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IN THE PRIVY COUNCIL

No. 27 of 1957

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N

DON THOMAS SAMARATUNGA ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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LEGAL STUDIES

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RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No. 27 of 1957

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N

DON THOMAS SAMARATUNGA ... Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

No. 1.

CHARGE AGAINST K.A.S. GUNATILEKE

In the Supreme
Court of Ceylon

No. 1.

10 IN THE SUPREME COURT OF CEYLON No. 10/A
M.C. Gampaha No.26329

Charge against
K.A.S. Gunatileke,
10th June 1957.

The Queen

v.

Kuruppu Arachchige Samarakodi Gunatileke

Trial Date: 10th June 1957.

20 Charge: You Kuruppu Arachchige Samarakodi
Gunatileke are indicted under Section 439 of the
Criminal Procedure Code at the instance of Dr.
Henry Wijayakone Tambiah, Q.C., Commissioner of
Assize, presiding at the trial of (1) Ellupuli
Ralalage Yothan Singho and (2) Don Thomas Samaratunga
before this Court on charges of attempted murder

In the Supreme
Court of Ceylon

and abetment of attempted murder respectively and
the charge against you is:

No. 1.

Charge against
K.A.S. Gunatileke,
10th June 1957 -
continued.

THAT on the 6th day of October 1955 being
a witness in the non-summary inquiry held by
the Magistrate of Gampaha in Case No. 26329
of the Magistrate's Court of Gampaha and be-
ing bound by oath to state the truth you did
state:-

"On 29.8.55 at about 6.30 p.m. Mr. Samara-
tunga (meaning Don Thomas Samaratunga, the 2nd
accused) gave a bottle of arrack to this ac-
cused (meaning) Ellupuli Ralalage Yothan
Singho, the 1st accused). That arrack bottle
was in the kitchen. 10

"This accused was asked to open the bottle
and drink it. Accused drank and I was made
forcibly to drink by this accused (meaning the
1st accused). A little less than quarter of
the arrack remained in the bottle.

"Mr. Samaratunga (meaning the 2nd accus-
ed) asked Banda to bring a kitful club from the
store room and give it to this accused (mean-
ing the 1st accused). Banda went and brought
that kitful club and handed it to this accused
(meaning the 1st accused). 20

"Mr. Samaratunga (meaning the 2nd accus-
ed) asked this accused (meaning the 1st accus-
ed) and myself to go and kill W. A. Peiris
Singho and come back. Peiris Singho is the
injured man in this case. Mr. Samaratunga told
us that Peiris Singho is the injured man in
this case. Mr. Samaratunga told us that
Peiris Singho was in the Bandakka Kotuwa and
asked us to go and assault him and kill him.
The both of us (meaning yourself and 1st
accused) left and went to the Bandakka Kotuwa.
That Bandakka Kotuwa is the injured man's
kotuwa. Both of us went there. 30

"Just then this accused (meaning the 1st
accused) struck him (meaning Peiris Singho)
which alighted on the neck of the man and he
fell down. After the man fell down accused
(meaning 1st accused) dealt two more blows
with the club. Those two blows alighted on
the ear and lobe of the ear got torn. 40

"After he (meaning Peiris Singho) was
assaulted the injured man did not speak a

word. Then this accused (meaning the 1st accused) asked me to raise the injured man. I held the injured man by his legs and accused raised the injured man by his head. He was then carried to a kohila pit and was put into the kohila pit with his face downwards.

In the Supreme
Court of Ceylon

—————
No. 1.

Charge against
K.A.S. Gunatileke,
10th June 1957 -
continued.

10

"Mr. Samaratunga (meaning the 2nd accused) and the injured man (meaning Pieris Singho) had a land dispute regarding a foot path. There is a foot path running over Mr. Samaratunga's land starting from the injured man's land. That foot-path is being used by the injured man and his family. About two months prior to this incident Mr. Samarantunga closed that foot-path. Carts of Mr. Samaratunga were taken over the land of the injured man by Mr. Samaratunga's carters. As Mr. Samaratunga closed the foot-path over his land, the injured man also closed the path over his

20

land. Thereafter Mr. Samaratunga could not take his carts over the land of the injured man. The injured man's land and Mr. Samaratunga's land are divided by a common boundary. Ever since these paths were closed there was ill-feeling between Mr. Samaratunga and the injured man. That is the reason for this assault".

30

and that on the 21st day of May 1957 in the course of the trial of the same case before this court, and being bound by oath to state the truth, you did in regard to your evidence in the Magistrate's Court set forth above state -

40

"I did not that night go into the 2nd accused's kitchen at all about 6.30 or so. I saw the 1st accused in the bungalow after 6.30 p.m. The 1st accused was sleeping in the garage at about 6.30 p.m. and I was on the verandah.

"I did not drink arrack that night and I have never taken arrack. I did not see the 1st accused drinking arrack that evening.

"I did not see the 1st accused with a kitful club that day.

"1st accused went that night. I did not go. I saw the 1st accused after he returned

In the Supreme Court of Ceylon

No. 1.

Charge against K.A.S. Gunatileke, 10th June 1957 - continued.

to the bungalow after 9 p.m. At 9 p.m. he went to Yakwila and returned to the bungalow after 9 p.m. I did not see Peiris Singho in his kotuwa. I have never been to that land in my life. I am sure about that.

"I heard that Peiris Singho came by certain injuries in August; I heard at about 9 p.m. on 29th August that Peiris Singho was injured. I came to hear that because I heard some cries in the house of Peiris Singho. I did not see how Peiris Singho came by his injuries. I did not see anybody assaulting the injured man Peiris Singho that day.

10

"I learnt that Peiris Singho had been found lying fallen in a pit from the crowd that was there.

"2nd accused and Peiris Singho were neither friendly nor angry. There was no kind of displeasure between the 2nd accused and Peiris Singho. I am not aware of any displeasure".

