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

In the matter of an application for Special Leave to Appeal in terms of Article 127 read with Article 128 of the Constitution.

The Director General,
Commission to Investigate Allegations
of Bribery or Corruption,
No.36, Malalasekera Mawatha
Colombo 7.

Complainant

Vs.

SC Appeal No. 99/2007
SC Spl. L.A. No.80/2007
HC Colombo Case No. HCMCA 535/04
Colombo Magistrate's Court Case No.42837/05/02

Kalinga Padmatillake, alias
Sergeant Elpitiya
Siribopura
Hambantota

Accused

And between

Kalinga Padmatilake, alias
Sergeant Elpitiya
Siribopura
Hambantota

Accused-Appellant

Vs.

The Director General,
Commission to Investigate Allegations
of Bribery or Corruption.
No.36, Malalasekera Mawatha,
Colombo 7.

Complainant-Respondent

And Now Between

Kalinga Padmatillake, alias
Sergeant Elpitiya
Siribopura
Hambantota

A**ccused-Appellant-Petitioner**

Vs

The Director General,
Commission to Investigate Allegations
of Bribery or Corruption.
No.36, Malalasekera Mawatha,
Colombo 7.

Complainant-Respondent-Respondent.

****

BEFORE : DR. SHIRANI A. BANDARANAYAKE, J.
D.J.DE S. BALAPATABENDI, J.
CHANDRA EKANAYAKE, J.

COUNSEL : Rienz Arasacularatne P.C. with Wasantha Batagoda and Dharshana Kuruppu for the Accused-Appellant-Petitioner.
Dilan Ratnayake SSC with Ms. Fernando for the Complainant- Respondent-Respondent.

ARGUED ON : 28.01.2009

DECIDED ON : 30.07.2009

CHANDRA EKANAYAKE, J.

This is an appeal preferred by the accused-appellant-appellant from the judgment of the Provincial High Court of the Western Province holden in Colombo dismissing his appeal against the convictions entered and sentences imposed by the Magistrate in Magistrate's Court Colombo Case No. 42837/05/02. The learned Magistrate had convicted the accused-appellant-appellant (hereinafter sometimes referred to as the appellant) for all the charges viz – 2 charges framed under section 16(b) and 2 charges under Section 19(c) of the Bribery Act as amended.

At the trial before the Magistrate's Court the prosecution case was unfolded by the following witnesses namely – Manatungage Sumathipala, Mallawaratchige Swarnalatha (wife of said Sumathipala), Manatungage Sumitrasena- (son of the above witness M. Sumathipala) and K. Amila Madusanka. The case of the appellant had been concluded only with his evidence. After conclusion of the trial the learned Magistrate had convicted the appellant for all 4 counts and had imposed a fine of Rs.5000/= and sentenced to 6 months imprisonment for each count.

The appeal preferred by the appellant against the aforesaid convictions and sentences to the High Court of Western Province holden in Colombo bearing No. HCMCA 535/04 was dismissed by the learned High Court Judge by his judgment dated 14.2.2007 (P7). This is the judgment from which Special Leave to appeal application dated 26.03.2007 was preferred by the appellant to this Court. This Court by its order dated 22.11.2007 has granted special leave to appeal on the questions of law set out in paragraph 20(iv) of the aforesaid special leave to appeal application. The said sub paragraph 20(iv) of the petition is reproduced below:-

"Whether the learned High Court Judge erred in fact and in law by not coming to a finding on the allegations contained in the Written and Oral submissions made on behalf of the Petitioner that it was illegal for the learned Trial Judge to consider evidence pertaining to subsequent incidents i.e. incidents that took place on 08.04.2001and 12.04.2001 as corroborative material of the solicitation and acceptance alleged to have taken place on 05.03.2001 at the Tissamaharama Police Station which is the subject matter of the charge."

By the aforesaid application the appellant has sought the following other reliefs also in addition to special leave:-

b. Issue notices on the respondent.

c. Set aside the judgment of the learned Magistrate dated 29.06.2004 and acquit the Petitioner.

d. Set aside and judgment of the learned High Court judge dated 14.02.2007(P7) and acquit the Petitioner.

After filing of written submissions by both parties, appeal was taken up for hearing before this Court.

