

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

*In the matter of an appeal to the Supreme Court against  
an order of the High Court-at-Bar, in terms of the  
Section 451 (3) of the Code of Criminal Procedure Act  
No. 15 of 1979, as amended, read with Article 128 of  
the Constitution.*

**SC (TAB) 03/2023**

**HC (TAB) 2900/2021**

Attorney General,  
Attorney General's Department,  
Colombo 12.

**COMPLAINANT**

**Vs**

Pujith Senadhi Bandara Jayasundara  
"Bogamuwa Walawwa",  
Mahamukalanyaya,  
Ibbagamuwa.

**ACCUSED**

***And now between***

Attorney General,  
Attorney General's Department,  
Colombo 12.

**COMPLAINANT-APPELLANT**

**Vs**

Pujith Senadhi Bandara Jayasundara  
"Bogamuwa Walawwa",  
Mahamukalanyaya,  
Ibbagamuwa.

**ACCUSED-RESPONDENT**

**Before** : **P. PADMAN SURASENA, J.**  
**YASANTHA KODAGODA, PC J.**  
**KUMUDINI K. WICKREMASINGHE, J.**  
**MAHINDA SAMAYAWARDHENA, J. &**  
**ARJUNA OBEYESEKERE, J.**

**Counsel** : Priyantha Nawana PC, SASG, with Dileepa Peiris, SDSG, and  
Sudharshana de Silva, DSG, for the Complainant-Appellant

Widura Ranawake with Menaka Warnapura, Dinusha Bandaranayake  
and Roshan Dehiwala for the Accused-Respondent.

**Argued on** : 04-07-2023, 05-07-2023, 06-07-2023, 03-08-2023, 08-08-2023, 11-08-  
2023, 08-09-2023

**Decided on** : 05-11-2024

**P. PADMAN SURASENA J**

On 21-04-2019, seven incidents of suicide bomb explosions occurred in seven different places of this country. These explosions claimed the lives of 268 people and caused injuries to 586 people. The Victims were those gathered at three churches namely: St. Anthony's Church, Kochchikade, Colombo; St. Sebastian's Church, Katuwapitiya in Negombo; Zion Church, Batticaloa, as well as those gathered at four hotels namely: Shangri-La Hotel, Colombo; Kingsbury Hotel, Colombo; Cinnamon Grand Hotel, Colombo; and New Tropical Inn, Dehiwala.

In relation to the above suicide explosions, the Accused-Respondent who held office as the Inspector General of Police, stood indicted before High Court-at-Bar under 855 counts. The charges in these 855 counts could be categorized and tabulated in the following manner:

	<b>Places of the Suicide Bomb Attacks and the Names of the suicide bombers.</b>	<b>Description of Charges.</b>	<b>Count Nos. in the indictment.</b>
1.	<p><u>Place:</u> <i>Shangri La, Colombo 01</i></p> <p><u>Names of the suicide bombers:</u></p> <p>1. Mohamad Cassim Mohamad Zahran alias Zahran Hashim</p> <p>2. Mohamad Ibrahim Ilham Mohamad</p>	<p><i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i></p> <p>Count Nos. 01-33: <u>S.296</u> read with S.102 of the Penal Code;</p>	<p>33 Counts: (Count Nos. 01-33)</p>
		<p>Count No. 34-67: <u>S.300</u> read with S.102 of the Penal Code.</p>	<p>34 Counts: (Count Nos. 34-67)</p>
2.	<p><u>Place:</u> <i>St. Anthony's Church Kochchikade</i></p> <p><u>Names of the suicide bomber:</u> Alawudeen Ahammath Muwath</p>	<p><i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i></p> <p>Count Nos. 68-123: <u>S.296</u> read with S.102 of the Penal Code;</p>	<p>56 Counts: (Count Nos. 68-123)</p>
		<p>Count Nos. 124-268: <u>S.300</u> read with S.102 of the Penal Code.</p>	<p>145 Counts: (Count Nos. 124-268)</p>

3.	<p><u>Place:</u> <i>St. Sebastian's Church Katuwapitiya Negombo</i></p> <p><u>Names of the suicide bomber:</u> Achchi Mohamad Mohamad Hasthun</p>	<p><i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i></p> <p>Count Nos. 269-383: <u>S.296</u> read with S.102 of the Penal Code;</p> <p>Count Nos. 384-690: <u>S.300</u> read with S.102 of the Penal Code.</p>	<p>115 Counts: Count Nos. 269- 383</p> <p>307 Counts: (Count Nos. 384- 690)</p>
4.	<p><u>Place:</u> <i>Kingsbury Hotel, Colombo 01</i></p> <p><u>Names of the suicide bomber:</u> Mohamad Asam Mohamad Mubarak</p>	<p><i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i></p> <p>Count Nos. 691-699: <u>S.296</u> read with S.102 of the Penal Code;</p> <p>Count Nos. 700-722: <u>S.300</u> read with S.102 of the Penal Code.</p>	<p>09 Counts: (Count Nos. 691- 699)</p> <p>23 Counts: Count Nos. 700- 722</p>
5.	<p><u>Place:</u> <i>Cinnamon Grand Hotel, Colombo 03</i></p> <p><u>Names of the suicide bomber:</u> Mohamad Ibrahim Insaf Ahamed</p>	<p><i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i></p> <p>Count Nos. 723-744: <u>S.296</u> read with S.102 of the Penal Code;</p> <p>Count Nos. 745-762: <u>S.300</u> read with S.102 of the Penal Code.</p>	<p>22 Counts: Count Nos. 723- 744</p> <p>18 Counts: Count Nos. 745- 762</p>

6.	<u>Place:</u> Zion Church, Batticaloa	<i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i>	31 Counts: Count Nos. 763-793
	<u>Names of the suicide bomber:</u> Mohamad Nazar Mohamad Asad	Count Nos. 763-793: <u>S.296</u> read with S.102 of the Penal Code; Count Nos. 794-853: <u>S.300</u> read with S.102 of the Penal Code.	60 Counts: Count Nos. 794-853
7.	<u>Place:</u> New Tropical Inn, Dehiwala	<i>Facilitating the suicide bomb attack by illegal omission to prevent the commission of the crimes set out in:</i>	02 Counts: Count Nos. 854-855
	<u>Names of the suicide bombers:</u> Abdul Lathif Jameel Mohamad	Count Nos. 854 and 855: <u>S.296</u> read with S.102 of the Penal Code.	
	Total number of incidents - 07	Number of counts under S. 296 (Murder)	268
		Number of counts under S. 300 (Attempted Murder)	587
		Total Counts	855

The High Court-at-Bar on 22-11-2021 had read out charges to the Accused-Respondent and he had pleaded not guilty to each count upon which the High Court-at-Bar had commenced the trial against him.

The Prosecuting Counsel had made the opening address in terms of Section 199 (1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended (hereinafter sometimes referred to as the CCPA). The admissions<sup>1</sup> were then recorded in terms of Section 420 of the CCPA on several matters namely: the fact that the Accused-Respondent had held the office of the IGP during the relevant time period including *inter alia* the occurrences of the bomb attacks; the contents of the Postmortem reports of the deceased; the contents of the Medico Legal Reports

<sup>1</sup>Admissions recorded on 22-11-2021 at 10.05 am (pages 15-34), High Court-at-Bar Record of Proceedings, at Volume IV.

of the Injured; and the contents of the Government Analyst's Reports relating to the crime scenes.

During the trial in the High Court-at-Bar, the learned Deputy Solicitor General had led the evidence of the following Prosecution Witnesses (PW):

- 1) Nilantha Jayawardena, Director/State Intelligence Service (SIS) (PW1);
- 2) C. D. Wickremaratne, IGP (PW 1214);
- 3) Deshabandu Tennakoon, the then DIG, Western North (PW 35);
- 4) Shirley Aaron, Coordinator (Inquiries) ,Legal Department, Mobitel Pvt. Ltd (PW 1034);
- 5) Nimal Senaratne, Chief Inspector, IGP's Secretariat, Police Headquarters, Colombo (PW 1216); and
- 6) Chamila Damayanthi, Additional Deputy Registrar of the Colombo High Court.

On 20-01-2022, the Prosecution had informed the High Court-at-Bar that it would close its case. The learned High Court Judges upon the Prosecution closing its case on 20-01-2022, had adjourned the proceedings for 18-02-2022 to consider whether they would call for the defence from the Accused-Respondent. On the next date, i.e., on 18-02-2022, the High Court-at-Bar had pronounced the Order in that regard, and decided not to call for the defence from the Accused-Respondent. The High Court-at-Bar acting under Section 200 (1) of the CCPA, had decided to acquit the Accused-Respondent without calling for his defence.

Being aggrieved by the said decision of the High Court-at-Bar, the Attorney General has appealed to this Court seeking to have the said High Court-at-Bar decision set aside by this Court.

#### **CHARGES IN THE INDICTMENT:**

The Attorney General has framed the charges against the Accused-Respondent on the basis that he had abetted the suicide bombers to commit the respective crimes on the respective dates mentioned in several counts in the indictment. The said abetment is alleged to have been committed by an illegal omission on his part, i.e., by his failure to prevent the commission of those respective crimes in his capacity as the Inspector General of Police (IGP), even after he was in receipt of the information more fully set out in the schedule (අ) attached to the indictment. It is on that basis that the Accused-Respondent is alleged to have committed all

the offences set out in the several counts in the indictment served on him. Those charges are in respect of the deaths of persons who became victims of the afore-said bomb explosions punishable under Section 296 read with Section 102 of the Penal Code and in respect of injuries sustained by the persons who became victims of the afore-said bomb explosions punishable under Section 300 read with Section 102 of the Penal Code. It is those charges which have been set out in afore-said 855 counts in the indictment. At the outset, it must be noted that the count No. 511 was in respect of the same deceased person as in count No. 501 and hence the learned Judges of the High Court-at-Bar had disregarded count No. 501.

Let me elaborate a little more on the charges in the indictment which I have already mentioned above. These charges are based on the alleged illegal omission on the part of the Accused-Respondent in his capacity as the Inspector General of Police. The said illegal omission is his failure to take action in respect of the eight pieces of information sent to him in his capacity as the Inspector General of Police. These eight pieces of information which forms the foundation of the charges in the indictment have been distinctly identified in the Schedule attached to the indictment. For easy reference, they are reproduced below.

Information No. 01

The first of the said eight pieces of information is an information sent to the Accused-Respondent by the Director-State Intelligence Service on 09-04-2019. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 01" or "Information No. 01 received on 09-04-2019". The Prosecution has relied on the document produced, marked **P 37** to prove that the Director-State Intelligence Service had in fact sent the Information No. 01 to the Accused-Respondent on 09-04-2019.

Information No. 01 received on 09-04-2019 is as follows,

I. රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් 2019.04.09 දා තමන් වූදින වෙත යොමු කරන ලද ලිපිය

“සුචිත් ජයසුන්දර මහතා  
පොලිස්පති

“ජාතික තව්හින් ජමාත්” නායක මොහොමඩ් සහරාන් විසින් මෙරට මරාගෙන මැරෙන ප්‍රහාරයක් දියත් කිරීමට සැලසුම් කරන බවට ලද තොරතුරක් සම්බන්ධව

ජාතික තව්නීන් ජමාත් (National Thowheeth Jama'ath – NTJ) සංවිධානයේ නායක මොහොමඩ් කාසිම් මොහොමඩ් සහරාන් (Mohamed Cassim Mohamed Zahran) හෙවත් සහරාන් හාෂිම් ඔහුගේ අනුගාමිකයින් හා එක්ව මෙරට තුළ මරාගෙන මැරෙන ප්‍රහාර ඵල්ල කිරීමේ සුදානමක් පවතින බවට විදේශ බුද්ධි අංශයක් විසින් තොරතුරු වාර්තා කර ඇත. මෙම ප්‍රහාර සඳහා මෙරට ප්‍රසිද්ධ කතෝලික පල්ලි සහ ඉන්දියානු මහකොමසාරිස් කාර්යාලය ඉලක්ක කරන බවට වැඩිදුරටත් සඳහන් කර ඇත. (යොමු කරන ලද තොරතුරේ පිටපත - ඇමුණුම "අ")

ඉහත තොරතුර සම්බන්දයෙන් සිදු කරන ලද මූලික සොයාබැලීම් වලදී ප්‍රහාර සැලසුම් කිරීම සඳහා දායකවන බවට තොරතුරේ සඳහන් පුද්ගලයින් අතුරින් කිහිප දෙනෙකු මෙම සේවාවේ බුද්ධි මෙහෙයුම් වලදී හඳුනාගෙන ඇත.

- සහරාන් හාෂිම් (Zahran Hashmi) සහ ශාහිඩ් (Shahid) යන අයවරුන් 2018.12.26 මාවනැල්ල ප්‍රදේශයේ ආගමික ප්‍රතිමා වලට පහරදීමේ සිදුවීම් වලින් පසු ප්‍රදේශයෙන් පලාගොස් දැනට අක්කරෙයිපත්තු, ඔලුවිල් පත්තුවේ රහසිගතව සැඟවී සිටින බවට තොරතුරු වාර්තා වී ඇත.
- රිල්වාන් (Rilwan) යන අය සහරාන්ගේ බාල සොහොයුරා හා ඔහුගේ මතවාදය වටා පිරිස් රැස් කිරීමේ නියමුවා ලෙස කටයුතු කළ කාත්තන්කුඩ් පොලිස් වසමේ කුඩෙයිකාරන් විදිය, මොහිදින් පල්ලිය පාර, නව කාත්තන්කුඩ් 06 ලිපිනයේ පදිංචි මොහොමඩ් කාසිම් මොහොමඩ් රිල්වාන් (ජා.හැ.ප.: 903432624 වී) බවට හඳුනාගෙන ඇත. මෙම පුද්ගලයා 2017.03.10 දින කාත්තන්කුඩ් ප්‍රදේශයේ NTJ සංවිධානය හා තවත් ආගමික සංවිධානයක් අතර ඇතිවූ ගැටුමකින් පසු ප්‍රදේශයෙන් පලාගොස් සැඟවී සිටින බවට දැන ගැනීමට ඇත. මෙලෙස රහසිගතව සැඟවී සිටියද සිය සහෝදරයාගේ මතවාදය වටා පිරිස් රැස් කිරීමට කටයුතු කරමින් ඔහු සමග අක්කරපත්තුව, කුලියාපිටිය, පුත්තලම, මාවනැල්ල සහ තිහාරියයන ප්‍රදේශයේ සංචාරය කර ඇති බවත් දැනට ඔලුවිල් ප්‍රදේශයේ සිය සම්පතමයෙකුගේ නිවසේ රැඳී සිටින බවටත් තොරතුරු ඇත. රිල්වාන් රාත්‍රී කාලයේදී (පැය 2300 - පැය 0400ත්) අංක 309/බී, ගරිනාස් පාර, දෙවන හරස්විදිය, ආරියම්පති නැගෙනහිර, ආරියම්පතියන ලිපිනය වෙත පැමිණෙන බවත් එම ලිපිනයේ මොහුගේ බිරිඳ හා දරුවා රැඳී සිටින බවටත් දැන ගැනීමට ඇත.
- මිල්හාන් (Milhan) ලෙස සඳහන් පුද්ගලයා 'Mohamed Milhan' නමින් සමාජ ජාල ගිණුමක් පවත්වාගෙනයමින් සහරාන්ගේ සමාජ ජාල ගිණුම සමග සබඳතා පවත්වන බවත් 2019.03.15 දින නවසීලන්තයේ කතෝලික ලබ්දිකයෙකු විසින් මුස්ලිම් පල්ලියක් වෙත ඵල්ලකරන ලද ප්‍රහාරයෙන් පසු සිය සමාජ ජාල ගිණුම නිරන්තරයෙන් යාවත්කාලීන කරමින් අන්‍යාගමිකයන් පිළිබඳව ද්වේෂ සහගත ලෙස අදහස් දක්වා ඇති බවටත් නිරීක්ෂණය වී ඇත.



කල්මුණ සහිත විද්‍යාලයෙන් අධ්‍යාපනය හදාරා ඇති මොහොමඩ් මිල්හාන් නමැත්තා 0767788353 දරණ දුරකතන අංකය භාවිතා කරන බවත් සහරාන්ගේ මතවාදය ඔස්සේ යමින් අන්‍යාගමිකයින් කෙරෙහි වෛරී හැගීමකින් කටයුතු කරන්නෙකු බවටත් වාර්තා වී ඇත.

එසේම, යුධ හමුදාවේ හිටපු සෙබලෙකු වන අන්වර් පල්ලිය අසල කාන්තන්කුඩ් 03 පදිංචි බදුර්දීන් මොහොමඩ් මොහිදීන් හෙවත් Army Mohideen (ජා.හැ.ප.: 750683126වී) නමැත්තෙකු ද සහරාන් සමග සමීප සබඳතා පවත්වන බවත් ඉහත 2017.03.10 දින කාන්තන්කුඩ් ප්‍රදේශයේ ගැටුමින් පසු ප්‍රදේශයෙන් පලා ගොස් කුඹුරුමුල පාර, පාසිකුඩා, වාලච්චේන ප්‍රදේශයේ ස්ථානයක රහසිගතව රැදීසිටින බවටත් දැනගැනීමට ඇත. මෙම පුද්ගලයා සිකුරාදා දිනවල රාත්‍රී කාලයේ බිරිඳ සහ දරුවන් බැලීම සඳහා කාන්තන්කුඩ් 03 ඉහත සඳහන් කළ ලිපිනය වෙත පැමිණෙන බවට නිරීක්ෂණය වී ඇත.

සහරාන් යන අය සමාජ ජාල ගිනුම ඔස්සේ සිය අනුගාමිකයින් අභිප්‍රේරණය කිරීමේදී මෙරට කතෝලික පල්ලි සහ ඉන්දියානු මහකොමසාරිස් කාර්යාල ඉලක්ක කරගන්නා ලෙසට නිශ්චිතව සඳහන් කළ බවට මේ වන තෙක් නිරීක්ෂණය වී නොමැති නමුත් සියලු අනුගාමිකයන් ඝාතනය කිරීම උතුම් ආගමික කරුණක් බවත් අන්‍යාගමිකයන් විනාශ කරමින් ඉස්ලාමය ප්‍රචර්ධනය කළ යුතු බවත් සඳහන් කරමින් 2016 වර්ෂයේ සිට සිය සමාජ ජාල සහ ආගමික දේශන හරහා අනුගාමිකයන් අභිප්‍රේරණය කරන බවට නිරීක්ෂණය වී ඇත.