20

and that you did thereby intentionally give false evidence in a stage of a judicial proceeding and that you have thereby committed an offence punishable under Section 190 of the Penal Code.

No. 2.

Defence Counsel's Plea in Mitigation, 10th June 1957.

No. 2.

DEFENCE COUNSEL'S PLEA IN MITIGATION

Appearances: A.C. de Zoysa C.C., for prosecution.
E.B.K. de Zoysa, Proctor for the defence.

30

Prisoner pleads guilty.

Court: I like to hear some evidence with regard to the background. To have something on record the best thing would be to call the Clerk of Assize. I want some evidence to show that he was employed under this

accused, the 2nd accused, who is a rich man, and further I want evidence to show that he was sent away by this man.

In the Supreme
Court of Ceylon

No. 2.

Crown Counsel: I take it that the Counsel for the accused will say all that in mitigation.

Defence Counsel's
Plea in Mitigation,
10th June 1957 -
continued.

Court to Defence Counsel: Are you prepared to say all that?

10 Defence Counsel: Yes, My Lord. He admits his statements in this Court and in the Lower Court.

Court: You can set out the background and make whatever submissions you wish to make.

Defence Counsel: My Lord, this prisoner, prior to his making the statement, he was employed under the second accused, Mr. Samaratunga.

Court: He was employed when?

20 Defence Counsel: At the time of this incident; in respect of the attempted murder of Peiris Singho, Ellupuli Ralalage Yothan Singho and Don Thomas Samaratunga were the accused in Case No. S.C. 10, M.C. Gampaha 26329; this prisoner was employed under the second accused Don Thomas Samaratunga on 29th August 1955, that is the date of the alleged offence, in which the two accused were charged. The second accused is Don Thomas Samaratunga in S.C.10, M.C. Gampaha No.26329. After the alleged offence this prisoner went to Nawalapitiya and the date of the offence is 29th August 1955.

30 Court: So you admit that on the 29th of August 1955 your client was employed as a domestic servant.

Defence Counsel: After the 29th of August 1955, after this incident, he went to Nawalapitiya.

Court: How many days after?

Defence Counsel: Two days.

40 Crown Counsel: On the 1st of October he made his statement.

In the Supreme
Court of Ceylon

No. 2.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

Court: Is it before he made his statement that he went to Nawalapitiya?

Defence Counsel: Yes. On 26.9.55 he made his statement to the Police. The statement that he made to the Nawalapitiya Police is almost identical with the statement that he came out before the Magistrate.

Court: Is that a correct version?

Defence Counsel: Yes, My Lord.

Court: I take it that you have got instructions from the client? 10

Defence Counsel: My instructions are that the evidence he gave in this Court is the correct version.

Court: Now you admit that the statement he made to the Police is identical with the statement that he made to the Magistrate?

Defence Counsel: Yes, My Lord.

Court: How many days before he made this statement did he go to Nawalapitiya? 20

Defence Counsel: 3 days.

Court: Who took him to Nawalapitiya?

Defence Counsel: He went to Nawalapitiya on his own accord.

Court: In the statement he made to the Police he says that he went to get employed and that Samaratunga took him in his car and that he was dropped at the Nawalapitiya town. He stays how many miles away from the town? 30

Defence Counsel: His home is 3 miles away from Nawalapitiya.

Court: To the Magistrate he has said that it was this Samaratunga who took him in his car and asked him to go home. Is that correct?

Defence Counsel: No. My instructions are that Mr.

Samaratunga did not take him. He admits having made his statement at the Nawalapitiya Police Station.

In the Supreme Court of Ceylon

No. 2.

Court: At the Nawalapitiya Police Station, you admit your client made a statement similar to the statement that he made before the Magistrate?

Defence Counsel's Plea in Mitigation,
10th June 1957 - continued.

Defence Counsel: Yes.

10

Court: What induced him to go there and make a statement?

Defence Counsel: My instructions are that the prisoner, this accused, had an intention of getting married to the injured person's daughter.

Court: When did he form that intention?

Defence Counsel: He had that intention for over a month prior to this alleged incident.

Court: Was it a love-affair?

Defence Counsel: It was a love affair.

20

Court: Nobody induced him to the marriage?

Defence Counsel: Yes.

Court: What is the name of the girl?

Defence Counsel: Kusumawathie.

Court: No inducement was offered by anybody to the accused?

Defence Counsel: Yes.

Court: But that was a month previous to his coming to Nawalapitiya?

Defence Counsel: Yes.

30

Court: Then what made him stay one month there and thereafter leave?

Defence Counsel: He stayed for one month and thereafter -

Court: What made him stay there?

In the Supreme
Court of Ceylon

No. 2.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

Defence Counsel: Thereafter he was offered employ-
ment there, at Samaratunga's house, and
he went there.

Court: He had formed the intention to marry the
daughter of the injured man one month
prior to the 26th of September 1955?

Defence Counsel: Yes.

Court: That would be somewhere about the 26th of
August 1955. That means at the time the
offence was committed he was in love with
this girl? 10

Defence Counsel: Yes.

Court: Why did not he come to the Police? The
Police had gone and questioned him two or
three days after this incident?

Defence Counsel: Yes.

Court: At Hakurukumbura the Police questioned
him?

Crown Counsel: I think what he says is that he
was hidden at the time when the Police
came. He says "On the following day in
the morning the Police came for the in-
quiry. Banda and me were put into the
kitchen by Mr. Samaratunga and asked not
to come out." 20

Defence Counsel: He admits that.

Court: That is on the following day of the alleg-
ed offence. The alleged offence was on
the 29th of August 1955. Then it must be
on the 30th of August 1955? 30

Defence Counsel: Yes.

Court: Is that a true statement?

Defence Counsel: Yes. It is a true statement.

Court: If it is a true statement, why was he
hidden by Mr. Samaratunga?

Defence Counsel: That was to show that he was not
there.

Court: Question I am asking is this: if this
was a true statement then it was Mr.
Samaratunga who hid your client when the
Police came there. Why did Samaratunga
do that? 40

Defence Counsel: To show that he was not employed
there. That was Samaratunga's intention.