At the outset it would be pertinent to consider the 4 counts on which the appellant was charged in the Magistrate's Court. Those are to the following effect-vide charge sheet dated 13.12.2002 filed in the Magistrate's Court :-

1. වර්ෂ 2001 ක්වූ මාර්තු මස 05 වෙනි දින හෙ! ඊට ආසන්න දිනයකදී මෙම අධිකරණ බල සීමාව තුල තිස්සමහාරාමයේදීණී වරදකරුවන්ට නඩු පැවරීමණී ඔවුන් සොයා ගැනීම හෙ! ඔවුන්ට දඩZුවම් දීම පිණිස සේවයේ යොදවා සිටි පොලිස් නිලධාරියකු වූ යුෂ්මතාණී වරද කරන්නෙකු වූ එනම්ණී අංක: එම්¨ ඩී¨ 90 - ං 2112352 දරන ලියාපදිංචි නොකරන ලද යතුරු පැදිය ව්‍යාජ අංකයකින් පැදවීමේ වරද සිදුකරන ලද මනතුංගගේ සුමිත්‍රසේන යන අයට විරුද්ධව නඩුවක් නොපැවරීම සඳහා පෙළඹවීමක්

හෙ! ත්‍යාගයක් වශයෙන් රුපියල් 2000/-ක්වූ මුදලක තුටු පඩ‍ිුරක් මනතුංගගේ සුමතිපාල යන අයගෙන් අයැදිමෙන් 1965 අංක 02 දරන අල්ලස් පනතේ 09 වන වගන්තියෙන් සංශෝධිත අල්ලස් පනතේ 16(ආ) වගන්තිය යටතේ දඩ‍ිුවම් ලැබිය යුතු වරදක් කළා යැයි මෙයින් ඔබට චෝදනා කරනු ලැබේ"

2. ඉහත 1 වෙනි චෝදනාවේ සඳහන් වේලාවේදිණි ස්ථානයේදී හා එකී ක්‍රියාකලාපයේදිම රජයේ සේවකයකු වූ එනම් තිස්සමහාරාම පොලිස් ස්ථානයේ පොලිස් නිලධාරියෙකු ලෙස සේවයේ යොදවා සිටි යුෂ්මතාණි රුපියල් 2000/-ක්වූ මුදලක තුටු පඩ‍ිුරක් මනතුංගගේ සුමතිපාල යන අයගෙන් අයැදිමෙන් 1974 අංක 38 දරන අල්ලස් (සංශෝධන) නීතියේ 08 වන වගන්තිය මගින් හා 1980 අංක 09 දරන අල්ලස් (සංශෝධන) පනතේ ඡඡ වන වගන්තිය මගින් සංශෝධිත අල්ලස් පනතේ 19(ඇ) වගන්තිය යටතේ දඩ‍ිුවම් ලැබිය යුතු වරදක් කළා යැයි මෙයින් ඔබට චෝදනා කරනු ලැබේ"

3. ඉහත 1 වෙනි චෝදනාවේ සඳහන් වේලාවේදිණි ස්ථානයේදී හා එකී ක්‍රියාකලාපයේදිම වරදකරුවන්ට නඩු පැවරීමණි මවුන් සොයා ගැනිම හෙ! මවුන්ට දඩ‍ිුවම් දිම පිණිස සේවයේ යොදවා සිටි පොලිස් නිලධාරියකු වූ යුෂ්මතාණි වරද කරන්නෙකු වූ එනම්ණි අංක: එම්" ඩ‍ි" 90 - ං 2112352 දරන ලියාපදිංචි නොකරන ලද යතුරු පැදිය ව්‍යාජ අංකයකින් පැදවීමේ වරද සිදුකරන ලද මනතුංගගේ සුමතුසේන යන අයට විරුද්ධව නඩුවක් නොපැවරීම සඳහා පෙළඹවීමක් හෙ! ත්‍යාගයක් වශයෙන් රුපියල් 2000/-ක්වූ මුදලක තුටු පඩ‍ිුරක් මනතුංගගේ සුමතිපාල යන අයගෙන් හාරගැනිමන් 1965 අංක 02 දරන අල්ලස් පනතේ 09 වන වගන්තියෙන් සංශෝධිත අල්ලස් පනතේ 16(ආ) වගන්තිය යටතේ දඩ‍ිුවම් ලැබිය යුතු වරදක් කළා යැයි මෙයින් ඔබට චෝදනා කරනු ලැබේ"