ඉහත සඳහන් තොරතුරු පිළිබඳව රහසිගත පරීක්ෂණ සිදුකරමින් පවතී.

2019.04.09

ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පති  
රාජ්‍ය බුද්ධි සේවාව

පිටපත: ජ්‍යෙ.නි.පො.ප./ අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව”

Information No. 02

The second of the said eight pieces of information is an information sent to the Accused-Respondent by the Director of National Intelligence Service on 09-04-2019 attached with his letter bearing the same date. This information will hereinafter sometimes be referred to in this Judgment as “Information No. 02” or “Information No. 02 received on 09-04-2019”. The Prosecution has relied on the document produced, marked **P 37(a)**, to prove that the Director of National Intelligence had in fact sent the Information No. 02 to the Accused-Respondent on 09-04-2019.

Information No. 02 received on 09-04-2019 is as follows,

- II. රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් ඔහුගේ 2019.04.09 වන දිනැති ලිපිය සමග ඇමුණුම "අ" ලෙස වූදින වෙත යොමු කරන ලද රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ වෙත 2019.04.05 දින දාතමින් විදේශ බුද්ධි මූලාශ්‍රයකින් ලද පහත සඳහන් ලිඛිත තොරතුර

*"As per an input, Sri Lanka based Zahran Hashmi of National Thowheeth Jamaat and his associates are planning to carry out suicide terror attack in Sri Lanka shortly. They are planning to target some important churches. It is further learnt that they have conducted reconnaissance of the Indian High Commission Sri Lanka and it is one of the targets for the planned attack.*

02. *The input indicates that the terrorists may adopt any of the following modes of attack.*

- a. *Suicide Attack*
- b. *Weapon Attack*
- c. *Knife Attack*
- d. *Truck Attack*

03. *It is also learnt that the following are the likely team members of the planned suicide terror attack.*

- i. *Zahran Hashmi*
- ii. *Jal Al Quithal*
- iii. *Rilwan*
- iv. *Sajid Moulavi*
- v. *Shahid*
- vi. *Milhan and others*

4. *The input may kindly be enquired into on priority and a feedback given to us."*

### Information No. 03

The third of the said eight pieces of information is an information sent to the Accused-Respondent by the Chief of National Intelligence on 09-04-2019. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 03" or "Information No. 03 received on 09-04-2019".

Information No. 03 received on 09-04-2019 is as follows,

III. ජාතික බුද්ධි ප්‍රධානි විසින් 2019.04.09 දා තමන් මුද්‍රිත වෙත යොමු කරන ලිපිය.

09<sup>th</sup> April 2019

Mr. Pujith Jayasundara  
Inspector General of Police

INFORMATION OF AN ALLEGED PLA[N]NED OF ATTACK

*Information received by the State Intelligence Service (SIS) reveals that Sri Lanka based Zaharan Hashmi of National Thowheeth Jamaat and his associates are planning to carry out suicide terrorist attack in Sri Lanka shortly. It is also revealed that they are planning to target some important churches. According to the information, Indian High Commission in Sri Lanka is one of the targets among the plan[n]ed attack and reconnaissance has already been conducted.*

*As per the SIS report, these individuals may adopt any of the following modes of attack;*

- *Suicide Attack*
- *Weapon Attack*
- *Knife Attack*
- *Truck Attack*

*Furthermore, it is revealed that the following are the likely team members of the planned suicide terrorist attack.*

- *Zahran Hashmi*
- *Jal Al Quithal*
- *Rilwan*
- *Sajid Moulavi*
- *Shahid*
- *Milhan and others*

*It is important to alert the Law Enforcement agencies to be vigilant concerning the information.*

A N SISIRA MENDIS

Chief of National Intelligence  
For Secretary Defence "

Information No. 04

The fourth of the said eight pieces of information is an information sent to the Accused-Respondent by the Director of National Intelligence on 18-04-2019. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 04" or "Information No. 04 received on 18-04-2019".

Information No. 04 received on 18-04-2019 is as follows,

IV. 2019.04.16 වන දින කාන්තන්කඩ් පොලිස් වසමේ තාලංකුඩා හි දී යතුරු පැදියක් පුපුරුවාහැරීමට අදාළව රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් වූදින වෙත 2019.04.18 දිනැතිව යොමු කළ වාර්තාව

පොලිස්පතිතුමා,  
පොලිස් මූලස්ථානය,

කාන්තන්කඩ් පොලිස් වසමේ තාලංකුඩා ප්‍රදේශයේදී යතුරු පැදියක් පුපුරුවා හැරීම සම්බන්ධවයි

කාන්තන්කඩ් පොලිස් වසමේ තාලංකුඩා ප්‍රදේශයේ පිහිටි අක්කර 43 ක වපසරියකින් යුතු ඉඩමකදී 2019.04.16 දින පැය 21.20ට පමණ යතුරුපැදියක් පුපුරුවා හැර ඇති බවත්, අදාළ පිපිරීමෙන් යතුරුපැදියේ කොටස් මීටර් 50ක දුරකට විසිරී ඇති බවටත් වාර්තා වී ඇත.

මේ සම්බන්දයෙන් සිදුකරනු ලබන ඉදිරි විමර්ශන කටයුතු වලදී පහත කරුණු පිළිබඳව අවධානය යොමු කිරීම සුදුසු වේ.

පුපුරුවා හරින ලද යතුරු පැදියේ වැසි අංකය (ME4JF396FF8007612) ඔස්සේ විමර්ශන සිදු කිරීමේදී අදාළ වැසි අංකය WP BCQ 0304 දරන යතුරු පැදියට අයත් බවත්, එය 2016.04.06 දින සිට අංක 122, නාරම්මිණිය පාර, කැලණිය ලිපිනයේ පදිංචි කෝට්ටේ නිලමිණි ජයකොඩි නමින් මෝටර් රථ ප්‍රවාහන කොමසාරිස් කාර්යාලයේ ලියාපදිංචි වී තිබේ ඇති බවටත් දැනගැනීමට ඇත. එසේම, ලියාපදිංචි අයිතිකරු විසින් දැනට මාස 10කට ඉහත දී අදාළ යතුරුපැදිය අංක 1197, දළුපිටිය පාර, හුණුපිටිය, කැලණිය ලිපිනයේ පිහිටි "අනුසර මෝටර්ස්" වෙත විකිණීම සඳහා විවෘත ලිපි යටතේ ලබා දී ඇති බවට තොරතුරු ඇත.

2019.03.06 දින 0776857702 දරන දුරකථන අංකය භාවිතා කරන පුද්ගලයා සහ තවත් අයෙකු WP BCG 2763 දරන යතුරුපැදියෙන් 'අනුසර මෝටර්ස්' වෙත පැමිණ WP BCQ 0304 දරන යතුරුපැදිය සහ WP BCY 2183 දරන ස්කූට් වර්ගයේ යතුරුපැදිය, ඔවුන් පැමිණි යතුරුපැදියට හුවමාරු කර මුදලින් රු. 220,000/-ක් ලබාදී රැගෙන ගොස් ඇති බවට වාර්තා වී ඇත.

හුවමාරු කරන ලද BCG 2763 දරන යතුරු පැදිය අංක 48/10 සී, 03 වන පටුමග, ග්‍රැන්ඩ්පාස්, කොළඹ 14 ලිපිනයේ පදිංචි බසිර් මොහොමඩ් රිල්වන් (ජා.හැ.අ. 870360436V) යන අයගේ නමින් 2015.05.11 දින සිට මෝටර් රථ ලියාපදිංචි කිරීමේ කොමසාරිස් කාර්යාලයේ ලියාපදිංචිව ඇත.

අදාළ යතුරුපැදි දෙක ලබා ගැනීමේදී ඔවුන්ගේ අනන්‍යතාවය ලෙස අංක 188/එම්, දෙවන පටුමග, රෝහල් පාර, නාගොඩ, කදාන පදිංචි ඇට්ගේ ජෙරාඩ් යසස් ද සිල්වා (ජා.හැ.අ: 981460898 V) යන නම ලබාදී ඇති බවට තොරතුරු ඇත. මෙම ජාතික හැඳුනුම්පත 2018.05.25 දින පුත්තලම පාලවිය ප්‍රදේශයේදී අස්ථානගත වී ඇති බවත්, ඒ පිළිබඳව 2018.05.26 දින කදාන පොලිස් ස්ථානයට පැමිණිල්ලක් කර ඇති බවටත් ඇත ගැනීමට ඇත.

එමෙන්ම ඔහුගේ නමින් ලබාගෙන ඇති දුරකථන අංක කිහිපයක් මාවනැල්ල සිදුවීමට සම්බන්ධ තැනැත්තන් විසින් භාවිතා කර ඇති බවට වන විමර්ශනයක් සඳහා අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව විසින් දැනට මාසයකට පමණ ඉහත දී ඇට්ගේ ජෙරාඩ් යසස් ද සිල්වා නැමැත්තාගෙන් ප්‍රකාශ සටහන් කරගෙන ඇති බවද දැනගැනීමට ඇත.

පුපුරවා හරින ලද යතුරුපැදිය යම් පුපුරණ අයිතමයක් අත්හදා බැලීමට යොදාගෙන ඇති බවත්, 2019.04.16 දින වැසි සහ අකුණු සහිත දිනයක් වීම හේතුවෙන් එම සිදුවීම කෙරෙහි ප්‍රදේශවාසීන්ගේ අවධානය යොමු වී නොමැති බවත් නිරීක්ෂණය වේ.

මේ අතර, මිලදීගන්නා ලද අනෙක් යතුරුපැදිය (WP BYC 2183 දරන ස්කූට් වර්ගයේ යතුරුපැදිය) දැනට දින කිහිපයකට ඉහත දී හුණුපිටිය, වත්තල ප්‍රදේශයේ සංචාරය කරන අයුරු යතුරුපැදි අලෙවි කරන ලද "අනුසර මෝටර්ස්" හිමිකරු නිරීක්ෂණය කර ඇති බවටද, තොරතුරු ඇත.

මාවනැල්ල සිදුවීමට සම්බන්ධ National Thowheeth Jama'ath (NTJ) නායක Mohamed Cassim Mohamed Zaharan ඇතුළුව ජාලය විසින් පුපුරණ අයිතම සකස් කරගැනීම සම්බන්ධයෙන් 2018 ඔක්තෝබර් මස 05, 06 සහ 07 යන දිනවල නුවරඑළිය ප්‍රදේශයේදී උපදෙස් පංති පවත්වා ඇති බවට තොරතුරු වාර්තා වී තිබීමත් Zaharan ගේ ජාලයට සම්බන්ධතයින් සැලකිය යුතු පිරිසක් කාත්තන්කුඩි ප්‍රදේශය කේන්ද්‍ර කරගනිමින් ජීවත් වීමත් සැලකිල්ලට ගැනීමේදී යතුරුපැදියක් අනුසාරයෙන් යම් පිපිරීමක් සිදු කිරීමට අත්හදා බැලීමක් ලෙස මෙය සිදුකර ඇති බව පෙනී යයි.

යතුරුපැදි මිලදී ගැනීම සඳහා ලබාදෙන ලද 0776857702 දරන දුරකථන අංකය 106/ඩී, කොට්ටයිකල්ලාරු දකුණ ලිපිනය පදිංචි එම්. විජිතන් (ජා.හැ.අ: 852732580V) නමින් Dialog සමාගමේ ලියාපදිංචි වී ඇති බවත්, අදාළ අංකය දැනට මඩකලපුව ප්‍රදේශයේ දුරකථන කුළුණු ඔස්සේ ක්‍රියාත්මක වන බවටත් දුරකථන විශ්ලේෂණයේදී අනාවරණය වී ඇත.

තවද, "අනුසර මෝටර්ස්" ආයතනයෙන් මිලදීගෙන ඇති අනෙක් යතුරුපැදිය (WP BCY 2183) සම්බන්ධයෙන් දිවයිනේ පොලිස් ස්ථාන දැනුවත් කිරීම යෝග්‍ය බව නිරීක්ෂනය වේ.

2019.04.18

(අත්සන)

ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පති  
රාජ්‍ය බුද්ධි සේවාව"

**Information No. 05**

The fifth of the said eight pieces of information is an information sent to the Accused-Respondent by the Director-National Intelligence Service on 19-04-2019. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 05" or "Information No. 05 received on 19-04-2019".

Information No. 05 received on 19-04-2019 is as follows:

- V. Mohammed Casim Mohammed Zaharanගේ සම්පතමයෙකු මෙන් ම **2019.04.16** දින කාන්තන්කුඩ් හි දී යතුරු පැදියක් පුපුරුවා හැරීම සම්බන්ධ පුද්ගලයෙකු පිළිබඳව රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් වූදින වෙත **2019.04.19** දිනැතිව යොමු කළ වාර්තාව

පොලිස්පතිතුමා,  
පොලිස් මූලස්ථානය

**Mohammed Casim Mohammed Zahran ගේ සම්පතමයෙකු මෙන් ම **2019.04.16****

දින කාන්තන්කුඩ් හි දී යතුරු පැදියක් පුපුරුවා හැරීම සම්බන්ධ පුද්ගලයෙකු  
පිළිබඳව

2019.04.18 දින යොමු කරන ලද අංක එස් 1758/2019 දරන ලිපිය හා බැඳේ.

National Thowheeth Jama'ath (NTJ) නායක Mohammed Casim Mohammed Zahran ගේ ලේකම්වරයෙකු ලෙස කටයුතු කර ඇති තල්ගහවැව, රඹුව, මැදවව්විය ලිපිනය වර්තමානයේ පදිංචිව සිටින Abdul Latheef Mohammed Shafi (NIC No. 730784724V) නැමැත්තා කාන්තන්කුඩ්

ප්‍රදේශයේ රැදී සිට ඇති බවත්, 2017.03.10 දින NTJ හා ඉස්නිහදේ අන්ලුල් සුන්තුල් වල්පමාන් සංවිධානය අතර කාන්තන්කුඩ් හි දී ඇති වූ ගැටුමෙන් පසු ප්‍රදේශයෙන් පලා ගොස් Zahran ඇතුළු ජාලයට පහසුකම් සපයන්නෙකු ලෙස කටයුතු කරන බවටත් තොරතුරු ඇත.

Zahran ඇතුළු එම ජාලයේ කටයුතු සඳහා සක්‍රීය ලෙස සම්බන්ධ වී සිටින මොහු කොළඹ ප්‍රදේශයේ රැකියාවක නිරතව සිටින බව ප්‍රදේශවාසීන් වෙත සඳහන් කර ඇති බවත්, සතියකට දින කිහිපයක් බිරිඳ සහ දරුවන් බැලීම සඳහා ඉහත මැදවිච්චිය ලිපිනයට පැමිණෙන බවටත් දැනගැනීමට ඇත.

එසේ ම, මොහු 0768925556 දරන දුරකථනය භාවිතා කරන අතර එමගින් 2018.11.01 සිට 2019.04.13 දින දක්වා කාලය තුළ පහත විදේශීය දුරකථන අංක සමග සම්බන්ධතා පවත්වා ඇති බව දුරකථන විශ්ලේෂණයේ දී නිරීක්ෂණය වී ඇත.

අනු අංක	දුරකතන අංක	රට	ඇමතුම් වාර ගණන
01	+76761875025	Kazakhstan or Russia	105
02	+76772345678	Kazakhstan or Russia	10
03	+76768225555	Kazakhstan or Russia	07
04	+76763528384	Kazakhstan or Russia	01
05	+76762255362	Kazakhstan or Russia	01
06	+8220035315	South Korea	01

එමෙන් ම මොහු විසින් භාවිතා කරන ලද අංක WP BCG 2763 දරන යතුරු පැදිය 2019.03.06 වන දින අංක 1197, දළපිටිය පාර, හුණුපිටිය, කැලණිය ලිපිනය පිහිටි අනුසර මෝටර්ස් වෙත ලබා දී එම ස්ථානයෙන් අංක WP BCQ 0304 සහ අංක WP BCY 2183 දරන ස්කූට් වර්ගයේ යතුරුපැදි දෙකක් හුවමාරු පදනම යටතේ ලබාගෙන ඇති බවත්, එලෙස ලබා ගන්නා ලද අංක WP BCQ 0304 දරන යතුරු පැදිය 2019.04.16 දින කාන්තන්කුඩ් තාලංකුඩා ප්‍රදේශයේ දී පුපුරවා හැර ඇති බවටත් වාර්තා වී ඇත.

තවද විෂයගත පුද්ගලයා Zahran විසින් ලබා දෙන උපදෙස් පරිදි කටයුතු කිරීමෙන් පසු විදේශගතවීමේ අපේක්ෂාවෙන් 2019.01.18 දින අංක N 8142011 දරන විදේශ ගමන් බලපත්‍රය එක්දින සේවාව ඔස්සේ ලබාගෙන ඇති බවට දැනගැනීමට ඇත.

මොහු විසින් 2004.01.13 දින අංක N 3104028 දරන විදේශ ගමන් බලපත්‍රයක් ලබාගෙන ඇති අතර එය කල් ඉකුත් වුවද නව විදේශ ගමන් බලපත්‍රයක් ලබා ගැනීමට එම අවස්ථාවේ කටයුතු නොකර 2019.01.18 දින එක්දින සේවාව ඔස්සේ නව විදේශ ගමන් බලපත්‍රයක් ලබා ගැනීම සැකයට භාජනය වේ.

Zahran ගේ ජාලයට සම්බන්ධ පුද්ගලයෙකු වන මොහු පිළිබඳව විමර්ශන සිදු කිරීමෙන් Zahran ගේ විවිද සැලසුම් සහ අදාළ යතුරු පැදිය පුපුරවා හැරීම පිළිබඳව තොරතුරු අනාවරණය කරගැනීමට හැකි බව නිරීක්ෂණය වේ.