Court: According to him he had nothing to do with this attempted murder. Did he go there along with Yothan Singho on instructions to assault Peiris Singho?

In the Supreme
Court of Ceylon

No. 2.

Defence Counsel: Yothan Singho went on his own accord and not under the instructions of Mr. Samaratunga.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

Court: Did he go with Yothan Singho?

Defence Counsel: No.

10 Court: Then why was he hidden or why did he allow himself to be hidden?

Defence Counsel: It is because Peiris Singho in his statement had stated that this prisoner saw this incident.

Court: All that the prisoner had to say is: "All this is utterly false. I was never present." Why was he hidden?.

Defence Counsel: He had probably to obey the orders of his master.

20 Court: Why could he not have protested and said: "I was here in the house doing domestic business. Why should I be hidden?" Your position is that he did go to the Police Station at Nawalapitiya and make a statement?

Defence Counsel: The statement that he gave to the Nawalapitiya Police was written by the injured person's wife and is in the handwriting of Kusumawathie the daughter.

30 Court: Where is that writing?

(Letter X1 is produced by the Registrar)

Kusumawathie gave this statement.

(For the purpose of the record this document is marked X1).

Defence Counsel: Yes.

(The exercise book is marked X2).

Court: X1 is in the writing of Kusumawathie?

Defence Counsel: Yes.

Court: And X2?

40 Defence Counsel: It was given by the injured man's wife.

(The Interpreter, Mudaliyar, reads out the document X1 and X2 and translates them.)

In the Supreme
Court of Ceylon

No. 2.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

Certified copies of these documents will
be put in by the Mudaliyar.

Court: When did Kusumawathie give this statement
to your client?

Defence Counsel: 25 days after the alleged of-
fence.

Court: Why did she take 25 days? Why could she
not go the next day because she was in
love with him?

Defence Counsel states that his client is unable 10
to give an explanation to that question.

(Mudaliyar is asked to translate the document
X2. Having read through it he says that it
is a translation of the evidence which was
given in the lower Court, and it is in fact
set out as Examination, Cross-examination, re-
examination, etc.)

Court: You are trying to tell me that this injur-
ed man's daughter gave this document to
your client? 20

Defence Counsel: My instructions are that this
document was given when this case was
taken up and went down. On one occasion
when he came and gave evidence the injur-
ed man's wife gave him that document and
told him that it was to remind him of the
evidence he had given in the lower court.

Court: On which date was it given?

Defence Counsel states that his client cannot re-
member the exact date. It was given in 30
March.

Court: Later on was he still in love with the
injured man's daughter?

Defence Counsel: Yes.

Court: On the date this case was heard was he
still in love with the injured man's
daughter?

Defence Counsel: He was not in love.

Court: How long before?

Defence Counsel: For about 15 days prior the case 40
being taken up.

Court: Why did that happen?

Defence Counsel: They were indifferent to him
thereafter.

Court: In other words although Kusumawathie had asked him to give this evidence and went to the extent of writing X1 and also X2 through the mother 15 days before she had accomplished the task she was indifferent?

In the Supreme Court of Ceylon

No. 2.

Defence Counsel: My instructions are that the parents of Kusumawathie were not well disposed towards him.

Defence Counsel's Plea in Mitigation,
10th June 1957 -
continued.

Court: What was the reason?

10 Defence Counsel: The parents of Kusumawathie told him that they did not approve.

Court: When Kusumawathie's mother gave X2 to him, at that time Kusumawathie's mother knew that Kusumawathie also had given a similar document X1 to him?

Defence Counsel: Yes.

20 Court: Then Kusumawathie's mother must have known that Kusumawathie was in love with this man and this man was in love with Kusumawathie?

Defence Counsel: Yes.

Court: Then why this change of heart suddenly. That means that parents also approved of it?

Defence Counsel: I cannot say.

30 Court: I asked you to get instructions from your client on everything you were asked and you got the instructions. I pointed out to you that the evidence he gave on the last date is not in conformity with the statement he is making now.

Court to Crown Counsel: I ask Crown Counsel to read those portions of the evidence which he gave in this Court which are not in conformity with the evidence he gave here.

Crown Counsel reads: "25 days after this incident Peiris's wife and his elder daughter Kusumawathie met me on the land belonging to the 2nd accused?"

40 Defence Counsel states that his instructions are that this is correct.

Court: "The wife of Peiris handed this document X2 to me"?

Defence Counsel: Yes.

In the Supreme
Court of Ceylon

No. 2.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

Court: In whose handwriting is this?

Defence Counsel: I cannot say.

Court: His position in this Court was that what he stated to the Police is because there was a proposal for him to marry Peiris's daughter?

Defence Counsel: Yes.

Court: Were you hoping to marry Peiris's daughter?

Accused: I was not hoping to get married to her but after this case they promised to give her in marriage to me I had no idea of getting married to this girl. 10

Defence Counsel: What he meant by after the case is after the proceedings in the lower court.

Court: This is a case where he is trying to either falsely implicate or it is a case he was trying to screen somebody. In either case it is a very serious offence which this Court should take cognizance of. 20

(At this stage Court orders that the witnesses Munasinghe Ralalage Punchi Nona, wife of W.A. Peiris Singho, and Kusunawathie be summoned)

Court: I am asking all these facts and I should like to hear the evidence of these witnesses before passing sentence in order to understand the background so that I may give an adequate sentence.

Defence Counsel: He says he was in love with Kusumawathie. 30

Court: The statement he made before me then on the last occasion that he was not keen to marry is false?

Defence Counsel states that is not the truth.

Court: Why should he come out with an untruth before this Court?

Defence Counsel: He has not given evidence in a Court of law other than in this case.

Court: What is the difficulty if a man is speaking the truth? You are trying to tell me that you must be trained in the art of giving evidence before you come and speak the truth? 40

(Court orders that the witness Peiris Singho also be summoned for the 13th).