4. ඉහත 1 වෙනි චෝදනාවේ සඳහන් වේලාවේදිණි ස්ථානයේදී හා එකී ක්‍රියාකලාපයේදිම රජයේ සේවකයකු වූ එනම් තිස්සමහාරාම පොලිස් ස්ථානයේ පොලිස් නිලධාරියෙකු ලෙස සේවයේ යොදවා සිටි යුෂ්මතාණි රුපියල් 2000/-ක්වූ මුදලක තුටු පඩ‍ිුරක් මනතුංගගේ සුමතිපාල යන අයගෙන් හාරගැනිමෙන් 1974 අංක 38 දරන අල්ලස් (සංශෝධන) නීතියේ 08 වන වගන්තිය මගින් හා 1980 අංක 09 දරන අල්ලස් (සංශෝධන) පනතේ ඡඡ වන වගන්තිය මගින් සංශෝධිත අල්ලස් පනතේ 19(ඇ) වගන්තිය යටතේ දඩ‍ිුවම් ලැබිය යුතු වරදක් කළා යැයි මෙයින් ඔබට චෝදනා කරනු ලැබේ"

By the petition filed in this Court the appellant has sought to set aside the judgment of the learned Magistrate dated 29.6.2004 and to acquit him – vide sub paragraph (c) of the prayer to the petition. What arises for consideration now is whether on the evidence on record the conviction entered and sentence imposed by the learned Magistrate are justified or they deserve to be set aside.

The prosecution case in nut shell is summed up thus:

The appellant at the relevant time was serving as a Sergeant attached to Hambantota Police Station and the virtual complainant M. Sumathipala's evidence in examination-in-chief was that he had to make a complaint to the Bribery Commission on 06.09.2001 with regard to solicitation of money from him by the appellant after taking the licence and insurance of his three wheeler. His specific position in examination –in-chief had been that the solicitation was made by the appellant and another constable and the appellant asked for Rs.2000/= at Tissamaharama Police Station but he cannot remember the exact date of asking the said amount. His next position was that when money was asked for nobody was present and only the said sergeant and he was present but no one lese was there. According to him when the said amount was requested since he did not have he borrowed Rs.500/= from one Amila – a nephew of his to be given to the appellant. In testifying further in examination-in-chief he had said that after the above incident again on 12th April 2001 the appellant had asked for a further sum of Rs.2000/= as there was going to be a party on 12th April. At that stage Court had adjourned for lunch. When his evidence was resumed his position had been that money was taken on 5th March of last year or the previous year.

In cross-examination above witness had contradicted the evidence given even with regard to the date of the incident . The evidence given on material points in examination –in-chief had been clearly contradicted in cross-examination and he had given different versions. Even as to the date of arrest of his son (Sumitrasena) over the traffic offence was stated as " 4වෙනි මාසේ 3වෙනිදා" whereas he had gone to the police station to see him on the 5th at about 7.30 – 8.00 in the morning. – Vide his evidence in cross – examination at page 35 of the brief;

“ප්‍ර¨ තමා පොලිසියට ගියේ කවදද?

උ¨ 5 වෙනිදා¨

ප්‍ර¨ කියට විතරද ගියේ?

උ¨ උදේ 7¨30 ට 8¨00 වගේ වෙලාවට ගියේ¨”

With regard to the alleged solicitation on 05.03.2001 which is the subject matter of counts 1 and 2, above witness had given different versions. The other 2 counts are with regard to the alleged acceptance of the said amount by the appellant. The specific stance taken by him with regard to the presence of the Constable-Mahinda when giving the money which is undoubtedly a material point was even contradicted by him later in the course of his evidence. It is evident from the learned Magistrate’s judgment that he had heavily relied on the evidence of the above witness. Thus necessity has arisen to consider whether said witness’s evidence was correctly examined and properly evaluated by the learned Magistrate.

