මාණයක් දක්නට ලැබුණා. එමෙන්ම මෙම සීරීම් තුවාල විශාල ප%මාණයේ සීරීම් තුවාල නෙමෙයි. 1 වන තුවාලය සෙන්ටි මීටර් 3.52 යි. අනෙක් හැම එකක්ම කුඩා සීරීම් තුවාල. සමහර ඒවා සිරස් අතට සහ සිරසට ආනතව පිහිටා තිබුණා. එමෙන්ම එම සීරීම් තුවාල වලට පිටින් ඇති මාංශ පේශි කැපීමක් දක්නට ලැබුණා. උගුරු දණ්ඩේ හග්නයක් දක්නට ලැබුනා. එවැනි සීරීම් තුවාල ගෙල වැළලා ගෙන මිය යන අයගේ දක්නට ලැබෙන්නේ නැහැ.

During cross-examination, the JMO stated that,

ප්‍ර: මම නැවත වරක් යෝජනා කරනවා. ඇයම ගෙල වැළලා ගෙන මෙම මරණය සිදු වුණේ කියලා?

උ: නමුත් ගෙල වැළලා ගැනීමේදී දක්නට ලැබෙන ලක්ෂණ කිසිවක් මෙම මෘත ශරීරයේ දක්නට ලැබුණේ නැහැ.

Further, the JMO specifically rejected all suggestions to the effect that the wounds discovered on deceased's body were self-inflicted as a result of sudden change of mind subsequent to the deceased's decision to hang herself. In cross-examination,

ප්‍ර: මේ සීරීම් තුවාල ගෙල ලා ගන්න කොට ඇති වෙන්නේ නැද්ද දගලන අවස්ථාවේදි ඇය විසින්ම මේ සීරීම් තුවාල කර ගන්න හැකියාවක් නැද්ද ගෙල ලා ගෙන මැරෙන්න හදන අවස්ථාවක්.

උ: ගෙල වැල ලා ගන්න අවස්ථාවක මරණය ඉතා ඉක්මනින් සිදු වෙනවා. බොහෝ අවස්ථාවල ඒ පුද්ගලයා අවසන් වශයෙන් ඔහුගේ තීරණය වෙනස් කලහොත් ඔහුටම බැරි වෙනවා ඔහුගේ ජීවිතය බේර ගන්න. එවැනි අවස්ථාවක ඕනී නම් තොණ්ඩුව දා ගන්න අවස්ථාවේදී ඇති වෙන්න පුලුවන්. මේ තරම් විශාල තැලීම් තුවාල ඇති වෙන්නේ නැහැ. මේ සීරීම් තුවාල විසිරී ඇති ආකාරයට සිරස් අතට සහ සිරසට ආනතව.

ප්‍ර: එල්ලිලා පහතට ඇදෙන අවස්ථාවක සීරීම් තුවාල ඇති වීමට හැකියාවක් නැද්ද?

උ: මේ ආකාරයට ඇති වෙන්නේ නැහැ.

Further, he specifically rejected all the suggestions to the effect that the wounds discovered on the body were caused due to falling as a result of the breaking of wires.

ප්‍ර: එම තැනැත්තිය, මිය ගිය තැනැත්තිය බිමට වැටුණා නම් වෛද්‍යතුමා කියන සීරීම් තුවාල ඇති විය හැකියි නේද ?

උ: නැත.

ප්‍ර: උඩකින් බිමට වැටෙන කොට මේ දණහිසට තුවාල සිදු වන්නේ නැද්ද?

උ: විය හැකියි, නමුත් මා නිරීක්ෂණය කළේ මියගිය අයෙකුගේ සිරුරේ තියෙන තුවාල නෙමෙයි. අංක 10 වශයෙන් මම පැහැදිලිව ලකුණක් කළා.

ප්‍ර: මෙය මියගිය තැනැත්තිය උඩක සිට බිමට වැටීමෙන් සිදු විය හැකිද?

උ: පුද්ගලයෙක් ඉහල තැනක සිට පහලට වැටුනාම සීරීම් තුවාල ඇති වෙන්න පුළුවන්. ඊට වැඩිය තැලීම් තුවාල වැඩියි. වැළ මිට, වළලුක දණහිසේ තුවාලවල එවැනි තැලීම් දක්නට ලැබුණේ නැහැ. කලවයේ පමණක් තැලීම් තුවාල මා සඳහන් කරලා තියෙනවා. එය හරස් අතට පිහිටා තිබූ තැලීම් තුවාලයක්.

Moreover, the JMO, giving evidence at the trial, refuted the contention that one of the marks found across the neck of the deceased was a mark caused while the deceased was alive.