Court: Has the accused any previous convictions?

Defence Counsel: No, My Lord.

In the Supreme
Court of Ceylon

No. 2.

Court: I will make up my mind after I hear the other evidence. If I take the view that he was trying to screen this rich man apparently for some small consideration, then this man is coming out with an utterly false version in this court and the evidence he gave in the Magistrate's Court is true.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

Crown Counsel: I was wondering whether Your Lordship would wish to summon Mr. Samaratunga.

Court: Yes, I wish to hear Mr. Samaratunga also regarding the facts stated by Crown Counsel. Summon Mr. Samaratunga also.

Perhaps the documents were given to impress on the jury that this man, an illiterate man has been given these documents by the injured man's wife and daughter to come out with this falsehood, not with the idea of confronting him but with the idea of making his version more probable. If the other position is found to be correct that the two women had these documents, then it is a case where he tried to implicate an innocent man falsely it is a very heinous offence and much more heinous than screening a man.

Summon the Police Officer who recorded the statement also.

Crown Counsel: The Non-summary Inquiry shows that the only evidence against the man was the evidence of this witness.

Court: It is a scandalous state of affairs that a rich man is able to buy up a witness and defeat the ends of justice.

The Clerk of Assize brings to my notice that the case S.C. 10, M.C. Gampaha No. 26329 is in appeal and the Registrar has written to him to send the record. I regret that I am unable to send the record because a witness in the case, Gunatileke, has been indicted under Section 439 of the Criminal Procedure Code of having given false evidence and the trial is pending. Today he has pleaded guilty and I am hearing evidence to assist me in determining

In the Supreme
Court of Ceylon

No. 2.

Defence Counsel's
Plea in Mitiga-
tion,
10th June 1957 -
continued.

the sentence. As soon as the case is over
the record will be sent.

In view of the fact that these wit-
nesses have to be summoned we have to
adjourn at this stage, 10.45 am., and the
hearing will be resumed on Thursday the
13th June.

The Inspector of Police need not be
summoned for Thursday.

No. 3.

Evidence of W.A.
Kusamawathie,
13th June 1957.

No. 3.

10

EVIDENCE OF W.A. KUSAMAWATHIE

Accused present: Counsel present.

Wijesooriya Appuhamillage Kusamawathie, 23 years.
(Shown X1).

Court: Q. Is this your handwriting? A. No.

Q. This accused says that you gave this
X1 and asked him to give false evi-
dence; is that right? A. That is
false.

Q. Further the Counsel for the defence 20
suggested that he was in love with you
or were you in love with him?

A. That is false.

Q. You are a school girl? A. Attend
school. But for the last 3 or 4
months I have not gone to the school.

Q. What Standard? A. I am in the S.S.C.
Form of the Mirigama Government School

Q. English school? A. Yes.

Q. Then why did not you give your evi- 30
dence in English? A. I prefer to give
in Sinhalese. (Shown X2.)

Q. Do you know whose handwriting is that?

A. I do not know.

Q. It is suggested that your mother had written this and given it to this accused so that he may come out with it on some date of trial? A. That is false.

In the Supreme
Court of Ceylon

No. 3.

Q. Have you seen him before? A. I have seen him in the bungalow of Samaratunga as he was employed under him.

Evidence of W.A.
Kusamawathie,
13th June 1957 -
continued.

10 Q. Samaratunga was charged with aiding and abetting in the attempted murder of your father? (No answer).

Q. Peiris Singho is your father? A. Yes.

Q. Do you know that case where Samaratunga was acquitted? A. I know it.

(At this stage witness is asked to write while Mudaliyar reads what it contained in XI.

His Lordship compares the handwriting with the writing in the document XI.)

20 Court to witness: I am sorry that you had been dragged into this case.

Cross-examination:

Q. Were you living adjoining Mr. Samaratunga's house?

A. Yes. My house is a short distance away from Mr. Samaratunga's house.

Q. Point out the distance? A. From here to the sea. (A distance of about 200 yards).

30 Q. After the hearing of the case in this Court you got engaged to your father's elder sister's son?

(Court interposes before the answer is given).

Court: Q. Are you engaged? A. Yes.

Cross-examination continued:

Q. On the 27th of last month? A. Yes.

Q. To get married to your father's elder sister's son? A. Yes.

Court: Q. Awassa cousin (first cousin)? A. Yes.

40 Q. Had you ever made up your mind to love this man? A. No.

Re-Examination: Nil.

In the Supreme
Court of Ceylon

No. 4.

EVIDENCE OF M.B.P. NONA.

No. 4.

Evidence of
M.B.P. Nona,
13th June 1957.

Marasinghe Balagallage Punchi Nona: 39 years.

Hakurukumbura, wife of W.A. Peiris Singho, Affirmed

Court: I allow Crown Counsel to examine this witness.

Examined:

(Shown X2) Q. Is this your hand writing? A. I do not know to write. I have never attended school.

10

Q. Did you at any stage offer the hand of your daughter in marriage to this accused? A. Never. I have not even spoken a word about such a thing.

Court: Q. Your daughter is in the S.S.C. Form at the Mirigama English School. A. Yes.

Q. She has studied up to S.S.C.?

A. Yes.

Q. Do you ever consent to give your daughter in marriage to a servant? A. Never.

20

Q. It is suggested by the Counsel for the defence that this document X2 was handed over by you to this accused? A. No. Today is the first day I saw this book. Before that I have never seen.

Examination continued:

Q. How many daughters you have got? A. 6 daughters. There are 3 elderly daughters, the others are small girls.

Q. Is this the eldest child? A. Yes.

30

Court: Q. Your husband resides on his own property.

A. Yes.

Q. What is the worth of that property?

A. I cannot say that.

Examination continued:

Q. I take it, as a mother you expect your daughter to give the best possible example to the others?

A. Yes.

Q. And this accused, in your opinion, is not the best man to give your daughter in marriage?

A. Yes.

Court: Q. Is he in your caste? A. I don't even know his caste.