It has to be stressed here that credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the Judge. When witnesses makes inconsistent statements in their evidence either at one stage or at 2 stages, the testimony of such witnesses is unreliable and in the absence of special circumstances, no conviction can be based on the testimony of such witnesses. On the other hand one cannot be unmindful of the proposition that Court cannot mechanically reject the evidence of any witness. With regard to appreciation of evidence in criminal cases it would be of importance to quote what Sir John Woodroffe & Amir Ali had to say in their work on - “ Law of Evidence- 18th Edition- Vol. 1 at pg. 471:-

> “ No hard and fast rule can be laid down about appreciation of evidence. It is after all a question of fact and each case has to be decided on the facts as they stand in that particular case. Where a witness makes two inconsistent

statements in his evidence with regard to a material fact and circumstance, the testimony of such a witness becomes unreliable and unworthy of credence."

Further it is the paramount duty of the Court to consider entire evidence of a witness brought on record in the examination-in-chief, cross-examination and re-examination. In other words Courts must take an overall view of the evidence of each witness. Careful examination of the evidence of M.Sumathipala leads me to the inevitable conclusion that it lacked credibility due to the overwhelming contradictions coupled with inconsistent statements made with regard to material particular in his own evidence.

Next witness called by the prosecution was Swarnalatha- the wife of the above witness Sumathipala. Perusal of her evidence would make it crystal clear that her evidence in entirety had been based on hearsay material and admittedly she was not at the police station on the day in question and/or even does not claim that she saw the alleged incident. This is amply established by her evidence in examination –in-chief itself to the following effect appearing at pg- 67 of the brief:-

"……මම දැක්කේ නැහැ ඇල්පිටිය සාජන් මහත්තයා මුදල් ඉල්ලනවා හෙ! ගත්තවා" මම ළඟ සිටියේ නැහැ" පොලිසියට ගියේ මෙම නඩුවේ පැමිණිලිකරු" මම සිටියේ නැහැ" මම ගියේ නැහැ. "

But the learned Magistrate has stated that her evidence is very vital to corroborate her husband's evidence which appears to be an erroneous statement.

The evidence of Swarnalatha pertaining to subsequent incidents alleged to have taken place on 8/4/2001 and 12/4/2001 too had been considered by the Magistrate as corroborative material for solicitation and acceptance alleged to have occurred on 5/3/2001 at the Police Station, which in my view is also erroneous. Those were incidents alleged to have occurred after the date of incident given in the charges namely 05/03/2001.

For the reasons given as above I am inclined to hold the view that virtual complainant Sumathipala's evidence is found to be highly unreliable and unacceptable. It is a cardinal principle that unreliable and unacceptable evidence cannot be rendered credible, simply because there is some corroborative material. In the case at hand as Swarnalatha's evidence was totally based on hearsay, and the learned Magistrate has grossly erred by accepting the same. Further major portion of her testimony had been focused on an incident alleged to have taken place on 8/4/2001 (being an incident subsequent to the date of the alleged offences) and about going to the Police Station on 13th April, 2001.

The next witness who testified for the prosecution was Sumithrasena – (son of the virtual complainant – M. Sumathipala) who being the person locked up in the Police cell and the alleged solicitations and acceptance of money was to refrain from prosecuting him. His evidence appears to be only with regard to the fact that when he was in the Police cell at Thissamaharama Police Station, in his presence his father (Sumathipala) borrowed the sum of Rs.500/- from Amila since he had fell short of Rs. 500/- for a sum of money to be given to *Mahatthaya* (uy;a;hd). There is absolutely nothing in his testimony to indicate who this *Mahatthaya* was or the name of the person whom he referred to as *Mahatthaya.*

When one considers the evidence of the other prosecution witness Amila Madusanka – his firm position was that having admitted that Sumathipala borrowed a sum of Rs.500/- from him at the Police Station, but failed to disclose the purpose for which same was borrowed and neither he knew nor asked the purpose for which it was borrowed. This is amply established by the testimony of the above witness in examination-in-chief (as appearing at page 110 of the brief.):-

> " සුමතිපාල මගෙන් සල්ලි ඉල්ලුවෙ මොකටද කියලා මම පොලිසියේදි දන්නෙ නැහැ" ගෙදර ආවට පස්සේ තමයි දැන ගත්තේ" එයා ලග රු" 1500/- ක් තිබිලා" රු" 500/-ක මුදලක් මදිවෙලා කියලා තමයි මගෙන් රු" 500/- ක් ඉල්ලුවේ" මෙයාව නිදහස් කරන්න රු"2000/-ක් පොලිසියෙන් ඉල්ලුවා කියලා තමයි කිව්වේ" එහෙම කියලා මම ගෙදරට ආවට පස්සේ