(අත්සන)

2019.04.19

ජෝෂ් ඩ නියෝජ්‍ය පොලිස්පති  
රාජ්‍ය බුද්ධි සේවාව

පිටපත: ජෝෂ් ඩ නියෝජ්‍ය පොලිස්පතිතුමා අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව"

Information No. 06

The sixth of the said eight pieces of information is an information sent to the Accused-Respondent by the Director-National Intelligence Service on 20-04-2019. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 06" or "Information No. 06 received on 20-04-2019".

Information No. 06 received on 20-04-2019 is as follows,

VI. ජාතික තවහින් ජමාත් සංවිධානයේ නායක Mohammed Casim Mohammed Zahran නැමැත්තා පිළිබඳව රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් වූදින වෙත 2019.04.20 දිනැතිව යොමු කළ වාර්තාව

"පොලිස්පතිතුමා  
පොලිස් මූලස්ථානය

ජාතික තවහින් ජමාත් සංවිධානය නායක Mohammed Casim Mohammed Zahran නැමැත්තා පිළිබඳව

Mohammed Casim Mohammed Zahran යන අය 2019.03.29 වන දින පැය 1500-1530 ත් අතර කාලය තුළ අක්කරපත්තුව, පල්ලිකුඩ්පිපු ප්‍රදේශයේ දී තවත් පුද්ගලයෙකු සමග යතුරු



පැදියකින් ගමන් කරන අයුරු එම ප්‍රදේශයේ අරාබි විද්‍යාලයක රැකියාවක නියුතු සාහුල් හමීඩ් (0757446514) නැමති පුද්ගලයෙකුට නිරීක්ෂණය වී ඇති බවට තොරතුරු ඇත.

එසේම අමුත්තන් නගර, ඔලිව්ලි ලිපිනයේ පිහිටි අක්කර 05 ක පමණ වපසරියකින් යුතු ගොවිපලක Zahran රැදී සිටින අයුරු එම ප්‍රදේශයේ පදිංචි මිස්බා (0777926507) යන අයට දින කිහිපයකට ඉහත දී නිරීක්ෂණය වී ඇති බවත් අදාළ පුද්ගලයාගේ බිරිද බිත්තර මිලදී ගැනීම සඳහා ගොවිපල වෙත ගිය අවස්ථාවේ Zahran දරුවෙකු සමග එහි පිහිටි නිවසක රැදී සිටි අයුරු දැක ඇති බවටත් දැනගැනීමට ඇත.

මාවනැල්ල සිදුවීමට සම්බන්ධ ප්‍රධාන සැකකරුවන් දෙදෙනා අතරින් Mohamed Ibrahim Saheed Abdul Haq (බාල සහෝදරයා) නැමැත්තා Zahran සමග රැදී සිටින බවත් Zahran ගේ ජාලයට සම්බන්ධ පුද්ගලයින් (ගම් ප්‍රදේශ වලින් පලා ගොස් සිටින්නන්) කිහිප දෙනෙකු සහිත ඉල්මා (765990734V) නැමැත්තියට අයත් මාතලේ, මරුක්කොන ප්‍රදේශයේ පිහිටි නිවසක රැදී සිටින බවටත් තොරතුරු ඇත.

Zahran ගේ උපදෙස් මත Zahran ගේ සහෝදරයාගේ බිරිදගේ පියා වන මොහොමඩ් සරිබු ආදම් ලෙබ්බේ @ ගහුර් (641832421 V) නැමැත්තා විසින් එගොඩපත්තුව, රිදීතැන්න, වැලිකන්ද ලිපිනයේ අක්කර 25 ක වපසරියකින් යුතු කැලැබද ඉඩමක් රු.2,000,000/- ක මුදලක් ගෙවා අංක 25, රිදීතැන්න, පුනානි, වාලව්වෙන පදිංචි මොහොමඩ් සාහි මොහිදීන් අබ්දුල් කාදර් (712972556V) යන අයගේ නමින් 2018.10.04 දින අංක 253/බී, පාසල් හන්දිය, අක්කරපත්තුව පදිංචි මොහොමඩ් කාසිම් කාල්සීන් (651341035V) නැමැත්තාගෙන් පවරාගෙන ඇති බවට වාර්තා වී ඇත.

මෙම ඉඩම ශ්‍රී ලංකා මහවැලි අධිකාරියට අයත් ඉඩම් කැබැල්ලක් වන අතර, එය සංවර්ධන කර පවත්වාගෙන යාම සඳහා බදු පදනම යටතේ මොහොමඩ් කාසිම් කාල්සීන් නැමැත්තා විසින් මොහොමඩ් සාහි මොහිදීන් අබ්දුල් කාදර් නැමැත්තා 2018.10.05, 06 සහ 07 යන දින වල නුවරඑළිය ප්‍රදේශයේ ස්ථානයක දී Zahran පවත්වා ඇති අභිප්‍රේරණ උපදෙස් පත්තිය සඳහා ද සහභාගී වී ඇති බවට තොරතුරු ඇත.

මේ අතර Zahran විසින් භාවිතා කරන ලද NW PA 2855 දරන වෑන් රථය නාරම් මල ප්‍රදේශයේ පුද්ගලයෙකුට විකිණීම සඳහා 2019.01.20 දින මොහොමඩ් සරිබු ආදම් ලෙබ්බේ @ ගහුර් යන අය විසින් මඩකලපුව ප්‍රදේශය සිට රැගෙනවිත් ඇති බවත්, වෑන් රථය විකිණීමෙන් පසු ඔහු සිය දුරකතනය විසන්ධි නර නව දුරකතන අංකයක් භාවිතා කරන බවත්, ප්‍රදේශයෙන් පලා ගොස් දැනට Zahran සමග රැදී සිටින බවටත් දැනගැනීමට ඇත.

Zahran ගේ බිරිඳ වන අබ්දුල් කාදර් ෆාතිමා හාදියා @ සිත්තියා (955944666V) නැමැත්තිය 2019.02.20 දින දක්වා රැඳී සිටි කැකුණගොල්ල කටුපොත ලිපිනයේ පිහිටි නිවසින් පිටවයන අවස්ථාවේ එම නිවසේ රැඳී සිටි ඉස්ලාමය වැලඳගත් මායිම පාර, මණ්කාඩු, වෙට්ටිකාලයම්, කලවංචිකුඩි ලිපිනයේ පදිංචි මහේන්ද්‍රන් පුලස්තිනි (965672702V) නමැති ද්‍රවිඩ කාන්තාවද ගමන් කර ඇති බවත් Zahran සිය බිරිඳගේ සහයට අදාළ කාන්තාව කැකුණගොල්ල නිවසේ රඳවා සිට ඇති බවටත් වාර්තා වී ඇත.

මහේන්ද්‍රන් පුලස්තිනි නමැති ද්‍රවිඩ කාන්තාව අංක 267A , ධීවර සමිතිය පාර, වාලව්වේන ලිපිනයේ පදිංචි අවිච් මොහොම්මදු හස්තුන් (940462916V) නැමැත්තා සමග විවාහවීමෙන් පසු සාරා ජෙස්මින් ලෙස නම භාවිතා කර ඇති බවත් අදාළ පුද්ගලයා Zahran ගේ අනුගාමිකයෙකු ලෙස කටයුතු කරන්නෙකු බවටත් දැන් ගැනීමට ඇත.

මහේන්ද්‍රන් පුලස්තිනි @ සාරා ජෙස්මින් නැමැත්තියගේ මව විදේශගතව සිටි ඇති බවත් 2019.02.20 දින 0767495087 දරන දුරකථනයෙන් සිය මවට ඇමතුමක් ලබා ගෙන තම දුරකථනය අළුත්වැඩියාවක් සඳහා දුරකථන අළුත්වැඩියා කරන ස්ථානයකට ලබා දෙන බවත් නැවත දුරකථනයක් ලබා ගැනීමෙන් පසු ඇමතුමක් ලබා ගන්නා බවට ප්‍රකාශ කර ඇතත් එදින සිට මේ දක්වා ඇමතුම් ලබාගෙන නොමැති බවටත් වාර්තාවී ඇත. මෙම කාන්තාව සහ ස්වාමීපුරුෂයා 0765272770, 0765274770, 0711390432 සහ 0778828304 දරන දුරකථන භාවිතා කර ඇති බවටද තොරතුරු ඇත.

2017.03.10 දින කාන්තන්කුඩි සිදුවීමෙන් පසු Zahran සමග ප්‍රදේශයෙන් පලා යන ලද Zahran ගේ බාල සොහොයුරු වන Mohammed Cassin Mohammed Rilwan (903432624V) නැමැත්තා (වරෙන්තු නිකුත්වී ඇති) සතියකට දින කිහිපයක් රාත්‍රී [කාලයේ] සිය බිරිඳ පදිංචි අංක 309/බී, ෆරිනාස් පාර, දෙවන හරස් වීදිය, ආරියම්පති ලිපිනයේ පිහිටි නිවසට පැමිණෙන බවත් මොහු මෙලෙස පැමිණීමේදී තවත් පුද්ගලයින් සිටි දෙනෙකු යතුරුපැදි දෙකකින් මොහුගේ ආරක්ෂාවට පැමිණෙන බවත් පැය 2300ට පමණ නිවසට පැමිණ පසු දින පැය 0400 දක්වා එම නිවසේ රැඳී සිටින බවටත් දැනගැනීමට ඇත.

එසේම, Zahran ගේ සමීපතමයකු මෙන්ම 2017.03.10 සිදුවීමේ සැකකරුවෙකු වන අන්වර් පල්ලිය අසල, කාන්තන්කුඩි 03 පදිංචි Badurdeen Mohamed Mohideen @ Army Mohideen (750683126V) නමැත්තාද (වරෙන්තු නිකුත් වී ඇති) අදාළ සිදුවීමෙන් පසු ප්‍රදේශයෙන් පලාගොස් සැඟව සිටින අතර, දැනට කුඹුරුමුල පාර, පාසිකුඩා, වාලව්වේන ප්‍රදේශයේ මුහුදට යාබද ස්ථානයක රහසිගතව සැඟව සිටින බවත් සිකුරාදා දිනවල රාත්‍රී කාලයේ බිරිඳ සහ දරුවන් බැලීම සඳහා කාන්තන්කුඩි පිහිටි නිවසට පැමිණෙන බවටත් බුද්ධි නිරීක්ෂණයකදී හඳුනාගෙන ඇත.

මෙම පුද්ගලයා සතුව T 56 සහ පිස්තෝල වර්ගයේ ගිනි අවි තිබෙන බවට තොරතුරු ඇති අතර, වරෙන්තු නිකුත් වී ඇති අයෙකු වුව ද කාන්තන්කුඩ් පොලිස් ස්ථානයේ නිලධාරීන් සමඟ සමීප සම්බන්ධතා පැවැත්වීම හේතුවෙන් මොහු අත් අඩංගුවට ගැනීමට එම පොලිස් ස්ථානයේ නිලධාරීන් කටයුතු නොකරන බවට තොරතුරු ඇත.

එමෙන්ම, Zahran ගේ සහෝදරයෙකු වන කුඩෙයිකාරන් පටුමග, මොහිදීන් ජුම්මා පල්ලිය පාර, කාන්තන්කුඩ් 03 පදිංචි Mohammed Cassim Mohammed Zaini @ සින්න මවුලවි (883093984V) යන අය NTJ සංවිධානයට හිතවාදී කාන්තන්කුඩ් පදිංචි මොහොමඩ් අසීර් (0757711155) නැමැත්තාගෙන් 2019.04.07 දින රු. 100,000/- ක මුදලක් ඉල්ලා ඇති බවත්, අදාළ මුදල අවශ්‍ය වන්නේ කුමක් සඳහා ද? යන්න අසීමි නැමැත්තා විමසූ අවස්ථාවේ අක්කරපත්තු පදිංචි තවුසර් නැමැත්තෙකු වෙතින් "වැඩකට අවශ්‍ය Item කිහිපයක් මිලදී ගැනීමට" බව සඳහන් කර ඇති බවටත් දැන ගැනීමට ඇත.

මාවනැල්ල සිදුවීමට සම්බන්ධ පළාගොස් සිටින ප්‍රධාන සැකකරුවෙකු වන Mohamed Ibrahim Shadiq Abdul Haq (වැඩිමහල් සහෝදරයා) සිය බිරිඳ සහ දරුවා සමඟ කාන්තන්කුඩ් ප්‍රදේශයට පැමිණ, ධීවර සමිති පාර, කාන්තන්කුඩ් ප්‍රදේශයේ Zahrn ගේ සමීපතමයින්ගේ නිවෙස් වල රැදී සිටි ඇති බවත් බිරිඳ සහ දරුවා එම ප්‍රදේශයේ ඉතා රහසිගත ලෙස සගවා ඔහු ස්ථානයන් වෙතස් කරමින් රැදී සිටින බවටත් දැනගැනීමට ඇත.

වාර්තා වී ඇති බුද්ධි තොරතුරු ඔස්සේ Zahran ඇතුළු ජාලය පිලිබඳව තව දුරටත් විමර්ශන සිදු කරමින් පවතී.

2019.04.20

(අත්සන)  
ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පති  
රාජ්‍ය බුද්ධි සේවාව

පිටපත : ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පති/අපරාධ පරීක්ෂණ දෙපාර්තමේන්තුව"

Information No. 07

The seventh of the said eight pieces of information is an information sent to the Accused-Respondent by the Director-National Intelligence Service on 20-04-2019. The information was received by the Director of National Intelligence Service by a foreign counterpart. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 07" or "Information No. 07 received on 20-04-2019".

Information No. 07 received on 20-04-2019 is as follows,

VII. රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් වූදින වෙත යොමු කරන ලද රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ වෙත 2019.04.20 දින දාතමින් විදේශ බුද්ධි මූලාශ්‍රයකින් ලද පහත සඳහන් බුද්ධි තොරතුර .

"Sir,

*According to a foreign counterpart.*

*As per a reliable input, Zaharan Hasim of National Thowheeth Jamath of Sri Lanka and his associates have hatched a plan to carry out an Isthisshad attack in Sri Lanka. it is further learnt that they have conducted a dry run and caused a blast with explosives laden Motor cycle at Palmunai near Kattankudy in Sri Lanka on 16.04.2019 as part of their plan.*

*It is learnt that they are likely to carry out their Isthisshad attack in Sri Lanka at any time on or before 21.04.2019. They have reportedly selected 08 places including a church and a Hotel, where Indians inhabit in large number. Further details awaited.*

*Director SIS"*

Information No. 08

The eighth of the afore-stated eight pieces of information is an information sent to the Accused-Respondent by the Director-National Intelligence Service on 21-04-2019. The information received by the Director-National Intelligence Service was from a foreign intelligence source. This information will hereinafter sometimes be referred to in this Judgment as "Information No. 08" or "Information No. 08 received on 21-04-2019".

Information No. 08 received on 21-04-2019 is as follows,

VIII. රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ විසින් වූදින වෙත යොමු කරන ලද රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂ වෙත 2019.04.21 දින දාතමින් විදේශ බුද්ධි මූලාශ්‍රයකින් ලද පහත සඳහන් බුද්ධි තොරතුර

*"Following info was received by me from the counterpart.*

*(21/04, 08:27 Respected Sir,*

*Good Morning,*

*They are likely to operate between 0600 hrs and 1000 hrs today..sir, One of their target is Methodists Church, Colombo. Further details awaited.*

*Actions were taken to alert the Police. Will deploy my surveillance teams.*

*Director SIS''*

These pieces of information set out under Item Nos. I, II, III, IV, V, VI, VII, VIII are respectively the information set out in the documents produced, respectively marked පැ 37, පැ 37(a), පැ 39, පැ 40, පැ 41, and පැ 43.

For more convenience, the following chart would show the co-relation between the eight items of information and the documents produced in the trial.

Information	Documents produced at the trial	Date of receipt of the Information by the Accused-Respondent
Item No. 1	P 37	09-04-2019
Item No. 2	P 37(a)	09-04-2019
Item No. 3	Prosecution had not marked this document in evidence.	09-04-2019
Item No. 4	P 39	18-04-2019
Item No. 5	P 40	19-04-2019
Item No. 6	P 41	20-04-2019
Item No. 7	P 43	20-04-2019
Item No. 8	Prosecution had not marked this document in evidence.  After the first explosion.	21-04-2019

Having set out briefly, the background of this case, let me now turn to the provision of law upon which this Court must decide the issue of the case at hand. Since the order impugned in this instance is one made under Section 200 (1) of the CCPA, let me at the outset, reproduce that Section. It is as follows:

Section 200(1) of the CCPA

*"Court may acquit without calling for defence, or call for defence.*

*(1) When the case for the prosecution is closed, if the Judge wholly discredits the evidence on the part of the prosecution or is of opinion that such evidence fails to establish the commission of the offence charged against the accused in the indictment or of any other offence of which he might be convicted on such indictment, he shall record a verdict of acquittal; if however the Judge considers that there are grounds for proceeding with the trial he shall call upon the accused for his defence.*

It is important to bear in mind that the learned Counsel for both parties namely, the learned Senior Additional Solicitor General Mr. Priyantha Nawanna PC, appearing for the Attorney-General, and Mr. Widura Ranawake appearing for the Accused-Respondent have relied on the Court of Appeal Judgment in the case of Attorney General vs Baranage<sup>2</sup>. It is also important to note that the learned High Court Judges in their Judgments also have followed the judicial principles laid down in that case. Thus, in the course of the proceedings of this case before this Court no party had any complaints against the said Court of Appeal Judgment in Attorney General vs. Baranage. They indeed have placed reliance on the principles of law enunciated by Hon. Justice Gamini Amaratunga<sup>3</sup> for the purposes of their respective cases.

According to Section 200 of the CCPA there are only three instances under which the trial Judge can record a verdict of acquittal without calling for the defence from the Accused. These three instances can be identified in the Section in the following way:<sup>4</sup>

If the Judge:

- A. wholly discredits the evidence on the part of the Prosecution; or,
- B. is of the opinion that such evidence fails to establish the commission of the offence against the Accused in the indictment: or,
- C. is of the opinion that such evidence fails to establish any other offence of which he might be convicted on such indictment;

he shall then record a verdict of acquittal.

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<sup>2</sup> (2003) 1 SLR 340.

<sup>3</sup> As he was then.

<sup>4</sup> I have marked these instances as 'A', 'B' and 'C'.