Q. Now your daughter is engaged to her first cousin? A. Yes.

10

Q. Suggestion has been made that you promised to give your daughter in marriage if this accused gave false evidence?

A. No, I do not know that Gunatileke had to give evidence in this case.

Cross examination: Nil.

Re examination: Nil.

In the Supreme Court of Ceylon

No. 4.

Evidence of M.B.P. Nona, 13th June 1957-continued.

No. 5.

EVIDENCE OF APPELLANT

No. 5.

Evidence of Appellant, 13th June 1957.

Don Thomas Samaratinga:

20 Court: Q. Is this the way that you have come to court?

A. Yes.

Q. You have no coat at home? A. I got.

Q. Then why did you come here with an open-shirt? A. My Lord, I tender an apology

Q. Is it because of contempt for this Court?

A. No.

30 Court: I ask Crown Counsel to examine this witness.

Don Thomas Samaratinga: 44 years. Landed Proprietor, Hakurukumbura, Affirmed.

Examined: Q. Last week you were an accused in this Court?

In the Supreme
Court of Ceylon

No. 5.

Evidence of
Appellant,
13th June 1957 -
continued.

A. Yes.

Q. You were the second accused? A. Yes.

Q. Today your servant is an accused?

A. He is not a servant of mine.

Court: Q. At no time? A. Yes. At no time.

Examination continued:

Q. If he has said that he was, then you say that is false? A. No. He was not a servant.

Q. Do you ever know him? A. No.

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Q. You have never seen him when he came to give evidence against you? A. At Mirigama Bazaar I had seen him.

Q. Long ago. A. About 3 or 4 months before the incident.

Q. Have you spoken to him at the bazaar?

A. No.

Q. What do you remember him doing in the bazaar?

A. He was going up and down in the bazaar. 20

Q. Have you seen other people going up and down in the bazaar? A. Yes.

Q. Most of the people? A. Some of them.

Court: Q. What is his name? A. I do not know his name.

Examination continued:

Q. Even now you don't know his name?

A. Now I know his name.

Court: Q. When did you come to know? A. After he gave evidence against me. 30

Examination continued:

Q. Can you suggest any reason why the accused says that he was a servant of yours? A. I cannot give any reason.

Court: Q. You cannot give any earthly reason?

A. I do not know what the reason is.

Q. He has had no grievance against you at any point of time?

A. No.

Examination continued:In the Supreme
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Evidence of
Appellant,
13th June 1957 -
continued.

Q. You had a servant by the name of Yothan Singho?

A. Yes.

Q. That man is in jail for having attempted to murder a man called Peiris Singho?

A. Yes.

Q. Pieris Singho is a man who owns an estate adjoining your land? A. Yes.

10 Q. That Pieris Singho and you were not on good terms?

A. We are good friends.

Q. Good friends? A. Yes.

Q. From when? A. Even now we are good friends.

Q. From what date? (No answer).

Court: Q. Please remember, if I find that you are giving false evidence I am proposing to deal with you. Therefore you must speak the truth? A. Yes.

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Examination continued:

Q. So you say that you had absolutely no grievance with Peiris Singho? A. No grievance.

Q. You had no dispute at all with Pieris Singho?

A. No. He was cultivating one of my paddy fields also.

30 Q. Pieris Singho gave evidence whilst you were an accused? A. Yes.

Q. In the course of his evidence you heard him saying that you were not getting on well with him?

A. I am not angry with him.

Q. Can you give any earthly reason why Yothan Singho attempted to murder Pieris Singho? A. I was staying in Colombo. My wife was taking treatment in Colombo. After 3 days this happened.

40 Court: Q. Crown Counsel is asking you any reason?

A. I had come to know that Yothan Singho

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Evidence of
Appellant,
13th June 1957 -
continued.

had been going to Pieris Singho's house.

Q. Do you know it personally? A. I do not know it personally.

Q. So that you personally do not know any reason why Yothan Singho should have attempted to murder Pieris Singho?

A. I do not know.

Examination continued:

Q. I am telling you now that this accused who says that he was a servant of yours also comes out with the same theory like the other servant? 10

A. I do not know about that. I cannot say anything about Kusumawathie.

Court: Q. You do not know of any love affair between this accused and Kusumawathie?
A. No.

Q. Neither do you know that Yothan Singho had any love affair with this girl Kusumawathie? 20

A. Yes.

Examination continued:

Q. You were also in the same situation?

A. No.

Court: Q. Can you give any reason why Pieris Singho suggests that you are angry with him?

A. Pieris Singho is entangled with an uncle of mine. He is friendly with the Registrar. He is my uncle. 30

Q. You said he is 'entangled' with the Registrar?

A. Yes.

Q. Up to what standard have you studied in English? A. 7th standard.

Q. Where? A. At Walbothale.

Q. You are able to give evidence in English. A. Yes.

Q. What do you mean by saying 'entangled'?

A. My uncle used to visit Pieris Singho after this incident. 40

Q. After the assault or before the incident? A. Before the incident.

Examination continued:In the Supreme
Court of Ceylon

No. 5.

Evidence of
Appellant,
13th June 1957 -
continued.Q. So your uncle visited you before the
incident? A. No.

Q. When? A. My uncle is angry with me.

Q. Why is that? A. He assaulted me and
we assaulted him.

Q. When was that? (No answer).

Q. You said 'we assaulted'. 'We' means
who?

10 A. Myself and 3 other uncles.

Q. You assaulted with 3 uncles of yours.

A. Yes, after assaulting me.

Q. So you are not a man who is disposed
to assault?

A. If he assaults me I assault him.

Court: Q. What did you assault him with?A. In hand. Three of my uncles and my-
self got hold of him on the road and
assaulted him.

20 Q. With what did you assault? A. In hand.

Examination continued:

Q. Did you have anything in your hand?

A. Nothing.

Q. Why did four people go and assault one
man? A. I do not know. He came and
assaulted us and we assaulted him.Q. How old is your uncle? A. About 60
years.