නමයි දැන ගත්තේ" ඒ සල්ලි දුන්නේ කාටද කියලා මම දැන ගත්තේ නැහැ" මම දුන්න රු"500/- ආපසු මට හම්බ වුනා""

Evidence to the above effect remains uncontradicted even in cross-examination. If at all his position had been that Police had asked for Rs.2,000/- to release him and his evidence too does not disclose any evidence with regard to solicitation and acceptance by the Appellant. On the other hand Amila's evidence totally contradicts Sumithrasena's (complainant's son's) evidence with regard to the fact that Sumathipala revealed the purpose for which the money was borrowed to wit – 'මහත්තයට දෙන්න""

The prosecution case had been closed with the evidence of the above witnesses. Perusal of the Magistrate's Court record reveals that none of the Police witnesses listed as Pw5 to Pw8 had been called by the prosecution. Thereafter the Appellant had testified and denied the allegations.

At the hearing before this Court amongst other things it was strenuously urged on behalf of the appellant that the learned High Court Judge erred in fact and in law by not coming to a finding on the allegations contained in the submissions of the appellant and that it was illegal for him to have considered the evidence pertaining to subsequent matters that took place on 08.04.2001 and on 12.4.2001 as corroborative material of the solicitation and acceptance alleged to have taken place on 05.03.2001 at Tissamaharama Police Station, which is the subject matter of the charges. The written submissions filed in the High Court has been tendered to this Court annexed to the petition marked as P6. In my view this merits careful examination by this Court.

The High Court Judge had concluded that although the prosecution witnesses had uttered certain statements pertaining to solicitations alleged to have taken place prior to the alleged solicitation in the charges, the learned Magistrate had only considered the oral

evidence of the witnesses regarding solicitation and acceptance in relation to charges and not any other evidence. However he has not proceeded to give reasons for the above finding. Further it is seen form the said judgment that the learned High Court Judge's conclusion(as appearing at page 4 of the judgment) had been that certain sum of money was solicited and same was accepted by the appellant. The said portion of the judgment appearing at page 4 is reproduced below:

> "උගත් නීතිඥ මහතාගේ ලිඛිත සැල කිරීම්හි උපුටා දක්වා ඇති සාක්ෂි ඛණ්ඩයන් එකිනෙකට සංසන්දනාත්මකව බැලීමේදී එම සාක්ෂි ඛණ්ඩ තුලින් ම යම් අල්ලස් මුදලක් අභියාචක විසින් ඉල්ලා සිටිමත්" එම අල්ලස් මුදල අභියාචක විසින් භාරගෙන ඇති බවත්ණී පෙන්නුම් කෙරේ""

It is seen from the above the learned High Court Judge has grossly erred by not stating on what items of evidence or what influenced him to arrive at the said finding. Perusal of the charges (as per the charge sheet) reveals that in all 1 to 4 counts a specific date of commission of the alleged offence and a specific amount that was alleged to have been solicited and accepted were embodied. In each charge the amount was Rs. 2000/=. As such there has to be clear proof of the fact that the amount solicited and accepted in relation to the charges was nothing but the sum of Rs.2000/=. The learned High Court Judge's basis appears to be that the appellant had solicited and accepted certain amount of money. This in my view is a cardinal error committed by the learned High Court Judge and same would suffice to vitiate his judgment .

Further the learned High Court Judge in the impugned judgment has totally failed to examine whether the learned Magistrate had evaluated and considered the evidence before the Magistrate's Court in the proper perspective in concluding the guilt of the appellant. Further he has failed to arrive at a finding with regard to the legality of Magistrate's consideration of evidence pertaining to subsequent incidents as corroborative material of the solicitation and acceptance which is the subject matter of

the charges. However it is the sacred duty of this Court to consider the entire evidence on record in the Magistrate's Court.

By the impugned judgment the learned High Court Judge had dismissed the appellant's appeal with costs. Right of appeal is undoubtedly a statutory right available to an accused-appellant against the conviction entered and sentence imposed on him. In this regard the pronouncement of His Lordship Justice Nimal Amaratunga in S.C. Appeal No. 108/2006 - R.Ananda vs. The Commissioner General to Investigate Allegation of Bribery or Corruption (2008 1 BLR- Part II 136) too would lend assistance. Per Amaratunge, J. at page 138 :-

> "……. I notice that the learned High Court Judge has dismissed with costs. When a convicted accused's appeal is dismissed Courts do not cast him in costs."