The fourth instance in the Section is the circumstance under which the trial Judge can call upon the Accused for his defence. It is set out in the Section in the following way:<sup>5</sup>

- D. If, however, the Judge considers that there are grounds for proceeding, he shall call upon the Accused for his defence.

Thus, one would observe that the grounds set out in (A), (B) and (C) above are specific in nature but to the contrary, the ground set out in (D) above is very wide. This is because "grounds for proceeding" have not been specifically set out in the Section and hence are not exhaustive. Moreover, the phrase "If, however," used in (D) above would serve to make the ground in (D) above, a proviso to the grounds set out in (A), (B) and (C) above.

Admittedly the decision of the learned High Court Judges, not to call for the defence is not based on (A) above. On the other hand, neither party made any submission before this Court in relation to the testimonial trustworthiness of the Prosecution witnesses as it was not the focal point in this appeal. Therefore, it is not necessary for me to consider the credibility of the witnesses who provided evidence for the Prosecution.

In the above circumstances, I only have to consider two critical questions. The said questions are: firstly, whether the learned High Court Judges have erred in holding that the evidence adduced by the Prosecution has failed to establish the commission of the offence against the Accused in the indictment or any other offence of which he might be convicted on such indictment.; secondly, whether there were grounds before the High Court-at-Bar which compels it to have proceeded further with the trial under (D) above.

### **JUDGMENT OF THE HIGH COURT-AT-BAR**

After the Prosecution closed its case on 20-01-2022, and after the adjournment of the hearing, the High Court-at-Bar on the next date i.e., on 18-02-2022, had pronounced two Judgments in this case. One is a majority Judgment by two Judges and the other is a Judgment by a single Judge (the other Judge). The conclusion arrived at, at the end of each Judgment is the same.

In the majority Judgment, a fundamental misdirection on law can be clearly observed. In that Judgment the learned High Court Judges have taken the view that the Prosecution is obliged

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<sup>5</sup> I have marked this instance as 'D'.

to adduce very 'strong and penetrating evidence' (ප්‍රබල හා කැපවුණ සාක්ෂි) against the Accused-Respondent to enable the Court to conclude that the Accused-Respondent is responsible for the abetment of the crimes described in the indictment as a principal offender as per Section 107 of the Penal Code. The said view of the High Court Judges can be seen clearly from paragraphs 144, 145, 146, 182, 188 of the majority Judgment. Thus, let me now consider whether Section 107 of the Penal Code has become relevant in the instant case. To start with, Section 107 of the Penal Code is reproduced below.

*"Abettor present when offence is committed.*

**107.** *Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence."*

I must mention at the beginning of this discussion that Mr. Widura Ranawake appearing for the Accused-Respondent conceded before us that this assertion by the learned High court Judges is clearly erroneous as it has no relevance for the proof of the charges in the indictment in this case. I agree. The Attorney General has not filed charges against the Accused-Respondent based on Section 107 of the Penal Code. Indeed, it is the learned High Court Judges who have imported Section 107 of the Penal Code in to the charges in the indictment of this case. Having imported that Section in to the charges by themselves, the learned High Court Judges now have concluded that the Prosecution is obliged to place evidence before Court in such a way that the Accused-Respondent could be held responsible as a principal offender in terms of Section 107 of the Penal Code.

A mere glance through the above Section is enough to say that Section 107 of the Penal Code has no application whatsoever to this case. Indeed, the purpose of Section 107 has been clearly set out in the very quotation cited by the learned High Court Judges in paragraph 146 of their Judgment. The said quotation is as follows:

*"A point which needs emphasis in connection with section 107 is that the principal which it embodies, is applicable only in circumstances where all the essential elements of abetment are established, so that the accused would be liable as an abettor, had he not been present at the commission of the offence. Section 107 does not impose criminal liability on a person who, although present when the offence was committed, would not have been liable as an*



*abettor if he had been absent. In other words, presence at the commission of the crime, in itself, is not a decisive consideration and does not necessarily facilitate proof of the independent requirements of abetment. Whether the accused is absent or present, the burden of establishing the requisite elements of abetment devolves on the prosecution. The only effect of the provision contained in section 107 is that, after all these elements are proved, the further circumstance of the accused's presence enables him to be dealt with qua the principal offender, and not merely as abettor.”<sup>6</sup>*

As has already been adverted to above, the Attorney General has not charged the Accused-Respondent under Section 107 of the Penal Code. Therefore, there is absolutely no justification for addition of Section 107 to the charges in the indictment by the learned High Court Judges. It is relevant and significant to note the time at which the learned High Court Judges have adopted this interpretation. The time is after the Prosecution closed its case. Thus, obviously, it was not practically possible for the Prosecution to place evidence before Court in such a way that the Accused-Respondent could be held responsible as a principal offender in terms of Section 107 of the Penal Code. In my view, this conclusion reached by the learned High Court Judges is grossly erroneous and unwarranted in light of the facts and circumstances of this case. Such a conclusion is untenable.

This misconception of law which the two learned High Court Judges had strongly entertained had prompted them to look for strong and compelling evidence (ප්‍රබල හා කාවදින සාක්ෂි) in the Prosecution case in order to hold the Accused-Respondent responsible as the principal offender. This was not the charge presented in the indictment. This was not the case presented by the Prosecution. Thus, the necessary inference from the above position is the fact that the two learned High Court Judges had totally failed to consider whether the evidence adduced by the Prosecution has established the case presented by the Attorney General against the Accused-Respondent. This misdirection on the part of the two learned High Court Judges in the majority Judgment is so serious and so grave. Thus, the learned High Court Judges in the majority Judgment could not have lawfully taken the view that the evidence adduced by the Prosecution has failed to establish the commission of the offence against the Accused-Respondent in the indictment in terms of limbs (B) or (C) in Section 200 (1). This is simply because they had failed to understand the charges presented in the indictment and

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<sup>6</sup>G.L. Peiris, *General Principles of Criminal Liability in Ceylon (Sri Lanka)*, (2<sup>nd</sup> Revised Edn, Lake House 1980) 401.

the case presented by the Prosecution against the Accused-Respondent. Thus, the charge they had in mind when they proceeded to consider evidence in the process of ascertaining whether the evidence adduced by the Prosecution has failed to establish the commission of the offence against the Accused in the indictment, was not the charge mentioned in the indictment. Hence the final conclusion reached in the majority Judgment based on such misconception becomes untenable for that reason alone. Therefore, the majority Judgment by the two learned High Court Judges cannot be permitted to stand on that account.

Although the learned Counsel for the Accused-Respondent conceded the afore-stated misconception in the majority Judgment by the two learned High Court Judges, he sought to argue that this Court must nevertheless consider whether the evidence adduced by the Prosecution makes this case one falling under limb (B) above.

The learned Counsel for the Accused-Respondent in the course of his lengthy submissions before this Court, advanced two-pronged argument seeking to establish that the case for the Prosecution has fallen under limb (B). His first argument is that there is no evidence to establish the required *mens rea* which is necessary to prove the charges in the indictment. His second argument is that evidence had emanated from the Prosecution case itself to establish before this Court that the Accused-Respondent had taken all actions within his means in his capacity as the Inspector General of Police upon the receipt of the relevant information and therefore the Accused-Respondent need not explain any further, the allegation against him that he had abetted by illegal omission facilitating the commission of the offences.

Let me now consider the afore-mentioned first argument. The learned Counsel for the Accused-Respondent relied on the Judgment in the case of *The King v Marshall*,<sup>7</sup> to argue that in a charge of abetment of murder, it is incumbent upon the Prosecution to prove that the aid given by an abettor is intentional aid. Let me first briefly advert to the facts of that case. The facts are as follows:

S. Deonis is the son of the deceased of that case S. Jamis. Both the son and the father, after having tea at a boutique in the village, started walking back from the boutique. Neither of them was armed. On the way, a quarrel arose between the sixth Accused and the son. The other Accused who were on the road joined in. They

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<sup>7</sup> 51 NLR 157.

surrounded the father and the son and began to assault them. Thereupon, two other villagers had intervened and rescued the son and took him back to the boutique where the father and the son earlier had tea. Thereafter, they returned to the place of attack with a view of extricating the father (the deceased). At that time, the first, fourth, and seventh Accused were holding and dragging the deceased man (father). The first Accused was holding the deceased by his right arm, the fourth Accused by his left arm and the seventh Accused was grasping the hair of the deceased. Then the second Accused, who at that time was some distance away, rushed in from behind, ran up to the deceased and struck a blow with a katty which turned out to be the fatal blow. Thereupon the first, fourth, and seventh Accused left the deceased and dispersed.

In the indictment in the case of *The King v Marshall*, there were eight Accused and five counts. All eight Accused were charged in **the first count** for being members of an unlawful assembly, the common object of which was to cause hurt to S. Jamis and S. Dionis, an offence punishable under Section 140 of the Penal Code. All eight Accused were charged in **the second count** for rioting, an offence punishable under Section 144. All eight Accused were charged in **the third count** for committing the death of S. Jamis, an offence punishable under Sections 296 read with Section 146 of the Penal Code. **The fourth count** of the indictment was only against the second Accused for committing the murder of S. Jamis, an offence punishable under Section 296 of the Penal Code. **The fifth count** of the indictment was only against the first, fourth, and seventh Accused for the abetment to the second Accused to commit the murder of Jamis, an offence punishable under Section 296 read with Section 102 of the Penal Code.

The Jury in the case of *The King v Marshall*, had **acquitted all the Accused from the first, second and third counts** which were framed to impute criminal liability on them on the principle that they were members of the said unlawful assembly. The Jury had **convicted the second Accused under the fourth count**. The Jury had also **convicted the first, fourth, and seventh Accused under fifth count for the abetment** to the second Accused to commit the murder of Jamis.

The Court of Criminal Appeal in the case of *The King v Marshall*, for the reasons set out in the said Judgment, had held that there was ample evidence against the second Accused which

justified the Jury's verdict that the second Accused is guilty of the fourth count and hence dismissed the appeal of the second Accused.

However, as regards the abetment charge, which is the fifth count in that case, Dias J held as follows:

*"... Furthermore, the indictment stated that the offence of the second accused was committed "in consequence of the abetment" by the first, fourth, and fifth accused. The explanation to section 102 of the Penal Code says: "An act is said to be committed in consequence of abetment" when it is "committed with the aid which constitutes the abetment". We cannot see how on the facts of this case it can be said that the conduct of these accused in holding the deceased and dragging him for some purpose of their own, amounts to aid intentionally given to the second accused to facilitate him to murder the deceased. This aspect of the matter was not put to the Jury, and amounts to non-direction."<sup>8</sup>*

In the case of *The King v Marshall*, it was the 2<sup>nd</sup> Accused who had suddenly come from a somewhat distant place, ran up with a katty, and then struck the deceased, the fatal blow. When the 2<sup>nd</sup> Accused struck the deceased with the said blow, the first, fourth and seventh Accused in that case were holding and dragging the Deceased. It was in that backdrop that Dias J held that the conduct of the first, fourth and seventh Accused in that case in holding the deceased and dragging him for some purpose of their own, cannot amount to an aid intentionally given to the second Accused to facilitate the murder of the deceased as per the charge in the fifth count in that case.

Moreover, in the case of *The King v Marshall*, it must be noted that the Trial Court had called upon the Accused to place their defence. Thus, the position placed by the defence was available before the Court of Criminal Appeal when it was called upon to consider and decide the final outcome of the case. In the instant case, Court is yet to hear from the Accused-Respondent as to his position with regard to the omissions alleged against him by the Prosecution. In the above circumstances, the facts and the conclusion of the Court of Criminal Appeal in *The King v Marshall*, is clearly distinguishable from the facts of the instant case.

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<sup>8</sup> 51 NLR 157 at page 160.

The learned Counsel for the Accused-Respondent also relied on the Judgment of Weerasuriya J in the case of *Samy and others v Attorney-General (Bindunuwewa murder case)*.<sup>9</sup> He highlighted the following extract from the said Judgment.

*"Having regard to the departmental orders referred to above if the Officer-in-Charge has exercised his discretion bona fide and to the best of his ability, he cannot be faulted for the action he has taken even if it may appear that another course of action would have proved more effective in the circumstances."*

However, I observe that Weerasuriya J in that case, has stated that paragraph in his Judgment when he was dealing with the case against the 4<sup>th</sup> Accused in that case who was a Police Officer. The charges against the said 4<sup>th</sup> Accused (Police Officer) were based on illegal omissions which consisted of the general allegation of intentional failure to comply with the duty imposed by law and certain specific illegal omissions in his capacity as a Police Officer. The charges against the 4<sup>th</sup> Accused in that case, were based under Section 146 of the Penal Code. The Court in that case had held that there was no evidence to establish that the 4<sup>th</sup> Accused being a Police Officer, had intentionally joined the unlawful assembly with the object of causing hurt to the detainees. Furthermore, the High Court-at-Bar in that case had called for the defence from the said 4<sup>th</sup> Accused and the 4<sup>th</sup> Accused in that case had provided an explanation and the reasons for not shooting at the attackers directly. His explanation was his inability to distinguish between the detainees and the villagers in the commotion. It was in the face of the said defence placed by the 4<sup>th</sup> Accused that Weerasuriya J in that case had held that the mere fact that there was a duty to act in the given circumstances and death had resulted due to the said failure to act, will not be sufficient to establish the offence.<sup>10</sup> One has to be mindful that in the instant case, the Accused-Respondent has not yet provided an explanation or reasons as the High Court-at-Bar decided not to call for the defence from him. Thus, the facts and circumstances of *Bindunuwewa murder case* is also clearly distinguishable from the facts and circumstances of the instant case. Furthermore, the phrase '*if the Officer-in-Charge has exercised his discretion bona fide and to the best of his ability,*' found in the dictum quoted above from the Judgment of Weerasuriya J in *Bindunuwewa murder case*,<sup>11</sup> shows clearly that it is incumbent upon the accused to satisfy Court that he

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<sup>9</sup> (2007) 2 SLR 216.

<sup>10</sup> Supra at page 237.

<sup>11</sup> (2007) 2 SLR 216.

has exercised his discretion bona fide and to the best of his ability which in that case, the 4<sup>th</sup> Accused had done.

Moreover, I also must emphasize here that the intention is a state of mind which under normal circumstances, is inferred from other proven facts and circumstances. Indeed, this was the same thinking in the case of *The King v Marshall*, where Dias J re-iterated that "*the intention of an abettor must be presumed from the nature and effect of the facility given by him to the doer of the act*" as laid down in *Rex v. Kadirgaman*.<sup>12</sup>

I must also mention here that under the fourth limb of Section 294 of the Penal Code, the offence of Murder is constituted, if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. In light of the facts and circumstances of this case, the phrase "without any excuse" mentioned in the fourth limb of Section 294 of the Penal Code assumes a greater importance. Who has to provide the excuse in such circumstances? If there is no apparent excuse, all that the Prosecution can prove is just that. It would then be the accused who must take steps to place the excuse if he has one. If there is none, according to the fourth limb of Section 294 of the Penal Code, any act falling under the description therein, may constitute the offence of Murder.

Thus, having regard to all the facts and circumstances of the instant case, I am of the view that the High Court-at-bar, should have considered about the proof of the intention; degree of such intention; whether knowledge on the part of the Accused-Respondent would amount to the required intention, at the end of the case, i.e., after calling for the defence from the Accused-Respondent.

The second argument advanced by Mr. Widura Ranawake on behalf of the Accused-Respondent was that the Accused-Respondent in his capacity as the Inspector General of Police, had taken all possible actions within his means. The learned Counsel for the Accused-Respondent pressed this position so hard and submitted before this Court that he agrees that the High Court should have called upon the Accused-Respondent to place his defence had the Accused-Respondent not taken such action.

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<sup>12</sup> 41 NLR 534 at pages 535-536.

When the learned Counsel for the Accused-Respondent was making the above submission before this Court, this Court persistently asked him to show to this Court, the actions (if any) which has been taken by the Accused-Respondent upon receipt of the relevant documentation containing the information No. 1-8 upon which the Prosecution had framed charges against him for failure to take any action on the said information. Then the learned Counsel for the Accused-Respondent relied on four specific instances and urged this Court to hold that those four specific instances have established that the Accused-Respondent has consciously taken all possible actions within his means, as the Inspector General of Police of the country, to avert these bomb explosions, the occurrences of which are the subject matter of the charges in the indictment in this case. It was on that basis that Mr. Widura Ranawake sought to justify the decision of the learned High Court Judges, not to call for the defence from the Accused-Respondent. In other words, it was his position that the fact that the Accused-Respondent has taken all possible actions within his means, as the Inspector General of Police, is a position borne out from the Prosecution's case itself. He therefore submitted that there is no necessity for this Court also to interfere with the decision of the learned High Court Judges as his client has discharged his legal obligations by taking all steps within his means. These steps are those four actions which the learned Counsel for the Accused-Respondent claims as actions his client had taken in respect of the eight pieces of information sent to him in his capacity as the Inspector General of Police. It was on that basis that Mr. Widura Ranawake sought to argue that there is no illegal omission on the part of the Accused-Respondent in his capacity as the Inspector General of Police. On being repeatedly asked by Court, the learned Counsel for the Accused-Respondent categorically informed Court that in the absence of such actions on the part of the Accused-Respondent, the High Court-at-Bar should have called upon the Accused-Respondent to explain as to how he had treated the relevant eight pieces of information which he had received. This was because the learned Counsel for the Accused-Respondent was unable to place before this Court, at least any indication that the Accused-Respondent had taken any other action on the relevant eight pieces of information which he had received. Thus, it is needless to say that the case for the Accused-Respondent would either stand or fall depending on the success or the failure of the above argument advanced on his behalf. Let me now consider the above submission.

Specific instances, that the learned Counsel for the Accused-Respondent relied on, as actions, the Accused-Respondent had taken in respect of the eight pieces of information sent to him could be enumerated as follows referring to them as Actions 1-4 for easy reference.

Action 01:

- i. The three letters "F.N.A." written by the Accused-Respondent on the letter addressed to the Respondent, dated 09<sup>th</sup> April 2019 sent by A. N. Sisira Mendis, Chief of National intelligence (CNI). This letter has been produced (marked 31) in the trial. I have reproduced below, a scanned copy of the note containing the above letters (F. N. A.) written by the Accused-Respondent on that letter.