Q. Was that his age at the time? A. Yes.

30 Q. What is his age now? A. 80 years.

Q. What happened in that case? A. I got out.

Q. Who got in that case. A. No one.

To Court:Q. At the time you assaulted him he was
60 years of age, and then you and three
uncles went to assault him? A. He
assaulted us and we assaulted him.

40 Q. That is the four of you? A. Yes.

Q. Who assaulted first? A. First my
uncle assaulted.

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Court of Ceylon

No. 5.

Evidence of
Appellant,
13th June 1957 -
continued.

- Q. With what? A. In his hand. He gave several slaps.
- Q. Slaps on the cheek? A. And on the head also.
- Q. Was your head injured? A. No.
- Q. Did you finally take action in respect of that?
- A. Both happened at the same time.
- Q. What happened?
- A. They got acquitted. 10
- Q. You stated in evidence that you were assaulted.
- A. Both parties filed action.
- Q. Your uncle was acquitted? A. Yes.
- Q. Thereafter what happened? A. Thereafter the uncle filed a counter plaint.
- Q. Are you proud of assaulting your uncle? Are you happy about it? A. I got angry and we went and assaulted him.
- Q. You are one of those people that when you get angry the correct thing to do is to assault that person. If you get angry with a villager, your reaction would be to assault him? 20
- Court: Q. In other words when you gave evidence you said that your uncle assaulted you and you assaulted your uncle. Your evidence was disbelieved? Your uncle's case was tried first? A. Both parties filed actions, 30
- Q. In one case where your uncle was charged you gave evidence? A. The police filed action against both parties to keep the peace.
- Q. In the case where you said you assaulted your uncle what happened? A. The Police filed action against both the parties. One action filed against both the parties to keep the peace. That case was over. 40
- Q. Did you file a case saying that your uncle assaulted you? Did you give evidence to that effect? A. I have made a mistake.

Q. Is it a mistake or a deliberate falsehood?

A. It is a mistake. The Police filed action against both parties to keep the peace. The Court bound over the parties in that case. Later on my uncle filed an action against four of us.

Q. You are an accused in the dock?

A. Yes.

10 Q. You say you did not file a similar action against your uncle? A. No.

Q. Apart from seeing this accused you know nothing about him? A. No.

Q. You did not take him to Nawalapitiya?

A. No.

Court: Q. This accused through his Counsel has stated that you hid him when the Police came?

A. No.

20 Q. Is there any reason why this accused should have stated that in evidence?

A. I cannot give a reason.

Q. Did you make no effort at all to get him defended in that case? A. No.

Q. That is Yothan Singho? A. I made no effort.

Q. You got Dr. Colvin R. De Silva to defend you. A. Yes.

30 Court: Q. What is the extent of your land? A. It is worth about 4 lakhs.

Q. What is the extent of the estate?

A. About 200 acres of coconut and paddy.

Court to witness: In my view you are deliberately lying in this Court. You are contumaciously lying. You have no respect for this Court. You have come here to this box and come out with a string of falsehoods with a view to deceiving this Court. Unfortunately I have formed that view and I propose to deal with you for that.

40 Witness: I spoke the truth.

Court: Have you any cause to show why you should not be dealt with for contempt of Court by giving false evidence?

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No. 5.

Evidence of Appellant, 13th June 1957 - continued.

In the Supreme
Court of Ceylon

No. 5.

Evidence of
Appellant,
13th June 1957 -
continued.

Witness: I spoke the truth.

Court: In my view you have given false evidence. The evidence given by Kusumawathie and her mother shows that you had employed this man.

Witness: Never.

Court: I sentence you to 3 months R.I. for contempt of Court by giving false evidence in this Court. In my view you have been lying contumaciously in this Court.

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No. 6.

No. 6.

Order of the
Commissioner
of Assize,
15th June 1957

ORDER OF THE COMMISSIONER OF ASSIZE

At the conclusion of the trial in S.C. 10, M.C. Gampaha 26329 this accused was indicted on my instance on the charge set out in the indictment of having given false evidence, an offence punishable under section 190 of the Penal Code. In case No.S.C.10,M.C. Gampaha 26329, one Yothan Singho was charged with the attempted murder of Pieris Singho.

Don Thomas Samaratunga, who was a witness in this case whom I noticed, was also indicted with aiding and abetting Yothan Singho to commit the said attempted murder. Yothan Singho and this accused were employed by Mr. Samaratunga according to the statement made by this accused. Mr. Samaratunga was called by me in order to ascertain whether that was the fact. I am sorry to say that Samaratunga was contumaciously lying on this point.

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Kusumawathie who has given evidence before me, whose evidence I accept, has stated that this accused was employed under Mr. Samaratunga at the time her father was assaulted. Kusumawathie stays about 200 yards from Samaratunga's house on the adjoining land. I accept her evidence with confidence. This accused himself through his Counsel admitted, whilst his Counsel was pleading in mitigation, that he was employed under Samaratunga at the point of time this assault took place. This

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accused even went to the extent of saying through his Counsel that Samaratunga was hiding him when the Police came to inquire into this offence. I have no hesitation in taking the view that Samaratunga has come here and contumaciously lied on this point.

In the Supreme
Court of Ceylon

No. 6.

Order of the
Commissioner
of Assize,
15th June 1957 -
continued.

10 The case for the Crown in S.C.10, M.C.Gampaha 26329 is that Mr. Samaratunga who is a landed proprietor had fallen out with the injured person Pieris Singho, who was owning a small bit of land, over some dispute over a right of way as a result of which Samaratunga employed Yothan Singho and this accused to go and murder Pieris Singho. The case for the Crown is that both this accused as well as Yothan Singho went to the place where Pieris Singho was and Yothan Singho dealt several blows on Pieris Singho as a result of which Pieris Singho fell down unconscious. Thereafter it is the Crown case that this accused and Yothan Singho carried Pieris Singho and put him inside a 'kohila' pit. Pieris Singho fortunately escaped from the injuries and gave evidence in the Magistrate's Court where he said that both Yothan Singho and this accused came there and Yothan Singho assaulted him. The case against Mr. Samaratunga depended entirely on the evidence of this accused. His Counsel also admitted that this accused made an identical statement to the Police as the statement he made to the Magistrate.