Thus I conclude that the learned High Court Judge had erred in casting the appellant in costs.

At this juncture it would be appropriate to consider the standard of proof that is required in a case of this nature. Undoubtedly 'beyond reasonable doubt' remains as the standard of proof in criminal cases. In proving a bribery charge also same standard of proof is required. It would be pertinent to quote what does the expression 'beyond reasonable doubt' mean? Per John Woordroffe & Amir Ali in their aforementioned book on Law of Evidence - (at page 325):

> "For a doubt to stand in the way of conviction of guilt, it must be a real doubt and a reasonable doubt – a doubt which after full and fair consideration of the evidence, the judge really, on reasonable grounds, entertains."

> 'If the data leaves the mind of the trier in equilibrium, the decision must be against the party having the burden of persuasion.' If the mind of the adjudicating tribunal is evenly balanced as to whether the accused is guilty, it is its duty to acquit. If the evidence adduced by the prosecution has been so

> discredited as a result of cross-examination or is as manifestly unreliable that no reasonable tribunal can safely convict on it the prosecution must fail. The court cannot be satisfied beyond reasonable doubt, if there be still open some reasonable hypothesis compatible with innocence. There is no emancipation of the mind unless all reasonable doubts have been eliminated from it. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The benefit of doubt, to which the accused is entitled, is reasonable doubt; the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind."

The trend of authority in Sri Lanka too amply demonstrates that the standard of proof required in respect of bribery charges is also nothing but beyond reasonable doubt.

An examination of the judgment of the learned High Court Judge reveals that he had totally failed to evaluate the evidence on record and to examine the correctness of the reasoning of the learned Magistrate which led to the finding of guilt of the appellant for all counts. Yet it is incumbent upon this Court to examine whether the inferences drawn and conclusions arrived upon by the learned Magistrate in his judgment are reasonable, rational and within the ambit of the law.

What needs consideration now is when the evidence led for the prosecution in this case is closely scrutinized, whether it could be satisfied that prosecution had discharged the burden of proving the case beyond reasonable doubt. If not the Appellant is liable to be acquitted of the charges. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness in the defence, and when the guilt of the accused is not established beyond reasonable doubt he is liable to be acquitted as a matter of right and not as matter of grace or favour.

For the reasons I have stated above it is already concluded that it was highly unsafe to have acted on Sumathipala's evidence. Further the learned Magistrate had relied on hearsay evidence of witness Swarnalatha and Amila Madusanka also. In my view the discrepancies in the evidence of the prosecution witnesses and the contrary positions taken up by witness Sumathipala in his own evidence with regard to material particulars as high-lighted above render their evidence highly unreliable and unworthy of credit, thus making the prosecution version highly doubtful. This being a bribery case it would be apt to quote the pronouncement to the following effect in the Indian case of Gurcharan Singh, Appellant V. State of Haryana, Respondent, - Criminal Law Journal 1994 (2) 1710 :-which too was an instance where the accused was charged under Prevention of Corruption Act (1947):

> "Where the material witnesses make inconsistent statements in their evidence on material particulars, the evidence of such witnesses becomes unreliable and unworthy of credence, thus making the prosecution case highly doubtful."

In the case at hand when an overall view of the evidence is taken the irresistible and inescapable conclusion one could arrive upon is that the prosecution has failed to establish its case beyond reasonable doubt and the appellant is entitled to the benefit of this doubt, which entitles him to earn an acquittal from all the charges. In view of the foregoing analysis I proceed to answer the question of law on which this Court granted special leave in the affirmative. For the above reasons the judgment of the learned High Court Judge dated 14.2.2007 is liable to be set aside and same is accordingly set aside.

Accordingly, this appeal is allowed and the convictions entered and sentences imposed upon the accused - appellant are set aside and he is acquitted of all the charges.

The Registrar of this Court is directed to forward copies of this judgment to the respective High Court and the Magistrate's Court forthwith.

Judge of the Supreme Court

DR.. SHIRANI A. BANDARANAYAKE, J.

I agree.

Judge of the Supreme Court

D.J.DE S. BALAPATABENDI, J.

I agree.

Judge of the Supreme Court