Action 02:

- ii. The fact that the Accused-Respondent had told the Director of National Intelligence Service Nilantha Jayawardhena "රවිට කියන්න". The learned Counsel for the Accused-Respondent relied on a solitary piece of evidence from the long evidence given by the Director of National Intelligence Service Nilantha Jayawardhena in his endeavour to establish that ("රවිට කියන්න") as an action taken by the Accused-Respondent on the information provided to him. The relevant piece of evidence of the said witness Nilantha Jayawardhena is reproduced below.

ප්‍ර: මෙම වාර්තා යැවීමට පස්සේ කොයි යම් හෝ අවස්ථාවක පොලිස්පතිවරයා ඔබගෙන් දුරකථනයෙන් හෝ විමසීමක් කළාද?

උ: මෙම වාර්තා පිළිබඳ දුරකථනයෙන් විමසීමක් කළේ නැහැ. ගරු පොලිස්පතිතුමාට මම පළවෙනි වාර්තාවෙන් පසුව දුරකථනයෙන් අමතා එම පරීක්ෂණ දෙපාර්තමේන්තුවට භාරදීමට ඉල්ලීමක් කළා. ඒ අනුව එතුමා මට කිවවා නිලෙන් ඔයා රවිට කියන්න කියලා කිවවා, අපරාධ



පරීක්ෂණ දෙපාර්තමේන්තුවේ ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පතිතුමාට දැනුවත් කරන්න කියලා. ඒ අනුව මම දැනුවත් කළා.<sup>13</sup>

Action 03:

- iii. The fact that the Accused-Respondent had told the Director of National Intelligence Service Nilantha Jayawardhena “නන්දනට කියන්න” on 20 April 2019. The learned Counsel for the Accused-Respondent relied on the following piece of evidence given by the Director of National Intelligence Service Nilantha Jayawardhena in this regard. The relevant piece of evidence of the said witness Nilantha Jayawardhena is reproduced below.

ප්‍ර: ඒ කියන්නේ මේ කාන්තන්කුඩියේ වෙච්ච පිපිරීම ආශ්‍රිතව මේ තොරතුරු ආවහම එහි තිබෙන බරපතලභාවය ඔබ පොලිස්පතිතුමාට දැනුවත් කල බවද කියන්නේ?

උ: විශ්වාසවන්තභාවය පිළිබඳව දැනුවත් කලා.

ප්‍ර: ඒ අවස්ථාවේ පොලිස්පතිවරයා ඔබට කල යුතු වැඩිදුර කාර්යයක් සම්බන්ධයෙන් උපදෙස් දීමක් කලාද?

උ: එසේය ස්වාමිනි.

ප්‍ර: ඒ කවරක්ද?

උ: නන්දනට කියන්න කිවුවා.<sup>14</sup>

Action 04:

- iv. The fact that the Accused-Respondent had written the minutes dated 21 April 2019 on documents produced, marked **P 39**, **P 40** and **P 41**, which had contained Information Nos. 04, 05 and 06. This minute is similar in all those three documents and hence it would suffice to reproduce one of those below:

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<sup>13</sup> Record of proceedings on 22-11-2021 at 9.35 am (page 4), High Court-at-Bar Record of Proceedings, at Volume IV.

<sup>14</sup> Record of proceedings on 26-11-2021 at 9.50 am (pages 3-4), High Court-at-Bar Record of Proceedings, at Volume IV.

The image shows a handwritten document. At the top, it reads 'SD/IG/OUT/8-04/369/2019'. Below this, there is a signature 'sdg/lrs' and the words 'progress report' written in cursive. There is a date '2019.04.21' and a stamp that reads 'Pujith Jayasundara, Inspector General of Police'.

Thus, the Accused-Respondent has relied on four minutes he had written, one on the document 81 and the other three on the documents P 39, P 40 and P 41. The Accused-Respondent has also relied on two solitary pieces of oral evidence which had emanated from two witnesses, one from the witness Nilantha Jayawardena and the other from witness Deshabandu Tennakoon in an attempt to convince Court that the Accused-Respondent had indeed taken actions after he had received the eight pieces of information referred to in the indictment which forms the basis for the charges. Thus, as has been already mentioned above, even the learned Counsel for the Accused-Respondent has conceded before us that if not for these four actions, this Court should hold that the High Court-at-Bar had erred in not calling upon the Accused-Respondent for his defence under Section 200 of the CCPA. Let me consider these four actions in the light of the background of the aforesaid submission made by the learned Counsel for the Accused-Respondent to ascertain whether indeed the Accused-Respondent had taken all actions within his means, in his capacity as the Inspector General of Police, upon receipt of the relevant information.

Action 01:

Let me now consider the Action 01 claimed to have been taken by the Accused-Respondent by placing a notation on the document 81. I have reproduced above, this notation. The Accused-Respondent had addressed this minute to four persons. This is brought out by the evidence of the witness Deshabandu Tennakoon at page 448, Volume IV of the Appeal Brief. The four officers mentioned therein, are:

- Senior DIG Western Province and Traffic
- Director Special Security Division
- DIG CID
- DIG STF

The witness Deshabandu Tennakoon has stated that the Accused-Respondent had addressed this minute to the afore-said four senior officers to draw their attention to the information

contained in ඉ1 which he had received on 09-04-2019. The date of this minute also appears to be 09-04-2019. Learned Counsel for the Accused-Respondent made somewhat lengthy submissions on ඉ1. However, the information in letter ඉ1, is an information which states that some terrorist attack in Sri Lanka was being planned to target some important churches and the Indian High Commission. In ඉ1, there is no specific date on which these attacks would possibly happen.

Thereafter relying on DIG Deshabandu Tennakoon’s oral evidence, the learned Counsel for the Accused-Respondent pointed out that DIG Deshabandu Tennakoon, upon receipt of ඉ1 from his senior DIG (Nandana Munasinghe), has written five instructions to his subordinates. These five instructions are to the following effect:

*"ලිපියේ සඳහන් එම පුද්ගලයන්ගේ ඡායාරූප ලබා ගෙන එම ඡායාරූප බුද්ධි අංශයේ නිලධාරීන් වෙත ලබාදී, ඔවුන් අදාළ ඉලක්කගත ස්ථානවල හෝ ඒ අවට සිටිදැයි පරීක්ෂා කළ යුතුය. තවද ඔවුන් නවාතැන්පොළවල්, කුලී නිවාස ආදියෙහි නවාතැන්ගෙන සිටිය හැක. එම ස්ථාන පරීක්ෂා කළ යුතුය.*

*බුද්ධි තොරතුරු රහසිගතව තබාගෙන විමර්ශන කළ යුතු අතර, මහජනතාව අනිසි බිය ගැන්වීමකට ලක්කළ යුතු නොවන බව අවධාරනය කරමි.*

*කතෝලික පල්ලිවලට ආරක්ෂාව ප්‍රමාණවත් නොවන බවට වැටහේනම් ඒ සඳහා නිසි ආරක්ෂක වැඩ පිළිවෙලක් සකස් කර ක්‍රියාවට නැංවිය යුතුය. එසේම එල්ලවිය හැකි ප්‍රහාර කල්වෙලා ඇතිව හදුනාගැනීමේ ක්‍රමයක් ක්‍රියාවට නැංවිය යුතුය.*

*එමෙන්ම මහජනයා වැඩිපුර ගැවසෙන ස්ථානයන් ප්‍රසංග වැනි කරුණු සඳහා අනුමැතිය ලබා දීමේදී ඒ සම්බන්ධයෙන් වැඩි අවධානයක් දිය යුතුය."<sup>15</sup>*

Thus, it is the position of the learned Counsel for the Accused-Respondent that it was the Accused-Respondent by his notation on ඉ1 who had triggered those five instructions being given to the police officers below. It was his submission that the Inspector General of Police is not obliged personally to go and provide security to the respective places as it is not practicable to do so. Therefore, it was his submission that in his capacity as the Inspector

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<sup>15</sup> Record of proceedings on 18-01-2022 at 10.00 am (pages 3-4), High Court-at-Bar Record of Proceedings, at Volume IV.

General of Police that, the giving of the above five instructions was the action he could take upon receipt of that information sent to him on 08-04-2021.

A closer look at the evidence of Deputy Inspector General of Police (DIG), Deshabandu Tennakoon, which was relied upon by the learned Counsel for the Accused-Respondent in his attempt to convince Court that the Accused-Respondent had discharged his obligations as the Inspector General of Police, would show that whatever the actions DIG Deshabandu Tennakoon had taken, are the actions solely taken by said DIG Deshabandu Tennakoon. They are not actions taken by the Accused-Respondent. The question whether those actions are sufficient actions which DIG Deshabandu Tennakoon ought to have taken is another matter. Be that as it may, it is clear that the Accused-Respondent had not thought it fit, at least to give his mind or to initiate any one of those actions which DIG Deshabandu Tennakoon had taken. The Accused-Respondent, despite the seriousness of the imminent threat to the National Security, the information of which was clearly given to him, was only content in writing three letters F.N.A and pass it down the line. Indeed, what is meant by F.N.A. is also not explained. It is only the Accused-Respondent who knows as to what he had meant by those three letters and what should have been understood by the other officers down the line. The learned Counsel for the Accused-Respondent has taken up the above position despite the fact that the Accused-Respondent had admitted in the trial, the fact that the Inspector General of Police is under legal obligation to do all acts in terms of Section 56 of the Police Ordinance. It is pertinent to reproduce the said admission. It is as follows,

අඉ. පොලිස්පතිවරයෙකු ලෙස,

ව්‍යවස්ථාපිත කාර්යය ආණ්ඩුක්‍රම ව්‍යවස්ථාව යටතේ ද විධායකයේ කොටසක් ලෙස ශ්‍රී ලංකා පොලිසිය මෙහෙයවීම පොලිස්පති විසින් සිදු කළ යුතු බව,

අඊ. පොලිස් ආඥා පනතේ 56 වගන්තිය යටතේ,

- (i) සියලුම අපරාධ , වැරදි සහ පොදු හිරිහැර වැළැක්වීම ට තමාගේ සම්පූර්ණ ධෛර්යය සහ ශක්තිය යෙදවීමට ද,
- (ii) සාමය ආරක්ෂා කිරීමටද,
- (iii) අනිසි ලෙස හැසිරෙන සහ අවිශ්වාස උපදවන තැනැත්තන් සිර භාරයට ගැනීම ද,
- (iv) වරදකරුවන් සොයා දැන ගැනීම හා ඔවුන් අධිකරණයට ඉදිරිපත් කිරීමද,
- (v) පොදු සාමය සම්බන්ධයෙන් ආරංචි එක් රැස් කිරීම සහ ඒවා දැක්වීම සහ,

(vi) යම්කිසි බලධරයෙකු විසින් නීත්‍යානුකූලව නිකුත් කරනු ලැබූ සියලුම නියෝග සහ වරෙන්තු තමා වෙත කරනු ලැබූ නියමය අනුව අප්‍රමාදව පිළිපැදීම සහ ඉටු කිරීම යන රාජකාරී සිදුකළ යුතු බවද, වේ.<sup>16</sup>

This position could better be understood by looking at the said Section (Section 56 of the Police Ordinance) which is also reproduced below.

*Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka, It shall be his duty*

- (a) to use his best endeavours and ability to prevent all crimes, offences, and public nuisances ;*
- (b) to preserve the peace ;*
- (c) to apprehend disorderly and suspicious characters ;*
- (d) to detect and bring offenders to justice ;*
- (e) to collect and communicate intelligence affecting the public peace ; and*
- (f) promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority*

Moreover, the evidence of the then Inspector General of Police (Prosecution Witness No. 1214 IGP Chandana Deepal Wickramaratne) on the use of the three letters F.N.A. by a senior officer, was referred to in the Judgment as follows:

වැඩිදුරටත් ලැබෙන තොරතුරු හෝ ලිපි සඳහා පියවර ගැනීමේදී, FNA යන යෙදුම භාවිතා කිරීම පිළිබඳ ව මෙම සාක්ෂිකරුගෙන් පැමිණිල්ල සාක්ෂි මෙහෙයවා ඇත. FNA යන යෙදුම, For Necessary Action යන යෙදුම සඳහා කෙටියෙන් භාවිත කරන්නක් බවත්, එසේ නැතහොත් සුදුසු කටයුතු සඳහා යන්න යොදන යෙදුමක් බව ට සාක්ෂිකරු හෙළිදරව් කර යි. සාක්ෂිකරුගේ ස්ථාවරය වූයේ, එවැනි යෙදුමක් යොදා පහළ නිලධාරීන්ට පියවර ගැනීම ට යොමු කිරීම සුදුසු නොවන බව ත්, එය වගකීමෙන් මිදීම ට කරන්නක් බව ත් ය.<sup>17</sup>

Therefore, the learned High Court Judges (in their majority Judgment) were mindful that there was such evidence in the trial. The learned High Court Judges have referred to this evidence

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<sup>16</sup> Paragraphs 22 (අඉ) and 22 (අඊ) of the Judgment of the High Court-at-Bar, dated 18-02-2022, at pages 60-61.  
<sup>17</sup> Paragraph 50 of the Judgment of the High Court-at-Bar, dated 18-02-2022, at page 71.

in paragraph 50 (Pg 71) of the majority Judgment. However, the learned High Court Judges had opted not to act on the said evidence giving no reason thereto.

If F.N.A. is to mean 'For Necessary Action', (if that is what it stands for in general parlance) the Trial Court will have to consider whether that would be an abbreviated instruction that any senior public officer would write even on any unimportant letter or document. In view of the seriousness of the information which clearly divulged a very serious threat to the National Security of the country, the Trial Court will have to consider whether writing the three letters F.N.A. would be a sufficient discharge of obligations by the person under whose command the entire Police Force of the country has been placed. The Accused-Respondent has not offered any explanation so far. It is his Counsel who argues that this must be taken as one of the explanations. Thus, while it is not an explanation offered by the Accused-Respondent, whether the Court would accept it, if the Accused-Respondent does give it as an explanation is yet to be seen.

#### Action 02

The Accused-Respondent has received Information No. 06 (**P 41**) on 20-04-2019. This information gives number of details about the people involved in preparation of the suspected attacks.

**P 39** (Information No. 04) which was received by the Accused-Respondent on 18-04-2019 contains specific information about the persons in relation to the incident of the dry-run where a motorcycle was exploded in Kaththankudi on 16-04-2019.

The Information No. 05 (**P 40**) which was received by the Accused-Respondent on 19-04-2019 has given further details of persons involved in the dry-run which had happened on 16-04-2019.

Information No. 06 (**P 41**) which the Accused-Respondent had received on 20-04-2019 has given further information on the afore-said persons.

Finally, through the Information No. 07 (**P 43**) the Accused-Respondent had received exact information that the aforesaid suspected persons would be likely to carry out the attack at any time on or before 21-04-2019. Information No. 07 has also been conveyed to the Accused-

Respondent that these suspected persons have reportedly selected eight places including a church and a hotel where Indians inhabit in large numbers.

It is the evidence of witness Nilantha Jayawardena that the Accused-Respondent did not even take action to have a brief discussion as to any possible course of action to be taken on these information received. Position is the same with regard to the four instances namely: after the Information No. 04 sent to him on 18-04-2019 (**P 39**); after the Information No. 05 sent to him on 19-04-2019 (**P 40**); after the Information No. 06 sent to him on 20-04-2019 (**P 41**); and after the Information No. 07 sent to him on 20-04-2019 (**P 43**). It is to be noted that witness Nilantha Jayawardena's evidence is clear and unambiguous on this point.<sup>18</sup> It is the evidence of witness Nilantha Jayawardena that he spoke with the Accused-Respondent through the mobile phone on 20-04-2019 since he did not get any response or instruction from the Accused-Respondent. Indeed, it is the position of witness Nilantha Jayawardena that he had called the Accused-Respondent because he had felt that no action had been taken by the Accused-Respondent. It is during that call that witness Nilantha Jayawardena had requested from the Accused-Respondent to hand over that information to the Criminal Investigation Department. It is to that request that the Accused-Respondent had responded by saying to witness Nilantha Jayawardena "නිලෙන් ඔයා රවිට කියන්න".

In my view, Court will not be in a position to assess this response in favour of the Accused-Respondent in the absence of an explanation as to what the Accused-Respondent had meant by that statement. On the other hand, one could reasonably expect that the Accused-Respondent, if called upon to place his defence, would have much more than these four words as his explanation. The Court would then be in a position to effectively evaluate the case both from the Prosecution's point of view and that of the Defence. Thus, the Accused-Respondent in my view, is obliged in law to explain to Court as to why he failed (if he had failed), to appreciate the importance, danger and seriousness of these information. It would be then only that the Court would be in a position to properly evaluate with a view of accepting or rejecting Action No. 02 as an intentional action taken by the Accused-Respondent in the discharge of his legal duty in his capacity as the Inspector General of Police.

### Action No. 03

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<sup>18</sup> Page 245-254 of Volume IV of the brief.

It is the evidence of witness Nilantha Jayawardena that the information he received on 20-04-2019 (**P 43**) is a reliable information. Indeed, it can be seen from the contents of Information No. 07 itself. It appears that witness Nilantha Jayawardena had immediately forwarded this information to the Accused-Respondent through a WhatsApp message due to its importance and urgency. That was also done on the same date, i.e., 20-04-2019.

Information No. 07 has been received by a foreign intelligence agency. It is after sending Information No. 07 to the Accused-Respondent that witness Nilantha Jayawardena had called the Accused-Respondent again. This was after witness Nilantha Jayawardena had received confirmation about this information at 4.16 pm on 20-04-2019. Witness Nilantha Jayawardena through this call had verbally also brought this information to the notice of the Accused-Respondent and highlighted the trustworthiness and reliability of this information. It would be worthwhile to reproduce his evidence in this regard, which is as follows:

ප්‍ර: මෙම පැ. 43 පණිවිඩය පමණද ඔබ පොලිස්පතිවරයාට යොමු කළේ?

උ: ස්වාමිනි මම පණිවිඩය යොමු කරලා එතුමාට දුරකතනයෙන් ඇමතීමක් කලා ස්වාමිනි<sup>19</sup>

...