ප්‍ර: ඔබතුමා සඳහන් කළා අංක 10 තුවාලය සම්බන්ධයෙන්?

උ: බෙල්ල ප%දේශයේ පිහිටලා තිබුණ ලකුණක් වශයෙන් නිරීක්ෂණය කලේ.

ප්‍ර: එය කවර ආකාරයෙන් ඇති විය හැකි තුවාලයක්ද?

උ: මෙය බෙල්ල මැද හරස් අතට පිහිටලා තිබුණා. නමුත් මෙහි එලෙස ජීවත්ව ඉන්න කෙනෙකුට ගෙල තොණ්ඩුවකින් සිර කිරීමේදී ඇති වන අභ්‍යන්තර තැළුම් තුවාල දක්නට ලැබුණේ නැහැ. ඒ නිසා මට මෙම ලකුණ ජීවත්ව ඉන්න අවස්ථාවේදී මෙම තැනැත්තිය ජීවත්ව සිටින අවස්ථාවක යෙදූ බලයක් හේතු කොට ගෙන ඇති වූ ලකුණක් ලෙස සඳහන් කරන්න බැහැ.

Further, the JMO confirmed the possibility of the above-mentioned mark being caused by the wire found at the place of the incident and marked as a production in Court. Therefore, it is submitted that the wound no.10 found on the body (15cm horizontal mark across the front middle of the neck) of the deceased supports the proposition that the Appellant attempted to hang the body using the wire subsequent to the commission of murder in order to stage it as a case of suicide. In addition, the JMO giving evidence confirmed that there was evidence of a struggle, evidence of the deceased's mouth being covered shut, and evidence of a blow to the head.

ප්‍ර: ප්‍රතිරෝධය පෑම සම්බන්ධයෙන්?

උ: මැය කෙසඟ සිරුරක් තිබුණු තැනැත්තියක්. එවැනි තැනැත්තියක් ඒ තරම් ප්‍රතිරෝධය පෑමේ බලය අඩුයි. එනමුත් ඇය දගලා ඇති බවට ලකුණු යොදා තිබෙනවා. 11 සිට 21 දක්වා ඇති තුවාළ පිහිටලා තිබුණේ ඉහළ බාහුවේ සහ පහළ බාහුවේ නෙරා ඇති වැල මිට, දණහිස, වළලු කර ආශ්‍රිතව. එවැනි අවස්ථාවක ඇය යම්කිසි ආකාරයෙන් දැගලීමක් කර ඇති බවක් පැහැදිලිව පේනවා. එමෙන්ම අංක 2 සහ 3 තුවාල මුඛය ආශ්‍රිතව ඇති තැල්මක්. එය මුඛය වැසීමට පාවිච්චි කලා. ඊට අමතරව අංක 1 තුවාලය හිසට යම්කිසි විදිහකින් පහරක් වැදුණු තුවාලයක්.

I am of the view that in the light of the above evidence by the JMO, the contention raised by the Appellant to the effect that the death was a case of suicide becomes negatory. Further, the contention submitted by the Appellant to the effect that the wounds were the result of a fall or an attempt to reverse the decision to commit suicide also becomes nugatory on the above evidence. Furthermore, considering the number of wounds on the body of the deceased and their nature as explained by the JMO, together with the evidence that shows the effect of a struggle, the deceased's mouth being covered, and a blow to the deceased's head, the irresistible inference one can draw is that this is a clear case of murder. As it was submitted in the evidence of the JMO, the 15 cm mark found on the front-middle portion of the neck of the deceased, which, in his opinion, is a mark created by an act subsequent to the death of the victim or a post-mortem injury, supports the contention that the Appellant attempted to stage an act of suicide after committing the murder.

In this case, as per page 349 of the appeal brief, it is very clearly indicated in the post-mortem report that the signs of hypostasis were visible on the posterior part of the body. However, according to the evidence of PW1, upon her arrival, the body position was face down on the floor.

ප්‍ර: මළ සිරුර තමා දැක්කද?

උ: එහෙමයි.

ප්‍ර: මළ සිරුර කොහොමද තිබුණේ?

උ: පුටුව උඩ කකුලක් තිබුණා. මුහුණ වැහෙන පරිදි වැටී තිබුණා.

As per the evidence of PW1, if the body was face down on the floor, it is impossible to have evidence of hypostasis (post mortem lividity- is the result of sedimenting of the blood in a cadaver due to gravity. It commences as soon as the circulation ceases. This appears and apparent after 30-60 minutes after death) on the posterior part of the body. Therefore, it is very clear from this evidence that the body was shifted after the death occurred. It is also clear that the body was lying somewhere else face up for a considerable period of time before it was shifted to the position in which it was found.