30 In the Magistrate's Court this accused stated that he and Yothan Singho were both employed as servants under Samaratunga. He said that on 27.8.55 at about 6.30 p.m. Samaratunga gave a bottle of arrack and Yothan Singho was asked to open the bottle and partake of its contents. He said that both he as well as Yothan Singho drank the arrack which was in the bottle and only a quarter of the bottle was left after they had partaken of the contents of the bottle.

40 Thereafter, this witness stated in the Magistrate's Court that Mr. Samaratunga asked one Banda, another servant, to bring a 'kitful' club. The club was handed over to Yothan Singho with instructions to Yothan Singho and himself to go and murder Pieris Singho.

The witness went on to state in the Magistrate's Court that having drunk the arrack both of them set out in the direction in which Pieris Singho was, and Yothan Singho saw Pieris Singho in

In the Supreme
Court of Ceylon

No. 6.

Order of the
Commissioner
of Assize,
15th June 1957 -
continued.

his vegetable enclosure. Yothan Singho dealt several blows on Pieris Singho, and Pieris Singho fell down unconscious. Thereafter, he says that he and Yothan Singho carried Pieris Singho and put him inside a 'kohila' pit. This is the identical statement he made to the Police three days after he went to his village.

This accused stays in a village close to Nawalapitiya. This incident where this unfortunate man Pieris Singho was assaulted took place at Hakurukumbura which is close to the village of Mirigama. His evidence in the Magistrate's Court was that when the Police came to inquire into this matter his employer Mr. Samaratunga took him to Nawalapitiya, dropped him at Nawalapitiya, and asked him to go home. He says that three days after he went home he went and stated to the Police what had happened.

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When this case was taken up for trial in this Court, Crown Counsel called the accused as his first witness and he went back completely on his statement and stated that on the day in question when the assault took place he did not take any arrack that night. He even went to the extent of saying that he never takes any arrack. He said that he did not see Yothan Singho drinking arrack that evening. He further went on to state that he did not see Yothan Singho with a 'kitful' club that day. He said he never went with Yothan Singho to the vegetable enclosure. He said he never went with Yothan Singho that day. He said that he never saw Pieris Singho in the 'kohila' enclosure and he went to the extent of saying that he never went to the land in all his life. He said he was sure about it.

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He then went on to say that he had heard that Pieris Singho had come by certain injuries, but he did not see how Pieris Singho came by his injuries. He said he did not see anybody assaulting the injured man that day. He went on to say that he learnt that Pieris Singho had been attacked from a crowd that was there. He said that there was no displeasure between Mr. Samaratunga and Pieris Singho. There was no other evidence implicating Samaratunga and when this evidence was led I had to direct the jury that there was no evidence against Samaratunga, and Samaratunga was acquitted. When this happened the case took a dramatic turn. Dr. Colvin R. de Silva who appeared for Samaratunga walked out and the 1st accused in that case, Yothan Singho, pleaded guilty to the charge, and he was sentenced to

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8 years rigorous imprisonment. After the conclusion of the case I asked the Clerk of Assize, who has the functions of the Registrar of the Supreme Court, to frame an ~~and~~ indictment against this accused for giving false evidence under Section 439 of the Penal Code.

In the Supreme
Court of Ceylon

_____ sic No. 6.

Order of the
Commissioner
of Assize,
15th June 1957 -
continued.

10 When the trial was taken up the accused was represented by Counsel whom he had retained and this accused pleaded guilty to the charge. In order to understand the background and in order to assist me on the question of sentence and also to place proper evidence on the matter on record, I desired to hear evidence. Counsel for the defence, after getting instructions from time to time from this accused, came out with a number of statements. I must say that Counsel for the defence has conducted his case in an exemplary manner. It cannot be suggested that he was drawing on his imaginations but he was only coming out with statements on the instructions the accused had given him. In this submission, his Counsel admitted that this accused was employed under Samaratunga at the time this assault took place, and his Counsel also stated that when the Police came for inquiry Samaratunga hid him. When I asked him for the reason why he should have been hidden, his answer was that his client had to obey the instructions of his master.

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30 Counsel for the defence has stated on instructions that the statements that his client made in this Court were truthfully made. At the previous trial the accused said that he was induced to make a statement to the Police and to the Magistrate on a promise made by Kusumawathie's parents to give Kusumawathie in marriage to him if he obliged them by giving that false evidence. The accused also produced in the course of his evidence before me in the previous case a document X1, which he alleged was given to him by Kusumawathie and which was in her handwriting and which contained the evidence which he was expected to give. He also produced an exercise book, which has been marked as X2, which this witness stated at the previous trial was given to him by Kusumawathie's mother on one of the dates of trial. In this trial through his Counsel he changed his story and said that Kusumawathie was in love with him and he was in love with Kusumawathie, and that it was Kusumawathie who had induced him to give false evidence and gave him the document X1. In order to verify the truth of these statements, I noticed Kusumawathie, her mother Punchi Nona, and I also noticed Mr. Samaratunga

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In the Supreme
Court of Ceylon

No. 6.

Order of the
Commissioner
of Assize,
15th June 1957 -
continued.

to find out whether Mr. Samaratunga had employed this accused.

I have heard the evidence of Kusumawathie. She appears to be a school girl who has studied English up to the S.S.C. and she gave me the appearance that she was speaking the absolute truth when she said that she was never in love with this accused, and that the accused was never in love with her, and that there was no promise on her part to get married to him if the accused gave false evidence. She said that she never gave the document X1. She was asked to write out part of the contents of X1. When the Mudaliyar read out certain parts of X1 she copied it out, and that document has been marked X3. Although I may not know Sinhalese language to perfection I think I know the characters. I have examined them and it seems to me that the writing on X1 is definitely not the handwriting of Kusumawathie. The characters are differently formed. The pressure points are different. There is no doubt in my mind that X1 was never written by Kusumawathie. 10

The witness Punchi Nona was also called by me. She stated that at no point of time did she understand that her daughter was getting married to this accused. She said that she had six daughters and that Kusumawathie was her eldest daughter and she naturally was trying to find a good match for her. It seems to be fantastic that Kusumawathie who has been educated up to the S.S.C. and who appears to be a very respectable girl, would have ever consented to marry this accused who was a servant. It is still more strange that the parents would have promised to give Kusumawathie in marriage to this accused. 30

There are two possible views. It seems to me that the version given by this accused through his Counsel when he stated that Kusumawathie had induced him to give false evidence is utterly false. It is far too fantastic for any Court to accept that version. The only other possible view is that this witness had been bought over by Mr. Samaratunga. Anyhow Mr. Samaratunga is not on trial on that matter and I need not pursue that matter any further. It seems to me that there was no repentance by this accused. 40

Through his Counsel he has come out with a number of false statements without any regard or

respect for this court. In this view of the matter, I regret, I have no other alternative but to send him to 4 years' rigorous imprisonment. If I accepted his version I would have sentenced him to a higher term of imprisonment, because that would be a case where he was involving an innocent man in a serious crime, but for the reasons I have given already I do not accept his version which he put forward through his Counsel.

In the Supreme
Court of Ceylon

No. 6.

Order of the
Commissioner
of Assize,
15th June 1957 -
continued.

10 It is with regret that I have to deal with Mr. Samaratunga under Section 440(1) of the Criminal Procedure Code. The way and the manner in which he gave evidence was such that he gave me the impression that he was speaking absolute falsehoods when he said that he did not employ this accused at all and that he had only seen this accused in the bazaar on one occasion. As I have stated earlier, I accept Kusumawathie's evidence with confidence, and even this accused must have been taken
20 by surprise when Samaratunga gave his evidence, because through his Counsel he has taken up the position that he was employed under Samaratunga, and even in the Assize trial before me, which ended in the discharge of Samaratunga he stated that he was employed under Samaratunga.

30 Although he had gone back on various other statements, on this particular point that he had been employed under Samaratunga he has always been consistent. I think people of Mr. Samaratunga's standing should know better than come to Court and lie. They must know to speak the truth. It seems to me that it was not only a case of lying but a case of contemptuous lying which calls for the censure of this Court. I regret I have to deal with him in this summary manner but I have no other alternative but to adopt this course, both in the interests of Justice and also in preserving the dignity of this Court. I sentenced Samaratunga to three (3) months rigorous imprisonment.

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Sgd. H.W. Tambiah.

Commissioner of Assize.

15th June 1957.

In the
Privy Council

No. 7.

ORDER IN COUNCIL GRANTING SPECIAL
LEAVE TO APPEAL

No. 7.

Order in Council
granting Special
Leave to Appeal,
31st October
1957.

AT THE COURT AT BUCKINGHAM PALACE

The 31st day of October 1957.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	CHANCELLOR OF THE DUCHY
EARL OF PERTH	OF LANCASTER
	MR. WALTER SMITH

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 29th day of October 1957 in the words following, viz:-

"WHEREAS by virtue of His Late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Don Thomas Samaratunga in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioner and Your Majesty Respondent setting forth (amongst other matters) that the Petitioner prays for special leave to appeal to Your Majesty in Council against the Order of the Court of the Commissioner of Assize for the Supreme Court of Ceylon dated the 15th June 1957 whereby the Petitioner was summarily sentenced to three months' rigorous imprisonment under Section 440(1) of the Criminal Procedure Code for giving false evidence within the meaning of Section 188 of the Penal Code in a judicial proceeding held before the said Commissioner; that one Yothan Singho and the Petitioner had been jointly charged Yothan Singho with attempting on the 29th August 1955 to murder one Pieris Singho and the Petitioner with aiding and abetting him in such attempt; that at the non-summary inquiry into the said charges the only evidence against the Petitioner was given by one Gunatileke who stated (so far as is material) that the Petitioner had given Yothan Singho and himself a bottle of

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In the
Privy Council

No. 7.

Order in Council
granting Special
Leave to Appeal,
31st October
1957 - continued.

10 arrack to drink in his kitchen and provided them with a club and told them to go and kill Pieris Singho between whom and the Petitioner there was ill feeling because of a dispute about a footpath: that at the trial on indictment of the said charges Gunatileke gave evidence that he did not drink arrack on the night in question or see Yothan Singho drinking arrack or in possession of a club and that he did not go to the Petitioner's kitchen and that so far as he knew there was no displeasure between the Petitioner and Pieris Singho: that following the giving of this evidence the Commissioner directed that the Petitioner be acquitted and that Gunatileke be tried on indictment under Section 439(1) of the Criminal Procedure Code for intentionally giving false evidence; that at the trial the Petitioner was summoned as a witness and gave evidence accordingly and at the conclusion thereof the Petitioner was sentenced as aforesaid: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Order of the Court of the Commissioner of Assize for the Supreme Court of Ceylon dated the 15th June 1957 and for further or other relief;

20 THE LORDS OF THE COMMITTEE in obedience to His Late Majesty's said Order in Council have taken the humble petition into consideration and having heard Counsel in support hereof no one appearing at the Bar in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Court of the Commissioner of Assize for the Supreme Court of Ceylon dated the 15th day of June 1957:

30 AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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50 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

In the
Privy Council

No. 7.

Order in Council
granting Special
Leave to Appeal,
31st October
1957 - continued.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly

W. G. AGNEW

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE SUPREME COURT OF CEYLON

B E T W E E N :

DON THOMAS SAMARATUNGA Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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London, S.W.1.
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