ප්‍ර: ඔබ කිවුවනේ මේ පණිවිඩය ලැබුනේ ඔබට ප.ව. 4.16ට පමණ කියලා?

උ: එසේය ස්වාමිනි.

ප්‍ර: ඒ අනුව ඔබ එදින පස්වරුවේමද පොලිස්පතිවරයාට දුරකතනයෙන් කතා කළේ?

උ: එසේය ස්වාමිනි.<sup>20</sup>

...

උ: විශ්වාසවන්තභාවය පිළිබඳව දැනුවත් කලා

ප්‍ර: ඒ අවස්ථාවේ පොලිස්පතිවරයා ඔබට කල යුතු වැඩිදුර කාර්යයක් සම්බන්දයෙන් උපදෙස් දීමක් කලාද?

උ: එසේය ස්වාමිනි.

ප්‍ර: ඒ කවරෙක්ද?

උ: නන්දනට කියන්න කිවුවා.

ප්‍ර: නන්දන වශයෙන් පොලිස්පතිවරයා අදහස් කළේ කවුරුන්ද කියලා ඔබට අවබෝධ වුනාද?

උ: එසේය ස්වාමිනි

ප්‍ර: ඒ කවරුන්ද?

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<sup>19</sup> Record of proceedings on 26-11-2021 at 9.50 am (page 2), High Court-at-Bar Record of Proceedings, at Volume IV.

<sup>20</sup> Record of proceedings on 26-11-2021 at 9.50 am (page 3), High Court-at-Bar Record of Proceedings, at Volume IV.



උ: ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලීසිපති බස්නාහිර පළාත් නන්දන මුනසිංහ මහතා<sup>21</sup>

Thus, it is the submission of the learned Counsel for the Accused-Respondent that this Court must be satisfied with this action as a meaningful action taken intently by the Accused-Respondent in the discharge of his legal duty as the Inspector General of the country. The position I have described with regard to Action No. 02 would equally apply to Action No. 03 as well. Thus, if the Accused-Respondent chooses to place this as part of his explanation (rather than the mere argument by Counsel) then the Court would be in a position to decide whether it should accept this as an intentional action taken by the Accused-Respondent in the discharge of his legal duty in his capacity as the Inspector General of Police.

#### Action No. 04

The writing that had been made by the Accused-Respondent on 21-04-2019 on the letters produced, marked **P 39**, **P 40** and **P 41**, form part of the claimed Action No. 04. At the outset, two significant features in relation to these three pieces of information must be borne in mind. The first significance is in the dates on which these pieces of information had been sent to the Accused-Respondent. These dates are as follows: the Information No. 04 was sent to him on 18-04-2019 (**P 39**); Information No. 05 was sent to him on 19-04-2019 (**P 40**); Information No. 06 was sent to him on 20-04-2019 (**P 41**). The second significance is in the fact that these information are the ones which had conveyed the specific reliable information to the Accused-Respondent informing him of an imminent terrorist attack including the information about those who were involved in planning the said attack.

Mr. Widura Ranawake making his submissions in respect of the action taken by the Accused-Respondent on these pieces of information sent to him on 18-04-2019, 19-04-2019 and 20-04-2019 relied on the minute which he says was written by the Accused-Respondent, dated 21-04-2019 which is the date of the incident of the bomb explosions relevant to this case.

Having drawn the said minute of the Accused-Respondent dated 21-04-2019 to the attention of this Court, it was the position of Mr. Widura Ranawake that it was on 21-04-2019 that the Accused-Respondent had received those documentation. He further submitted that according to the pattern of the serial numbers which have been entered by the office of the Inspector

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<sup>21</sup> Record of proceedings on 26-11-2021 at 9.50 am (page 4), High Court-at-Bar Record of Proceedings, at Volume IV.

General of Police that all these letters have been received by the Accused-Respondent on 21-04-2019. The minute made by the Accused-Respondent is to the following effect:

*S.D.I.G/S.I.S Report progress by 05-05-2019*

Highlighting the aforesaid minute, Mr. Widura Ranawake submitted that the Accused-Respondent would not have made such a minute calling for a progress report by 05-05-2019 if he had received them after the incidents of bomb explosions. Mr. Widura Ranawake took up the above position on the premise that one would expect some effective and lengthy minute drafted in such a way to indicate that the Accused-Respondent had taken all necessary measures within his means with a view to exonerate him from any possible responsibility for any failure to act on those information, on his part. It was therefore the argument advanced by Mr. Widura Ranawake that the above facts unequivocally indicate the fact that the Accused-Respondent had received this documentation on 21-04-2019 before the bomb explosions occurred.

It was at this moment of Mr. Widura Ranawake's submissions, when he was still on his feet, that Senior Additional Solicitor General Mr. Priyantha Nawanna PC, could not restrain himself from getting up on his feet to interject. Mr. Priyantha Nawanna PC, then proceeded to draw the attention of the Court to the Admission No. 38, marked with the concurrence of both the Accused-Respondent and the Prosecution. The said admission is as follows:

"38 වෝදනා පත්‍රයට අමුණා ඇති "අ" උපලේඛනයේ සඳහන් බුද්ධි තොරතුරු සහ/හෝ තොරතුරු එකී උපලේඛනයේ සඳහන් දිනයේ වූදින වෙත ලැබුණු බව පිළිගනී."<sup>22</sup>

Thus, in the light of the above Admission No. 38 that the Accused-Respondent had received this information on the respective dates mentioned on those documents, I have to reject outright, Mr. Widura Ranawake's submission, that the Accused-Respondent had in fact received these documentation on 21-04-2019 after the bomb explosions relevant to this case.

The Court has to go on proven fact that the Accused-Respondent had indeed received this documentation on the respective dates they are said to have been sent to him (according to the Prosecution). Thus, the Accused-Respondent having received the information No. 04 on

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<sup>22</sup> Record of proceedings on 22-11-2021 at 10.05 am (pages 3-4), High Court-at-Bar Record of Proceedings, at Volume IV.

18-04-2019, which is an information about the persons in relation to the incident of the dry-run where a motorcycle was exploded in Kaththankudi on 16-04-2019, had waited until 21-04-2019 only to write a minute to the S.D.I.G/S.I.S asking him to submit a progress report by 05-05-2019. It is only the Accused-Respondent who can explain this as it is only he who knows under what circumstances he had made this minute and as to when he had made this minute. Thus, I am of the view that the Accused-Respondent is obliged in law to explain these circumstances (than mere argument by Counsel) if he is to assert that as part of an intentional action taken by him, in the discharge of his legal duty in his capacity as the Inspector General of Police of this country.

I also observe that in the case of Sinha Tissa Migara Ratnatunga v Hon. Attorney General,<sup>23</sup> G. P. S. de Silva CJ did not think of interfering with the following observation made by the learned High Court Judge in his Order deciding to call for the defence from the Accused in that case. The said observation is reproduced below and clearly underline the importance of the Accused giving an explanation rather than mere argument by his Counsel.

*"Where the words are prima facie defamatory, as in this case, and if the accused intends to set up the defence that the words bore a non-defamatory sense and assign some particular non-defamatory meaning to them (words) and allege the special circumstances which he relies upon as supporting that (innocent) meaning it is not enough for his counsel to merely say from the Bar that in the circumstances in which they were published the words bear a non-defamatory meaning. The stance of the learned President's Counsel in regard to these matters is not as definite as one would have wished it to be and is as fluid as fluid can be but what the learned defence counsel seem to be saying is that, if I had understood him (or them) correctly, the writing in question represents humorous, gently, light banter marked by pleasantries said more or less in jest and not meant seriously or in earnest. Assuming that this is so, it is the writer if he be the accused, who must say so in evidence or at least, in a statement from the dock and not his counsel for a counsel's submission do not attract to itself the weight of evidence and cannot be treated as such."*

Thus, in the above circumstances, I have to conclude that the High Court should have called upon the Accused-Respondent to explain as to how he had treated the relevant eight pieces

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<sup>23</sup> SC (Spl) LA No. 336/1996 decided on 22-07-1996.

of information which he had received. This is because in the absence of any explanation from the Accused-Respondent, I am unable to agree with the submission of the learned Counsel for the Accused-Respondent that those four actions must be taken as sufficient discharge of the legal duty imposed upon the Accused-Respondent by law. I have to reiterate here that the learned Counsel for the Accused-Respondent placed no other action before this Court for consideration as actions taken by the Accused-Respondent.

The instant case is not a simple straightforward murder case. The charges have been based on abetment by illegal omissions attributed to the Accused-Respondent. Thus, having regard to the complexity and magnitude of this case, I am of the view that this is not a fit case in which the learned High Court Judges should have acquitted the Accused-Respondent without calling for his defence.

For the foregoing reasons, I have no basis to permit the Judgment of the High Court-at-Bar to stand. Therefore, I set aside the Judgment dated 18-02-2022 pronounced by the High Court-at-Bar. I hold that there are grounds for the High Court-at-Bar to proceed with the trial and therefore direct the High Court-at-Bar to call upon the Accused-Respondent for his defence and continue with the rest of the trial.

**JUDGE OF THE SUPREME COURT**

**YASANTHA KODAGODA, PC J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**KUMUDINI K. WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**ARJUNA OBEYESEKERE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I have had the privilege of reading the draft judgment of my brother, Justice Surasena, with which I entirely agree.

This appeal concerns the correctness of the decision of the High Court Trial at Bar, made under section 200(1) of the Code of Criminal Procedure Act, No. 15 of 1979, in acquitting the accused without calling for the defence immediately after the close of the prosecution case. I must acknowledge that the correct application of section 200(1) of the Code of Criminal Procedure Act, commonly referred to as the “no case to answer” application, is fraught with difficulty and presents considerable complexity. This issue is not unique to Sri Lanka but extends to many other jurisdictions with similar provisions. Hence, I decided to write a separate opinion by way of emphasis and to provide further grounds for allowing this appeal.

**Virtual end versus technical end**

The general rule is that the Court shall take the decision to convict or acquit the accused after the trial. There are two main exceptions to this general rule. The Court can acquit the accused:

- (a) before the close of the prosecution case, and
- (b) soon after the close of the prosecution case.

Before a case reaches its technical or formal end, it may come to a virtual end. This occurs when the prosecution case has “crashed”, either during its presentation or through cross-examination, leaving the prosecution “without a case”. If the prosecutor still persists, it amounts to persecution rather than prosecution, as there is no purpose in “flogging a dead horse”. If, for instance, in a rape case, no reasonable Court can accept the evidence of the prosecutrix that the sexual act took place without her consent, there is no reason to wait until the evidence of all prosecution witnesses is led to acquit the accused. The Court can acquit the accused after the evidence of the prosecutrix. It is not a rule of law but a rule of practice now hardened and crystallized into law.

The landmark case in which this rule was recognized is *Pauline de Croos v. The Queen* (1968) 71 NLR 169, decided over fifty-six years ago on 24.03.1968, where T.S. Fernando J. stated at page 172:

*The procedure actually adopted by the learned judge in this case is, to our knowledge, not infrequently resorted to by judges in this Country when it becomes apparent to the Court and counsel that to continue is to waste precious time and that there is no*

*purpose in "flogging a dead horse". We ourselves have no desire, at this stage of the development of the practice of stopping trials at their virtual though not their technical end, to insist on technicality to the point almost of sanctifying it.*

The Five Judge Bench decision of this Court in *Attorney General v. Gunawardena* [1996] 2 Sri LR 149 at 158-159 illustrates the scope and applicability of this principle in the following manner:

*Section 212(2) of the Administration of Justice Law provides: When the case for the prosecution is closed, if the Judge considers that there is no evidence that the Accused committed the offence he shall direct the Jury to return a verdict of "not guilty".*

*Under this provision the Judge can direct the Jury to return a verdict of not guilty only at the close of the prosecution case. A practice appears to have developed in our Courts of Judges stopping a case even before that stage is reached. This matter is referred to in a judgment of the Court of Criminal Appeal in *Pauline de Croos v. The Queen* 71 NLR 169.*

*"The procedure actually adopted by the learned Judge in this case, is to our knowledge, not infrequently resorted to by Judges in this country when it becomes apparent to the Court and counsel that to continue is to waste precious time and that there is no purpose of "flogging a dead horse". We ourselves have no desire, at this stage of the development of the practice of stopping trials at their virtual though not their technical end, to insist on technicality to the point of almost sanctifying it."*

*There is no reason to disagree with this dictum; if it is apparent to Court as well as to counsel that to continue is to waste time and to flog a dead horse, the case should of course be stopped. Again, if prosecuting counsel concedes or is constrained to admit that all the evidence on which the prosecution case is based has been led and what remains to be led is formal evidence or other supporting evidence which will not take the case any further, then the virtual end of the prosecution case has been reached and a court may fairly act under Section 212(2). But if there is such other evidence still to be led on behalf of the prosecution which the Judge has to reckon and give weight to in considering whether there is a case to go to the Jury, it appears to us that a Judge will be acting contrary to S.212(2) in making a direction before he hears that evidence.*

Nevertheless, some raise doubt as to whether this principle of terminating trials at their virtual end applies only to jury trials, primarily because the *Pauline de Croos* case involved a jury trial. In my view, this is not correct.

When the *Pauline de Croos* case was decided in 1968, High Courts were non-existent, and according to section 29 of the Courts Ordinance, the criminal sessions of the Supreme Court were conducted before a judge and a jury. Following the establishment of High Courts with the enactment of the Administration of Justice Law, No. 44 of 1973, section 193 mandated that all trials before the High Court be tried by a jury before a judge. After the enactment of the Code of Criminal Procedure Act, No. 15 of 1979, section 161 stipulated that all serious offences were to be tried on indictment in the High Court by a jury. This provision was amended by the Code of Criminal Procedure (Amendment) Act, No. 11 of 1988, which provides that all prosecutions on indictment in the High Court shall be tried by a judge unless the accused elects to be tried by a jury. In practical terms, following this amendment in 1988, all trials in the High Court are conducted before a judge alone, making jury trials virtually obsolete.

The practice of stopping trials at their virtual, though not technical, end is equally applicable to jury trials as well as non-jury trials. Over two decades ago, in *Attorney General v. Baranage* [2003] 1 Sri LR 340, Justice Amaratunga affirmed this view, stating at page 352, "*This practice is applicable not only to trials before a jury but also to trials by a judge without a jury.*"

If a judge in a jury trial can direct the jury to acquit the accused halfway through the prosecution case on the basis that continuing with the trial is merely "flogging a dead horse", there is no reason why the same approach should not apply when the judge is deciding the case alone, without a jury. It is crucial to maintain procedural integrity consistently across both types of trials.

However, the Judge must not make this decision arbitrarily. He must act judicially, adhering to the fundamental principles of natural justice. After the evidence of the main witnesses has been led, if the Judge firmly forms the opinion that there is no reasonable prospect of proving the charge against the accused, he should inform the prosecuting counsel of this in the presence of the defence counsel and afford both parties an opportunity to be heard before making a final decision.

In the United Kingdom, as a general principle, an accused cannot be acquitted before the close of the prosecution case. However, in *R v. N Ltd and Another* [2008] 1 WLR 2684 at

2693, Lord Justice Hughes, delivering the judgment on behalf of the Court of Appeal, clarified that such a course of action is permissible with the agreement of both parties:

*That does not mean that it may not sometimes be appropriate and convenient for the parties to agree to ask the Judge to rule as a matter of law whether on agreed or admitted facts the offence charged is made out. A simple practical example is the situation where the end of the Crown case is nigh, subject only to outstanding evidence which it can be known will take a particular form, for example the police interviews. It may be administratively convenient for the parties to ask, or for the Judge to suggest, that an expected submission of no case be made then rather than half a day later, perhaps so that the jury is not unnecessarily inconvenienced. The key point is that the outstanding evidence is known for certain; it is admitted or agreed what it will be. And although the argument may be taken at that point, and a ruling made, any direction to the jury to return a verdict of 'not guilty' ought ordinarily to await the end of the Crown case, unless of course the Crown bows to the ruling and offers no further evidence, as it might. Similarly, it may often happen that in advance of the calling of any evidence at all the parties may agree that it would be helpful for the Judge to rule upon the question whether, on agreed, admitted or assumed facts, the offence charged would be made out. That may well be done with a view to the Crown accepting that it may offer no evidence if the ruling is against it, just as it may be done with a view to a defendant considering whether to plead guilty if the ruling is otherwise. The difference from the power here claimed is that the Judge is invited to proceed upon established, or assumed and agreed, facts, and has no power to compel acquittal until the end of the Crown evidence.*

### **Acquittal after the close of the prosecution case**

After the close of the prosecution case, the Court may acquit the accused. If it is a trial by the Judge, section 200(1) of the Code of Criminal Procedure Act, No. 15 of 1979 (which is identical to section 210(1) of the Criminal Procedure Code, No. 15 of 1898 and section 183(2) of the Administration of Justice Law, No. 44 of 1973) is applicable, and if it is a Jury trial, section 220 of the Code of Criminal Procedure Act, No. 15 of 1979 (which is identical to section 234 of the Criminal Procedure Code, No. 15 of 1898 and similar to section 212 of the Administration of Justice Law, No. 44 of 1973) is applicable.



This appeal pertains to the interpretation and applicability of section 200(1) of the Code of Criminal Procedure Act, No. 15 of 1979. The crux of the argument of learned Additional Solicitor General was that the High Court Trial at Bar erred in law by acquitting the accused after the close of the prosecution case by misapplication of section 200(1), even without an application made on behalf of the accused to do so.

At the close of the prosecution case, and prior to the accused being called to present a defence, the trial Judge may, either on the application of counsel or *ex mero motu*, acquit the accused on the ground that there is no case to answer. An application on behalf of the accused is not a mandatory prerequisite for making such a determination.

Section 200(1) reads as follows:

*When the case for the prosecution is closed, if the Judge wholly discredits the evidence on the part of the prosecution or is of opinion that such evidence fails to establish the commission of the offence charged against the accused in the indictment or of any other offence of which he might be convicted on such indictment, he shall record a verdict of acquittal; if however the Judge considers that there are grounds for proceeding with the trial he shall call upon the accused for his defence.*

When the case for the prosecution is closed, section 200(1) permits the Judge to acquit the accused on two main grounds:

- (a) If he wholly disbelieves the evidence led by the prosecution or
- (b) even if he wholly believes such evidence, if such evidence fails to establish the commission of the offence charged in the indictment or of any other offence of which he might be convicted on such indictment.

It further states:

- (c) If, however, the Judge considers that there are grounds for proceeding with the trial he shall call upon the accused for his defence.

It is clear that (a) and (b) above, favour the accused and (c) above favours the prosecution. The test contained in (c) above, requires the Judge only to consider whether there are grounds for proceeding with the trial. As Justice Salam points out in *Jansen v. Attorney General* [2015] BLR 159, the words in (c) above grant the Judge greater discretion to continue with the trial. My brother, Justice Surasena, endorses this view. I do not take a different view, but I must

stress that (a) and (b) above constitute the operative part of the section. If there is an inconsistency within a section or a section with the other parts of the Act, the operative part of the section shall take precedence and the other parts must give way to the operative part of the section (*Sunpac Engineers (Private) Limited v. DFCC Bank* (SC/APPEAL/11/2021, SC Minutes of 13.11.2023 at pages 20-25).

### **Total discredit of the evidence**

Let me now turn to the operative part of section 200(1). If I may repeat, under (a) above, if the Judge wholly discredits the evidence on the part of the prosecution, there is no need to call for the defence. A partial disbelief is not sufficient; it should be a total disbelief.

As I stated previously, section 200(1) of the Code of Criminal Procedure Act relates to non-jury trials, and section 220(1), which I have quoted below, applies to jury trials:

*When the case for the prosecution is closed, if the Judge considers that there is no evidence that the accused committed the offence he shall direct the jury to return a verdict of "not guilty".*

E.R.S.R. Coomaraswamy in his treatise, *The Law of Evidence*, Vol II, Book I, page 267 states that the term "no evidence" has often been referred to as not a scintilla of evidence.

It may be on the rarest occasions that an indictment would be filed by the Attorney General in the High Court without a scintilla of evidence. The Attorney General performs a quasi-judicial function and is not tasked with securing convictions at any cost, but rather with upholding the rule of law independently and impartially, ensuring the proper administration of justice. However, there may be instances where the evidence presented by the Attorney General is so grossly unreliable that no reasonable Judge or Jury could ever believe it. In such cases, the accused shall be acquitted without calling for the defence.

*The Attorney General v. Ratwatte* (1967) 72 CLW 92 is a case where the judge has wholly discredited the evidence for the prosecution. The 1<sup>st</sup> accused in that case, at the time of the alleged offence, was the Private Secretary of the Prime Minister of Ceylon who was also the Minister for Defence and External Affairs, responsible for decisions relating to the grant of citizenship. The 1<sup>st</sup> accused was indicted for accepting a bribe of Rs. 5000 given in two instalments for granting citizenship in terms of the Citizenship Act to a Malaysian national whose visit visa had expired. The trial judge acquitted the 1<sup>st</sup> accused, concluding that no reasonable Court could accept the testimony of the main witness. On appeal by the Crown,

T.S. Fernando J. (with the agreement of H.N.G. Fernando C.J.) affirmed the acquittal and cited with approval the following extract from the judgment of the trial Court:

*But in my view no reasonable court can accept the oral testimony of Papuraj that this gratification was given to the first accused. Here is a person holding a responsible post under Government and one day in the afternoon on the 16<sup>th</sup> March 1964 an unknown car drove up to the compound. The car contained some people unknown to him, one of the persons possibly known to him – there is no proof even of that fact – walks up to him who has by now come up to the parties and hands him quite openly Rs. 1000 which he accepts without any hesitation and he puts it into his shirt pocket. Similarly, on the night of the 18<sup>th</sup> March 1964 an unknown car drives up to his house – in this case the ancestral walauwa of the 1<sup>st</sup> accused – that the same person who on the previous occasion is said to have given him Rs. 1000 walks up to him and the 1<sup>st</sup> accused who has now come to the entrance of his house accepts this Rs. 4000 and puts it his shirt pocket to be seen by the unknown persons in the car. On both occasions the 1<sup>st</sup> accused does not appear to have been in anyway hesitant about accepting the money. He does not appear to have been anxious to conceal the acceptance from any person who may have seen it. He does not take the precaution even of accepting the money without being seen by the unknown persons. It cannot be said that he is unaware of the seriousness of the offence he is committing. He does not seem to care as to whether he is led into a trap or not. I do not think any ordinary person would accept a bribe in such a manner, least of all a person in the position of the 1<sup>st</sup> accused who holds such a responsible post under Government.*

In interpreting section 234(1) of the Code of Criminal Procedure Act of 1898, which was identical to section 220(1) of the Code of Criminal Procedure Act of 1979, the Court of Criminal Appeal in *The Queen v. Kularatne* (1968) 71 NLR 529 at 555 made the crucial distinction between (a) the establishment of an offence by evidence and (b) the decision that there is no evidence that the accused committed the offence. According to the Court of Criminal Appeal, while the former is a question of fact that must be left to the Jury, the latter is a question of law that must be decided by the Judge.

*Lastly, there is the question whether the learned trial Judge should have given a direction to the jury at the close of the case for the prosecution under section 234(1) to return a verdict of not guilty. That section casts a duty upon the trial Judge to direct the jury to acquit, if he is of opinion that there is no evidence that the accused has*

*committed an offence. This provision is in accordance with the principle underlying a criminal trial by judge and jury that matters of law are for the Judge to decide and matters of fact for the jury. It does not appear to us to be a departure from that principle. It has always been considered that the question whether there is no evidence upon an issue is a question of law. Thus, in cases where an appeal is given on a matter of law, a plea that there was no evidence to support a determination is always permitted to be raised as a question of law. Whether there is sufficient evidence or whether the evidence is reasonable, trustworthy or conclusive, or, in other words, the weight of evidence is a question of fact. Accordingly, the Judge has to decide whether there is evidence upon the different matters which the prosecution has to prove in order to establish the guilt of the accused. It is for the jury to decide whether those matters are proved by such evidence and guilt established. Thus, in a case, which the prosecution seeks to prove by direct evidence, the Judge has to decide whether there is evidence upon the different matters required to be proved to establish the commission of the offence and the jury has to decide whether it believes that evidence and whether the evidence accepted by them establishes those matters to their satisfaction. In a case of circumstantial evidence, the Judge has to decide whether there is evidence of facts from which it is possible to draw inferences in regard to the matters necessary to establish the guilt of the accused. It is for the jury to decide what facts are proved and whether it is prepared, in the circumstances, to draw from them inferences in regard to guilt and whether in all the circumstances those inferences are the only rational inferences that may be drawn or are irresistible inferences.*

### **Failure to establish the commission of the offence**

The second ground for acquittal as embodied in section 200(1) is that "*such evidence fails to establish the commission of the offence charged against the accused in the indictment or of any other offence of which he might be convicted on such indictment.*" This means that even if the evidence presented is wholly reliable, if it does not establish the essential elements necessary for a conviction on (a) the charge in the indictment, or (b) any other offence for which the accused might be convicted on such indictment, the accused should be acquitted.

### **Standard of proof**

The next question, which is the most challenging, concerns not the onus of proof but the standard of proof expected from the prosecution at the close of its case. There is no explicit

provision setting out the applicable legal standard for a “no case to answer” application. Therefore, it is necessary to determine an appropriate legal standard that aligns with the statutory framework and the principles governing the burden of proof.

Throughout the trial, the burden remains on the prosecution to prove the charge against the accused “beyond reasonable doubt”, and it never shifts. In the celebrated House of Lords decision of *Woolmington v. DPP* [1935] AC 462 at 481, Viscount Sankey L.C., with the concurrence of Lord Hewart L.C.J., Lord Atkin, Lord Tomlin and Lord Wright, recognized this principle as the “golden thread” running through the fabric of criminal law.

At this juncture, it may be appropriate to briefly clarify the meaning of “proof beyond reasonable doubt”, a standard that has historically perplexed both prosecutors and judges due to its lack of a precise definition. The classic definition of “proof beyond reasonable doubt” is widely regarded as that of Lord Denning in *Miller v. Minister of Pensions* [1947] 2 All ER 372, where he stated at page 373:

*Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course it is possible, but not in the least probable,” the case is proved beyond reasonable doubt, but nothing short of that will suffice.*

Justice Kodagoda in *Sivathasan v. Attorney General* [2021] 2 Sri LR 290 at 304-305 emphasized that a reasonable doubt is a real, substantial doubt arising from objective consideration of the facts, not an imaginary or flimsy one:

*A reasonable doubt is a real or actual and a substantial doubt, as opposed to an imaginary or flimsy doubt that may arise in the mind of the decider of facts (judge or the jury, as the case may be), following an objective consideration of all the attendant facts and circumstances. It is a doubt founded on logical and substantial reasoning (well-founded) which a normal prudent person with not less than average intelligence and learnedness in men, matters and worldly affairs, would naturally and inevitably develop in his mind following a comprehensive, objective, independent, impartial and neutral consideration of the totality of the evidence and associated attendant circumstances. It is a doubt that makes the case for the prosecution significantly less probable to have occurred than in the manner purported to have occurred.*

*A reasonable doubt is not the type of doubt that arises due to incorrect, abnormal or unreasonable comprehension of testimonies and other material which amount to evidence presented at the trial, or due to irrational fear, inappropriate sympathy, or unjustifiable mercy. It is not a doubt that develops in the mind of an imbecile, indecisive or timid person, or in a weak or vacillating mind. A shadow of a doubt, an imaginary doubt, a vague doubt or a speculative or trivial doubt should not be confused with a reasonable doubt. A reasonable doubt is not a doubt that a partisan individual with vested interests would entertain in his mind, or a doubt that such a person would advocate that purportedly exists.*

As this Court held in *Karunarithna v. OIC, Police Station, Rambukkana* (SC/APPEAL/61/2023, SC Minutes of 09.10.2024 at page 20):

*The prosecution must prove the accused's guilt beyond a "reasonable doubt", not beyond "any doubt". A reasonable doubt refers to a doubt based on logical reasoning through proper evaluation of evidence. This requires the trier of fact to weigh all evidence supporting guilt against evidence suggesting innocence, considering the strengths and weaknesses on both sides. If, after this evaluation, the evidence overwhelmingly favors the prosecution and eliminates any reasonable doubt about the guilt of the accused, the case can be deemed proven beyond a reasonable doubt. This standard applies to the totality of the evidence as a whole, not to each individual piece of evidence the prosecution relies on to prove the guilt of the accused.*

It is also important to point out that there can be degrees of proof within the standard of proof of beyond reasonable doubt. The degree of proof must be commensurate with the occasion and proportionate to the subject-matter. This aspect was discussed by this Court in *LOLC Factors Limited v. Airtouch International (Private) Limited* (SC/CHC/APPEAL/20/2015, SC Minutes of 03.04.2024).

In *Bater v. Bater* [1950] 2 All ER 458, the wife sought for divorce against the husband on the ground of cruelty. The trial judge held that she must prove her case beyond reasonable doubt. On appeal, the Court of Appeal affirmed it. Denning L.J. stated at page 459:

*The difference of opinion which has been evoked about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof is required in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in*

*either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion. Likewise, a divorce court should require a degree of probability which is proportionate to the subject-matter.*

As explained by the International Criminal Court in *The Prosecutor v. William Samoei Ruto and Another* (Case No. ICC-01/09-01/11, decided on 03.06.2014), the primary rationale underpinning the acquittal on the basis of "no case to answer" is "*the principle that an accused should not be called upon to answer a charge when the evidence presented by the prosecution is substantively insufficient to engage the need for the defence to mount a defence case. This reasoning flows from the rights of an accused, including the fundamental rights to a presumption of innocence and to a fair and speedy trial, which are reflected in Articles 66(1) and 67(1) of the [Rome] Statute.*"

### **Prima facie case or case proven beyond reasonable doubt?**

By quoting *Attorney General v. Baranage* [2003] 1 Sri LR 340 at 354 and *Sinha Ranatunga v. The State* [2001] 2 Sri LR 172 at 188-189, Mr. Widura Ranawake, learned counsel for the former Inspector General of Police strenuously submitted with his characteristic eloquence that at the stage of the closure of the prosecution case, the standard of proof required of the prosecution is proof beyond reasonable doubt. I must accept that I was initially more inclined to accept this position during the course of the argument.

In *Attorney General v. Susantha Kumara* (HCC/0055/22, CA Minutes of 24.11.2022), Kaluarachchi J. stated:

*At the stage of deciding whether the accused should be called upon for his defence, it is not necessary to consider whether there is evidence to prove the charge beyond a reasonable doubt. However, at the very least, there must be some evidence on each*

*element of the offence to call the defence, because an offence would not be constituted if there is no evidence of one of the basic elements required to prove the charge.*

In *Edrick de Silva v. Chandradasa de Silva* (1967) 70 NLR 169 at 173, H.N.G. Fernando C.J. acknowledged that what needs to be established at that stage is a *prima facie* case.

The question of the standard of proof required from the prosecution at the close of its case is indeed contentious and remains a subject of considerable debate, extending beyond local jurisprudence. After careful and prolonged consideration, I regret that I am unable to concur with the submission of Mr. Widura Ranawake.

There is no duty cast on the prosecution to prove the guilt of the accused beyond a reasonable doubt at the close of its case. At the stage of the close of the prosecution case, the proper question for the Court to consider is whether the prosecution has made out a *prima facie* case to call upon the accused for his defence, not whether the prosecution has proved the case beyond reasonable doubt. The decision whether the accused is guilty of the charge beyond reasonable doubt should be reserved until the conclusion of the entire trial.

The next question is what is the meaning of *prima facie* case? There is a difference between *prima facie* case and *prima facie* evidence. *Sarker's Law of Evidence*, Vol I, 14<sup>th</sup> edition (1993), page 45 defines *prima facie* evidence as "evidence which, if accepted, appears to be sufficient to establish a fact unless rebutted by acceptable evidence to the contrary. It is not conclusive." In *Ex parte Minister of Justice, re R v. Jacobson & Levy* (1931) A.D. 466, Statford J.A. states that "Prima facie evidence in its usual sense is used to mean prima facie proof of an issue, the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof and the party giving it discharges his onus."

If the same yardstick is applied to a *prima facie* case, it would imply that a *prima facie* case is one made out by the prosecution on evidence which, if unrebutted, would warrant the conviction of the accused. However, I find this definition unacceptable for a *prima facie* case as contemplated under section 200(1).

After the Court calls for the defence on the basis that the prosecution has established a *prima facie* case, if the accused remains silent and closes the defence case, the Court cannot automatically enter a conviction. The Court has a duty thereafter to meticulously reassess and



reconsider the entirety of the evidence as a separate exercise in determining the guilt of the accused, applying the beyond reasonable doubt standard. The decision to call for the defence has no bearing on the onus of proof, which rests on the prosecution throughout the trial.

In *Sinha Ranatunga v. The State (supra)* at page 189, Yapa J. in the Court of Appeal stated that in an application for no case to answer under section 200(1), "A *prima facie* case necessarily means a case beyond reasonable doubt – at first sight i.e. on the evidence available on record as at the close of the prosecution case." With respect, I find myself unable to accept this definition. A *Prima facie* case and proof beyond reasonable doubt are two different and irreconcilable concepts. *Prima facie* is a Latin term which means "at first sight". *Prima facie* evidence is neither conclusive nor irrefutable. A *prima facie* case may not stand or fall by itself.

At the close of the prosecution case, it is not prudent to consider whether the prosecution has proved its case beyond all reasonable doubt, as this could undermine a fundamental principle of the criminal justice system that an accused person is presumed innocent until proven guilty. This presumption extends not only until the conclusion of the prosecution case but persists until the entire trial is completed, ensuring that both parties are given the opportunity to be heard in accordance with the principles of natural justice. However, if no *prima facie* case is established against the accused, he is entitled to an early acquittal. If proof beyond reasonable doubt were to be accepted as the standard at the close of the prosecution case, then, should the accused choose to remain silent after the defence is called, it would necessarily lead to an automatic conviction.

Lord Parker C.J. (with the concurrence of Ashworth and Fenton Atkinson JJ.) elucidated the applicable test at the close of the prosecution case in his "Practice Directions" reported in [1962] 1 All ER 448 as follows:

*Those of us who sit in the Divisional Court have the distinct impression that justices today are being persuaded all too often to uphold a submission of no case. In the result, this court has had on many occasions to send the case back to the justices for the hearing to be continued with inevitable delay and increased expenditure. Without attempting to lay down any principle of law, we think that as a matter of practice justices should be guided by the following considerations.*

*A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence;*

*(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it.*

*Apart from these two situations a tribunal should not in general be called upon to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.*

It is essential to recognize that the quality of the evidence is not evaluated at the mid-trial stage. If sufficient evidence exists to warrant the continuation of the trial, the Court must treat this evidence as reliable, call upon the defence, and defer a comprehensive evaluation of the evidence until the conclusion of the entire case to determine whether the prosecution has established its case beyond a reasonable doubt.

In *State of Kerala v. Mundan* (1981) CRILJ 1795 at paras 8 and 8A it was held:

*We are of the view that the words "no evidence" in Section 232 Cr.P.C. [in India] cannot be construed or interpreted to mean absence of sufficient evidence for conviction or absence of satisfactory or trustworthy, or conclusive evidence in support of the charge. The judge has to see whether any evidence has been let in on behalf of the prosecution in support of their case that the accused committed the offence alleged, and whether that evidence is legal and relevant. It is not the quality or the quantity of the evidence that has to be considered at this stage. If there is any evidence to show that the accused has committed the offence, then the judge has to pass on to the next stage. It is not open to him to evaluate or consider the reliability of the evidence at this stage....It is a salutary principle in a sessions trial that no final opinion as to the reliability or acceptability of the evidence should be arrived at for the Judge until the whole evidence before him and has been duly considered.*

What is expected from the prosecution at the end of the prosecution case and what is expected from the Judge at the end of the whole case was lucidly explained by Dixon C.J., Webb,

Fullagar, Kitto and Taylor JJ. on behalf of the High Court of Australia in *May v. O'Sullivan* (1955) 92 CLR 654 at page 658:

*When, at the close of the case for the prosecution, a submission is made that there is "no case to answer", the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is really a question of law. Unless there is some special statutory provision on the subject, a ruling that there is a "case to answer" has no effect whatever on the onus of proof, which rests on the prosecution from beginning to end. After the prosecution has adduced evidence sufficient to support proof of the issue, the defendant may or may not call evidence. Whether he does or not, the question to be decided in the end by the tribunal is whether, on the whole of the evidence before it, it is satisfied beyond reasonable doubt that the defendant is guilty. This is a question of fact. In deciding this question it may in some cases be legitimate, as is pointed out in *Wilson v. Buttery* (1926) SASR 150 for it to take into account the fact that the defendant has not given evidence as a consideration making the inference of guilt from the evidence for the prosecution less unsafe than it might otherwise possibly appear: cf. *Morgan v. Babcock & Wilcox, per Isaacs J.* (1929) 43 CLR 163 at 178. But to say this is a very different thing from saying that the onus of proof shifts. A magistrate who has decided that there is a "case to answer" may quite consistently, if no evidence is called for the defendant, refuse to convict on the evidence for the prosecution. The prosecution may have made "a prima facie case", but it does not follow that in the absence of a satisfactory answer the defendant should be convicted.*

The Court of Appeal judgment in *Attorney General v. Baranage* (*supra*) is largely founded on the seminal judgment of the Court of Appeal of the United Kingdom in *R. v. Galbraith* [1981] 1 WLR 1039 decided on 19.05.1981. It was a Jury trial. At the close of the prosecution evidence, a submission was made that there was no case for the accused to answer, which the Judge rejected. The principal ground of appeal was that the Judge had erred in this regard. Lord Lane C.J. articulated the test at page 1042 as follows:

*How then should the judge approach a submission of "no case"? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence, (a) Where*

*the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred.*

*There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.*

After reviewing the evidence, Lord Lane C.J. concluded that the trial judge's decision to call for the defence was correct.

The *Galbraith* directions, however, do not support the proposition that the standard for assessing a "no case to answer" submission is that of proof beyond a reasonable doubt.

After quoting the *Galbraith* directions, *Blackstone's Criminal Practice* (2017), Oxford University Press, page 1813 states:

*The following propositions are advanced as representing the position that has now been reached on determining submissions of no case to answer:*

- (a) If there is no evidence to prove an essential element of the offence, a submission must obviously succeed.*
- (b) If there is some evidence which, taken at face value, establishes each essential element, the case should normally be left to the jury.*
- (c) If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, a submission should be upheld. Weakness may arise from the sheer improbability of what the witness is saying, from internal inconsistencies in the evidence or from its being of a type which the accumulated experience of the courts has shown to be of doubtful value.*
- (d) The question is whether a witness is lying is nearly always one for the jury, save where the inconsistencies are so great that any reasonable tribunal would be*

*forced to the conclusion that it would not be proper for the case to proceed on the evidence of that witness alone.*

The Privy Council judgment in the case of *How Tua Tau v. Public Prosecutor* [1981] 2 MLJ 49 is a landmark judgment on the question of “no case to answer”, which was delivered on 22.06.1981, one month after the Court of Appeal judgment in *R v. Galbraith*. The Privy Council judgment stemmed from three appeals from the Court of Criminal Appeal of Singapore.

Section 188(1) of the Criminal Procedure Code of Singapore, at that time, read as follows: “*When the case for the prosecution is concluded the court, if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction, shall record an order of acquittal or, if it does not so find, shall call on the accused to enter on his defence.*” Section 180 of the Criminal Procedure Code of Malaysia also was drafted in identical terms. Although *prima facie* reading of this section suggests that the case must have been proved beyond a reasonable doubt at the close of the prosecution case, the Privy Council in *How Tua Tau v. Public Prosecutor* did not endorse such an interpretation. Lord Diplock with the agreement of Lord Fraser of Tullybelton, Lord Scarman, Lord Roskill and Sir Ninian Stephen held:

*The proper attitude of mind that the decider of fact ought to adopt towards the prosecution’s evidence at the conclusion of the prosecution’s case is most easily identified by considering a criminal trial before a judge and jury, such as occurs in England and occurred in Singapore until its final abolition capital cases in 1969. Here the decision-making function is divided; questions of law are for the judge, questions of fact are for the jury. It is well established that in a jury trial at the conclusion of the prosecution’s case it is the judge’s function to decide for himself whether evidence has been adduced which, if it were to be accepted by the jury as accurate, would establish each essential element in the alleged offence: for what are the essential elements in any criminal offence is a question of law. If there is no evidence (or only evidence that is so inherently incredible that no reasonable person could accept it as being true) to prove any one or more of those essential elements, it is the judge’s duty to direct an acquittal, for it is only upon evidence that juries are entitled to convict: but, if there is some evidence, the judge must let the case go on. It is not the function of the jurors, as sole deciders of fact, to make up their minds at that stage of the trial whether they are so convinced of the accuracy of the only evidence that is then before them that they have no reasonable doubt as to the guilt of the accused. If this were indeed their*

*function, since any decision that they reach must be a collective one, it would be necessary for them to retire, consult together and bring in what in effect would be a conditional verdict of guilty before the accused had an opportunity of putting before them any evidence in his defence. On the question of the accuracy of the evidence of any witness jurors would be instructed that it was their duty to suspend judgment until all the evidence of fact that either party wished to put before the court had been presented. Then and then only should they direct their minds to the question whether the guilt of the accused had been proved beyond reasonable doubt.*

*In their Lordship's view the same principle applies to criminal trials where the combined roles of decider of law and decider of fact are vested in a single judge (or in two judges trying capital cases). At the conclusion of the prosecution's case what has to be decided remains a question of law only. As decider of law, the judge must consider whether there is some evidence (not inherently incredible) which, if he were to accept as accurate, would establish each essential element in the alleged offence. If such evidence as respects any of those essential elements is lacking, then, and then only, is he justified in finding "that no case against the accused has been made out which if unrebutted would warrant his conviction", within the meaning of section 188(1). Where he has not so found, he must call upon the accused to enter upon his defence, and as decider of fact must keep an open mind as to the accuracy of any of the prosecution's witnesses until the defence has tendered such evidence, if any, by the accused or other witnesses as it may want to call and counsel on both sides have addressed to the judge such arguments and comments on the evidence as they may wish to advance.*

In Malaysia, doubts were expressed regarding the correctness of this judgment, notwithstanding that it was delivered by the Privy Council. These concerns were addressed by the Seven Judge Bench of the Federal Court of Kuala Lumpur in the case of *Arulpragasam Sandaraju v. Public Prosecutor* (1996) 4 CLJ 597, where it was held (with one Judge dissenting) that the standard of proof required of the prosecution at the close of its case is proof beyond a reasonable doubt, and if the accused elects to remain silent and calls no witnesses in his own defence, the Court must convict him without further ado. This decision was in conflict with the Privy Council decision.

However, the matter did not rest there. Doubts were expressed regarding the correctness of this judgment. As a result, the Seven-Judge Bench decision was effectively overruled in the

following year by the amendment to the Criminal Procedure Code in Malaysia in 1997, which explicitly stated that the standard of proof at the end of the prosecution case is a *prima facie* case, while the standard of proof at the conclusion of the trial is beyond reasonable doubt.

*180. (1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a prima facie case against the accused.*

*(2) If the Court finds that the prosecution has not made out a prima facie case against the accused, the Court shall record an order of acquittal.*

*(3) If the Court finds that a prima facie case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.*

*(4) For the purpose of this section, a prima facie case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.*

*182a. (1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.*

*(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.*

*(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.*

Section 230(1)(j) of the Criminal Procedure Code in Singapore (revised edition 2012) states that "*if after considering the evidence referred to in paragraph (e), the court is of the view that there is some evidence which is not inherently incredible and which satisfies each and every element of the charge as framed by the prosecutor or as altered or framed by the court, the court must call on the accused to give his defence*".

The International Criminal Court, in the case of *The Prosecutor v. William Samoei Ruto and Another (supra)* holds the same view:

*23. As an initial point, a distinction needs to be made between the determination made at the halfway stage of the trial, and the ultimate decision on the guilt of the accused to be made at the end of the case. Whereas the latter test is whether there is evidence*

*which satisfies the Chamber beyond a reasonable doubt of the guilt of the accused, the Chamber recalls that the objective of the 'no case to answer' assessment is to ascertain whether the Prosecution has led sufficient evidence to necessitate a defence case, failing which the accused is to be acquitted on one or more of the counts before commencing that stage of the trial. It therefore considers that the test to be applied for a 'no case to answer' determination is whether or not, on the basis of a prima facie assessment of the evidence, there is a case, in the sense of whether there is sufficient evidence introduced on which, if accepted, a reasonable Trial Chamber could convict the accused. The emphasis is on the word 'could' and the exercise contemplated is thus not one which assesses the evidence to the standard for a conviction at the final stage of a trial.*

*24. The determination of a 'no case to answer' motion does not entail an evaluation of the strength of the evidence presented, especially as regards exhaustive questions of credibility or reliability. Such matters – which go to the strength of evidence rather than its existence – are to be weighed in the final deliberations in light of the entirety of the evidence presented.*

Let me summarize the applicability of section 200(1) of the Code of Criminal Procedure Act of 1979. At the end of the prosecution case, if the Judge wholly, as opposed to partly, disbelieves the evidence led by the prosecution, i.e., no reasonable Judge would act upon such evidence, the accused shall be acquitted. This is articulated in the first part of section 200(1). If there exists, on prima facie basis, some evidence (not inherently incredible) which, if accepted by the Judge as accurate, would establish the essential elements of the offence charged in the indictment or any other offence of which the accused might be convicted on such indictment, the Judge shall call for the defence. This is addressed in the second part of section 200(1). If the Judge decides against the prosecution in either of these two instances, the Judge need not call for the defence but shall acquit the accused, unless there are other "grounds for proceeding with the trial" as referred to in the last part of section 200(1).

### **Strong and cogent evidence**

In the majority judgment, the phrase "strong and cogent evidence" (ප්‍රබල සහ කාවදින සාක්ෂි) is used repeatedly with special emphasis, highlighting the required standard of proof. I have no doubt that the Trial at Bar anticipated a high degree of proof from the prosecution by the end of its case. I do not for a moment say that the approach adopted is consciously wrong



and the majority deliberately or knowingly resolved to ignore the settled law regarding standard of proof expected at the close of the prosecution case. In my view, the law was not settled at the time of the delivery of the impugned order of the Trial at Bar.

As Justice Surasena has pointed out, the case at hand is not an ordinary murder or attempted murder case to be proved by direct or circumstantial evidence. It is a very complicated high-profile trial where for the first time in our history, an Inspector General of Police was indicted by the Attorney General to impute criminal liability on illegal omissions. There was, and still is, a public outcry that those in authority, including the accused, failed to take action despite being well aware in advance of the series of suicide attacks launched on Easter Sunday in 2019. The Presidential Commission of Inquiry presided over by a sitting Supreme Court Judge made recommendations regarding criminal prosecutions. In fundamental rights applications filed by the victims of this carnage, the Supreme Court held several persons liable for violating their fundamental rights and ordered heavy compensation. I make these observations not to suggest that trial Judges should consider extraneous matters when deciding whether to call for the defence, but rather to highlight the challenge—especially in a case of such complexity and magnitude—of arriving at accurate findings without the benefit of counsel's assistance from both parties.

### **Questions of fact**

The major part of the judgment of the Trial at Bar is set apart to say that the accused has taken adequate steps to prevent suicide attacks whereas the prosecution version is that the steps alleged to have been taken by the accused are grossly inadequate. That is not a question of law but a question of fact which should be decided at the end of the trial, not at the end of the prosecution case. While my view is provisional and not binding, I concur with Justice Surasena that the accused did not take adequate steps that he could or ought to have taken to prevent the suicide attacks. I do not wish to elaborate on this aspect further, given the final conclusion reached by Justice Surasena, with which I entirely agree.

If I may stress what Justice Surasena has already stated, in *Samy and Others v. Attorney General (Bindunuwewa Murder Case)* [2007] 2 Sri LR 216 at 239 what Justice Weerasuriya stated was "*if the officer in charge has exercised his discretion bona fide and to the best of his ability, he cannot be faulted for the action he has taken even though it may appear that another course of action could have proved more effective in the circumstances.*" It is within the knowledge of the accused that he performed his duties and exercised his discretion *bona*

*fide* and to the best of his ability. Who can explain this? Only the accused can explain this, not the counsel or the Judge. This opportunity was denied to the accused by the Trial at Bar. The Trial at Bar did not even invite the learned counsel to explain this.

### **Intention**

The Trial at Bar has also taken the view that the prosecution has failed to prove intention on the part of the accused as required by section 100 of the Penal Code by strong and cogent evidence (ප්‍රබල සහ කාවදින සාක්ෂි). In addition to the defence taken up by learned counsel for the former Inspector General of Police that adequate steps were taken to prevent the suicide attacks, his other principal defence was grounded in the absence of intention on the part of the accused. It is true that in terms of section 100 of the Penal Code "*A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing.*" Intention is an essential ingredient in proving the offence. Learned Additional Solicitor General, in his written submissions, has cited several foreign legal authorities to argue that intention can be imputed when the accused foresees the result of his illegal omissions as virtual certainty. The relationship between knowledge and intention in a charge of abatement by illegal omission has also been a subject of considerable debate.

In my view, the question of intention was not seriously and adequately addressed at the argument before us; the primary focus was on the adequacy and inadequacy of the steps taken by the accused to prevent the suicide attacks. The question of intention is not a pure question of law to be raised for the first time on appeal. It is a mixed question of fact and law. The question of intention was not explicitly raised as a distinct issue before the Trial at Bar. There was no opportunity for the Attorney General to make submissions before the Trial at Bar regarding the question of intention or any other matter. Therefore, the Trial at Bar did not have the advantage of hearing both parties before it decided that there was no intentional aid on the part of the accused by illegal omission that enabled the suicide bombers to launch the attacks.

The Trial at Bar has simply gone on the basis that the prosecution has failed to prove that the omission was intentional. For the Trial at Bar, it was so obvious. When something is obvious, we tend to refuse to afford a fair hearing stating that hearing makes no difference as the end result would be the same. This is a misguided notion. A fair hearing could uncover critical insights and perspectives that were not initially apparent. Megarry J. in *John v. Rees* [1970] Ch 345 at 402 elucidated this point as follows:

*As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.*

In light of the final conclusion reached by Justice Surasena, with which I concur, I shall refrain from exploring the question of intention further in this judgment. Let the Trial at Bar first decide the question of intention by calling for the defence and hearing counsel for both parties.

### **Alternative charges**

There is another important matter trial Judges tend to overlook when an application under section 200 is made. At the close of the prosecution case, the Judge must consider not only whether there is *prima facie* evidence to call for the defence in respect of the offence charged in the indictment, but also whether there is *prima facie* evidence to call for the defence in respect of any other offence for which the accused might be convicted on the indictment. The phrase "the accused *might* be convicted" indicates that there need not be strong and cogent evidence on any other offence.

The Trial at Bar *ex mero motu* considered section 298 of the Penal Code as an alternative charge and rejected it, but learned Additional Solicitor General stated that the accused at least might have been convicted under some other section, such as section 112 of the Penal Code.

As Justice Surasena points out, the majority judgment has seriously fallen into an error when they evaluated the facts of the case in light of section 107 of the Penal Code whereas the accused was charged under section 102 read with sections 296 and 300 of the Penal Code. These obvious mistakes could have been avoided if the Trial at Bar took the decision after hearing counsel for both parties.

### **Hearing after the close of the prosecution case**

The gravamen of the complaint of learned Additional Solicitor General was that the Trial at Bar acquitted the accused without affording the Attorney General an opportunity to be heard. Conversely, Mr. Widura Ranawake, learned counsel for the accused submitted that there is no legal requirement in the Code of Criminal Procedure Act to afford a hearing once the prosecution has closed its case and before the Court decides whether to call for the defence.

In some jurisdictions it is mandatory to hear both sides before taking a decision on “no case to answer”. For instance, in India, section 232 of the Code of Criminal Procedure 1973 states:

*If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.*

While accepting that there is no such express provision in our Code of Criminal Procedure Act requiring to afford a hearing at that stage, I must state that there is no prohibition either against inviting counsel for both parties to address the Court, particularly when the Court is considering acquitting the accused in a complex case of this nature. As stated by Tambiah J. in *Hevavitharana v. Themis de Silva* (1961) 63 NLR 68 at 72, quoting with approval the famous dictum of Mahmood J. in *Narasimha Das v. Mangal Dubey* (1883) 5 Allahabad 163 at 172:

*Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed.*

If a statute is silent on the requirement to afford a hearing to the party who will be affected by a decision, the Court will imply a rule within the statutory provision that the principles of natural justice are observed. Procedural fairness demands such a course of action to be followed. In *Gamini Dissanayake v. M.C.M. Kaleel and Others* [1993] 2 Sri LR 135 at 179 this Court observed that “*today the courts presume, unless the contrary appears, that the legislature intended that powers conferred by it be exercised fairly, for although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.*” (William Wade, *Administrative Law*, 11<sup>th</sup> Edition (2014), page 377, *De Smith’s Judicial Review*, 8<sup>th</sup> Edition (2018), page 392, J.A.L. Cooray, *Constitutional and Administrative Law of Sri Lanka*, 1<sup>st</sup> Edition (1973), page 333)

In the UK case of *Barking and Dagenham Justices, ex parte DPP* (1995) 159 JP 373, it was held that when the justices are provisionally inclined to uphold a submission of no case to answer, they must first invite the prosecution to address the Court. This procedure ensures that the prosecutor has the opportunity to argue why the case should not be dismissed. In *R v. Brown* [1998] Crim LR 196, the Court of Appeal held that if, at the end of the evidence, the trial judge considers that no reasonable jury properly directed could safely convict, “*he should*

*raise the matter for discussion with counsel even if no submission of no case to answer is made".* If, after considering the submissions, the judge still holds this view, he should withdraw the case from the jury.

I agree with the final conclusion of Justice Surasena that the impugned order of the Trial at Bar dated 18.02.2022 must be set aside and the case remitted to call for the defence.

**JUDGE OF THE SUPREME COURT**