As it was discussed above, the prosecution heavily relied on the circumstantial evidence in establishing the prosecution's case, which can be summarized as follows. In **Sigera vs Attorney General (2011 1 SLR page 201)** the Court held that,

> *"In order to base a conviction on circumstantial evidence, the evidence must be consistent with the guilt of the accused and inconsistent with any other reasonable hypotheses of his innocence. In order to justify an inference of guilt from the circumstantial evidence the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt. (Vide. King Vs Abeywickrama, King Vs Appuhamy, as held in Podisingho Vs King, that in the case of circumstantial evidence it is the duty of the trial judge to tell the jury that such evidence must be totally inconsistent with the innocence of the accused and must only be consistent with his guilt. In Don Sunny Vs Attorney General, it was held that proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence and that if an inference can be drawn which is consistent with the innocence of the accused the accused cannot be convicted."*

In this case, based on the evidence of the JMO, the following was established: the cause of death was due to manual strangulation and not suicide; the external injuries found on the body were compatible with injuries inflicted when resisting manual strangulation; there were no internal injuries found corresponding to the mark found on the neck; and that it was a post-mortem injury. Even though the scene of the crime was arranged to display that the deceased had a fall after she hanged herself, the injuries on her body were not compatible with a fall but instead with resistance to manual strangulation, and the scene of the crime did not match a version of events where the deceased fell after hanging herself due to the fact that her leg was still

propped on a chair. According to the evidence of Kumarihamy (the mother of the Appellant) only the Appellant and the deceased lived in their house. The 27 letters inside the wallet found in close proximity to the body of the deceased were undisturbed and well-packed when recovered by the Police. The recovered letters referred to an affair between the Appellant and witness Kumari, which, according to PW 8, ended two years ago, and consequently, there is no purpose for the appearance of these letters on the scene of a crime unless the person who placed them at the scene of crime wanted to introduce them in order to mislead the investigation.

For the reasons set out above, we see no merit in the first ground of appeal raised by the learned Counsel for the Appellant.

As the final ground of appeal, it was argued by the learned Counsel for the Appellant that the rejection of the dock statement is wrongful and the learned High Court Judge has failed to correctly apply principles governing the evaluation of a dock statement. As discussed above, the Appellant, when explained his rights at the conclusion of the prosecution case, opted to make a dock statement. In his dock statement, the Appellant took up the position that when he returned home from the paddy field at around 11.30 P.M., he found the deceased collapsed near a small chair. He speaks of making an attempt to lift her and, at that time, observed a rope around her neck. At that stage, having been frightened, he called for his mother. No other evidence was placed on behalf of the Appellant before the High Court, and the defence's case was limited to the dock statement.

It is appropriate at this stage to consider the approach adopted by the learned High Court Judge in light of Supreme Court's decisions. In **Queen V. Kularatne 71 NLR 529 at page 531,** it was held that: -

> *"When an unsworn statement is made by the accused from the dock, the jurors must be informed that such statement must be looked upon as evidence, subject however to the infirmity that the accused had*

deliberately refrained from giving sworn testimony. But the jury must also be directed that

(a) if they believe the unsworn statement it must be acted upon,

(b) if it raises a reasonable doubt in their minds about the case for the prosecution, the defence must succeed, and

(c) that it should not be used against another accused.''

As observed by me, the learned High Court Judge was mindful of the medical evidence led at the trial and appropriately gave due consideration to the dock statement in his judgment (at pages 14-17) before rejecting it. In view of the above, it is abundantly clear that the learned High Court Judge had adopted the correct approach in evaluating the dock statement. Therefore, I see no merit in this argument.

Further, same and identical questions of law were raised in his appeal by the Appellant before the Court of Appeal too. The learned Judges of the Court of Appeal dismissed the Appellant's appeal on 17th February 2017. I perused the judgment of the Court of Appeal and I am of the view that the learned Judges of the Court of Appeal comprehensively analysed both grounds of appeal, submissions made by the parties and had come to a correct conclusion by dismissing the Appellant's appeal.

Decision

After careful consideration of the submissions made, facts and circumstances of the instant case as discussed above, there is no basis to interfere with the decision of the learned High Court Judge of Nuwara Eliya and the learned Judges of the Court of Appeal. I hereby dismiss this Appeal, by answering the first and second questions of law negatively. I affirm the conviction and the sentence given by the learned High

Court Judge of Nuwara Eliya dated 02nd November 2010 and the judgment of the learned of the Court of Appeal dated 17th February 2017.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA, PC, J

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT