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IN THE PRIVY COUNCIL

No. 12 of 1961

ON APPEAL

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

FROM THE SUPREME COURT OF CEYLON  
KANDY ASSIZES, MIDLAND CIRCUIT  
(SUMMARY JURISDICTION)

B E T W E E N

68282

GAMALATH RALAJAGE DANIEL APPUHAMY

Appellant

- and -

THE QUEEN

...

Respondent

R E C O R D   O F   P R O C E E D I N G S

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Respondent.

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GAMALATH RAJALAGE DANIEL APPUHAMY Appellant

- and -

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RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 12 of 1961

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON  
KANDY ASSIZES, MIDLAND CIRCUIT  
(SUMMARY JURISDICTION)

B E T W E E N:

GAMALATH RALALAGE DANIEL APPUHAMY Appellant

- and -

THE QUEEN ... Respondent

10

RECORD OF PROCEEDINGS

No. 1

OPENING OF TRIAL

THE QUEEN

Vs.

1. WIJELATH PEDIGE PURA
2. YODA PEDIGE MARTIYA
3. RAJAPAKSE PEDIGE ALBIYA
4. WIJELATH PEDIGE PEERIS
5. EDIRISINGHEGE BABIYA
6. MUTHUAGGE SEDA alias SEDIRIS
7. YODA PEDIGE JINADASA
8. S.P. JOHN

20

In the  
Supreme Court

R. v. Pura et

No. 1

Opening of  
Trial.

1st April,  
1960.

Trial begins on 1st April, 1960 - 9.30 a.m.

Present: D.B. WIJEWWARDENA Esqr., Commissioner  
of Assize.

E.D. Wickremanayake, Crown Counsel, for the crown

H.C. Wickremaratne, assigned for the 1st accused.

A.B. Walgampaya instructed by G.B. de Silva for  
the 2nd, 3rd, 4th, 5th, 6th and 7th accused.

30 Mangala Moonesinghe instructed by Rex Gunaratne  
with H.C. Wickremaratne, assigned for the 8th  
accused.

In the  
Supreme Court

R.v. Pura et al.

No. 1

Opening of  
Trial.

1st April,  
1960

- continued.

Charges:

Count 1. That on or about the 29th day of May, 1958, at Thallaiadde, Dorawake, in the division of Kegalle, within the jurisdiction of this Court, you with others unknown to the prosecution did agree to commit or abet or act together with a common purpose for or in committing or abetting an offence, to wit, illegally removing goods and articles from the boutique of P. Mooka Pillai, an offence against Regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations published in Government Gazette No. 11,321 of the 27th May, 1958, and made by the Governor-General under Section 5 of the Public Security Ordinance No.25 of 1947 (as amended by Act No.22 of 1949 and Act No.34 of 1953) and you are thereby guilty of the offence of conspiracy to commit or abet the said offence which offence was committed in consequence of the said conspiracy and you have thereby committed an offence punishable under Regulation 22 of the said Regulations read with Sections 113B and 102 of the Penal Code.

10

20

Count 2. That at the time and place aforesaid and in the course of the same transaction, you with others unknown to the prosecution were members of an unlawful assembly the common object of which was to commit house-trespass in order to commit theft by entering the boutique in the occupation of the said P. Mookapillai, an offence under section 437 of the Penal Code, and to illegally remove goods and articles from the said Boutique and you are thereby guilty of an offence against Regulation 22 of the said Regulations punishable under the said Regulation 22.

30

Count 3. That at the time and place aforesaid and in the course of the same transaction one or more members of the unlawful assembly aforesaid did commit house-trespass in order to the committing of theft by entering the said boutique which offence was committed in prosecution of the common object of the said unlawful assembly and you being members of the said unlawful assembly at the time of the committing of the said offence are thereby guilty of an offence punishable under Section 437 read with Section 146 of the Penal Code.

40

Count 4. That at the time and place aforesaid and in the course of the same transaction one or

more members of the unlawful assembly aforesaid did commit theft of bundles of textiles and banians exceeding Rs.200/- in value property in the possession of the said P. Mooka Pillai which offence was committed in prosecution of the common object of the said unlawful assembly and you being members of the said unlawful assembly at the time of the committing of the said offence are thereby guilty of an offence punishable under Section 367 read with Section 146 of the Penal Code.

10

Count 5. That at the time and place aforesaid and in the course of the same transaction you did commit house-trespass in order to the committing of theft by entering the said boutique in the occupation of P. Mooka Pillai, and you have thereby committed an offence punishable under Section 437 of the Penal Code.

20

Count 6. That at the time and place aforesaid and in the course of the same transaction you did commit theft of the said bundles of textiles and banians property in the possession of the said P. Mooka Pillai, and you have thereby committed an offence punishable under Section 367 of the Penal Code.

30

Count 7. That at the time and place aforesaid and in the course of the same transaction you did commit mischief by damaging the show cases and furniture of the said boutique, and you have thereby committed an offence punishable under Section 410 of the Penal Code.

Plea: Severally not guilty.

The following Jurors are empanelled:-

1. J.S. Wickremasinghe (Foreman) Affd.
2. C.M.A. Chandrasekera, Affd.
3. M.D. Gunasekera, Affd.
4. D.R. Atalage, Sworn.
5. R.D. Fernando, Affd.
6. C.T. Mapa Gunaratna, Affd.
7. W.A.M. Wijesinghe, Affd.

40 Juror R. Amerasingham is challenged by Mr. H.C. Wickremaratne.

Grown Counsel opens his case to the jury.

In the  
Supreme Court

R.v. Pura et al.

No. 1

Opening of  
Trial.

1st April,  
1960

- continued.



PROSECUTION EVIDENCE

In the  
Supreme Court

R.v. Pura et al.

No. 2

MOOKA PILLAI

Prosecution  
Evidence

No. 2

Mooka Pillai.

1st April, 1960

Examination.

MOOKA PILLAI son of Periyasamy: Affd. 50 years,  
trader, Ceylon Tamil, residing at Warakapola.

Q. In May 1958 what were you doing? A. I was  
running a boutique at Thallaiadde.

Q. How long have you been running that boutique at  
Thallaiadde? A. For ten years.

Q. You are now at Warakapola? A. Yes. 10

Q. What were you selling in your boutique at  
Thallaiadde? A. Textiles and oilmanstores.

Q. Do you have prices marked on the goods in your  
shop? A. Yes.

Q. How are the prices marked? A. Some are  
entered in Tamil characters and some in English.

COURT: Do you have a code word? A. We mark  
certain Tamil characters indicating numerals.

Examination in chief continued:

Q. Such as? A. "Kaana" means 1, "Muna" is 2. 20

Q. Supposing you were selling an article worth  
Rs.15/- what are the letters? A. "Kaana Runa"

COURT: Do these letters generally indicate these  
particular figures? A. Yes.

Q. So those letters could be written by anybody who  
knows Tamil? A. People who know the equivalent  
figures for these letters can write them.

Examination in chief continued:

Q. Who were in your boutique besides you?  
A. I had a boy, Suppiah. 30

Q. Are you married? A. Yes.

Q. Where is your wife? A. She was in the  
boutique.

Q. What is her name? A. Poopachy.

Q. Besides you, Poopachy and Suppliah were there anybody else in your boutique at that time?

A. No one else.

Q. Besides your boutique were there any other Tamil boutiques in that area? A. There was a barber saloon belonging to a Tamil Man.

Q. That was the only other Tamil establishment besides yours in that area? A. Yes.

10 Q. Who was running that barber shop? A. It was run by a Tamil man, I do not know his name.

Q. Do you know the village headman of this area? A. Yes.

Q. Who was the village headman in May 1958? A. One Podi Nilame.

Q. Do you know his name? A. No, he is known as Fodi Nilame.

20 Q. Did you meet him on 29th May, 1958? A. I did not meet him on that day, I met him a week prior to that date.

Q. You know in May 1958 a state of emergency was declared on the 27th? A. Yes.

Q. In your village was there tension between the Sinhalese and the Tamils? A. No.

COURT: But were there any Tamils to be any tension?

A. Apart from my boutique and that barber's shop belonging to a Tamil Man there were no other Tamils in that area.

Examination in chief continued:

30 Q. Did you open your boutique on the 27th? A. No.

Q. Why? A. As there were disturbances in the rest of Ceylon I kept my boutique closed.

Q. When did you close your shop? A. On Monday the 26th May.

Q. Did anything happen on the 29th? A. Yes.

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Examination  
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No. 2

Mooka Pillai.  
1st April, 1960

Examination  
- continued.

Q. What happened? A. The village headman of Kongoda came and told me that preparations were being made to loot my boutique.

Q. Do you know him? A. Yes.

Q. What is the name of the village headman of Kongoda? A. Daniel Appuhamy.

Q. He is the headman of a different Wasama?  
A. Yes.

Q. At what time did he come? A. At 7 p.m. on the 29th.

10

Q. What did he tell you? A. He told me people were planning to loot your boutique tonight, I will come and safeguard your boutique.

Q. Is that all? A. He said, for my taking steps to safeguard your boutique what have you got to say?

Q. What had you got to say? A. I agreed.

Q. What happened thereafter? A. Then the village headman sent for a lorry.

Q. Did the lorry come there? A. Yes, the lorry came at about 8 p.m.

20

Q. That is to say about an hour after the headman first came there? A. Yes.

Q. During that hour where was the headman?  
A. He was in my boutique.

Q. And was the boutique open or closed at the time?  
A. One plank was open.

Q. Was a lamp burning? A. Yes.

Q. Was that a petromax lamp like P1 - shown?  
A. This is the lamp.

Q. What happened after the lorry case? A. After the lorry came Suppiah and I loaded the things into the lorry.

30

Q. How many people came in the lorry? A. The driver and the cleaner.

Q. Had you known them? A. Yes.

Q. Who were they? A. The driver is Suwaris, I do not know the name of the cleaner.

Q. Did they help to load the things? A. The cleaner helped but not the driver.

Q. Did the village headman help? A. He did not help to load the things but he was there.

Q. What happened when you were loading the things?  
A. While we were loading the things into the lorry three of the accused came into the boutique.

10 Q. About what was roughly the total value of the articles in your shops? A. About ten thousand rupees.

Q. And how far long had you been loading the goods into the lorry before you saw the three accused come into the boutique? A. The small items of goods had already been loaded into the lorry and almost half the goods had been loaded when the three accused came into the boutique.

20 Q. For how long had you been loading when the accused came there? A. For about one hour.

Q. How far is the police station from your boutique?  
A. About  $2\frac{1}{2}$  miles.

Q. Who are the accused who came into the boutique?  
A. One Seda the 6th accused.

Q. Had you known him earlier? A. Yes.

Q. For how long had you known the 6th accused?  
A. I knew him for about a year?

Q. You knew him by name? A. Yes.

30 Q. Who were the others who came? A. The 1st accused.

Q. And the other one? A. The third man is one Podisingho, he has not been arrested. The third man is not among these accused.

Q. Had you known the 1st accused before this?  
A. I knew his name.

Q. What is his name? A. He is Pura.

Q. At the time they came into the boutique where were you? A. I was inside the boutique.

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1st April, 1960  
Examination  
- continued.

In the  
Supreme Court

R.v. Pura et al.

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No. 2

Mooka Pillai.

1st April, 1960

Examination  
- continued.

Q. Where was the headman? A. He too was inside the boutique.

Q. Your wife? A. She too was inside the boutique.

Q. Suppiah? A. He too was inside the boutique.

Q. What did the accused come inside the boutique and do? A. I remember the 6th accused Seda coming inside and asking the headman "What are you doing here"?

Q. What did the headman say? A. He said nothing.

Q. Then what happened? A. Then Seda said, I have brought about 200 people to loot this shop. Then the headman replied, you better kill me and then take away the goods. 10

Q. Then? A. At that time my wife was seated on a bench and the 6th accused hit her with hands.

Q. What happened thereafter? A. My wife was about to fall against the almirah and I held her.

Q. How old is your wife? A. She is about 40 years.

Q. Then what happened? A. Then Seda hit me with hands on my cheek. 20

Q. What happened then? A. Then I took my wife and Suppiah and went to the rear of the boutique.

Q. Was there anybody in the rear side? A. No.

Q. What happened after you went there? A. About 2 furlongs away there is the house of one Rapiel whom I knew, I went to his house.

COURT: Besides the headman saying, you better kill me and take away the goods, did he say or do any thing else? A. No, he said nothing and he did nothing. 30

Examination in chief contd.

Q. Were you able to see the boutique from Rapiel's house? A. No.

Q. Did you go back to the boutique after that? A. I next went to my boutique next morning at about 7 a.m.

- Q. Before going to the boutique did you go anywhere else? A. From Rapiel's house that night we left for Ambagala Estate where some of my relations live, it was about 1 a.m. when we reached Ambagala Estate.
- Q. From where did you come to your boutique?  
A. From Ambawela I went to the police station and came to the boutique.
- Q. Did you go to the police station? A. Yes, we went to the police station at about 4.30 a.m.
- 10 Q. And you came back to the boutique with the police from the police station? A. Yes.
- Q. When you came back to the boutique what did you find? A. I found the show cases and the radio smashed up.
- Q. And the lamp? A. The lamp was not broken but the light had gone off.
- Q. You said half the things had been loaded into the lorry at the time these three men came?  
A. Yes.
- 20 Q. And after that they assaulted your wife and you and you went to the rear of the boutique?  
A. Yes.
- Q. Next morning you came to the boutique?  
A. Yes.
- Q. Was the lorry there? A. No.
- Q. Were the things you loaded into the lorry there?  
A. No.
- Q. Did you see the lorry again? A. Yes. I saw the lorry at the police station that morning at 4.30 a.m.
- 30 Q. Were there any of these things in the lorry?  
A. Some of the things were there.
- Q. Some of them were missing? A. Yes.
- Q. What kind of things were missing from the goods you had loaded into the lorry? A. Some textiles and umbrellas were missing.
- Q. About what roughly were the value of the articles you had lost that night? A. The value of the

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Examination  
- continued.

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No. 2

Mooka Pillai  
1st April, 1960

Examination  
- continued.

articles I lost and which were damaged that night would be in the neighbourhood of Rs.5,500/-

Q. Roughly what is the value of the articles that were lost? A. The actual value of the articles lost would be about Rs.4,500/-.

Q. Did you see any of these articles which you lost again? A. Two weeks later some of the missing articles were shown to me at the police station. The police showed me some textiles, some umbrellas and some ration books.

Q. Whose ration books were they? A. Mine. They were the ration books of the members of my household.

Q. - shown three ration books marked P2?  
A. These three ration books belong to us.

Q. On the 29th where were these ration books?  
A. The three ration books were in the drawer of a table in my boutique.

Q. That was before you left that night? A. Yes.

Q. - shown P3 - Six new sarees. Had you seen these sarees before? A. Yes, they were in my boutique.

Q. Are there any marks on them? A. Yes.

Q. What is the mark? A. The figures 7/50 on the label are in my handwriting.

Q. What were the selling price of these sarees?  
A. We sell each saree for Rs.3/- or Rs.8/50.

Q. At the time you left the boutique had these sarees P3 been loaded into the lorry or not?  
A. They had been loaded into the lorry.

Q. - shown P4 - three umbrellas - Are these yours?  
A. Yes.

Q. Any marks on them? A. Yes, the Tamil characters "Runa" marked on them indicate the price as Rs.5/-

COURT: Who marked that "Runa"? A. I marked on each of the three umbrellas.

Q. That is your handwriting? A. Yes.

10

20

30

P4 shown to Jury and defence counsel.

Examination in chief contd.

Q. Shown P5 - bundle of textiles? A. These are mine.

Q. How do you identify them as yours? A. The figures 180 marked on the board on which the textiles is wrapped is in my handwriting.

P5 shown to Jury and defence counsel.

Q. Have all the textiles marked like that? A. Yes.

Q. - shown P6, are these also yours? A. Yes.

Q. P6 consists of 7 gauze banians, 2 camboys, a piece of cloth and a muffler and you identify them as yours? A. Yes.

Q. - shown P7, some used articles of clothing? A. These used articles of clothing belong to my household.

Q. Had they been loaded into the lorry? A. No.

Q. Where were they? A. These articles of clothing were in a box in the kitchen.

Q. P7 - shown - consists of 5 used sarees, 2 jackets, a piece of sarong in which they were wrapped and an envelope? A. Yes.

Q. What does that envelope contain? A. There is a letter inside that envelope.

Q. What is the letter? A. That envelope contains bills.

Q. What bills? A. I send arecanuts to A. Arulandam & Sons and they sell the arecanuts and send the bills.

Q. These are bills sent to you? A. Yes.

Q. When you left the boutique were the bills in the envelope in your boutique? A. Yes.

COURT: Let me see the envelope (shown to Court)

Q. The envelope bears your name P. Mookapillai, printed on it? A. Yes.

In the  
Supreme Court

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No. 2

Mooka Pillai.  
1st April, 1960

Examination  
- continued.

10

20

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In the  
Supreme Court

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Mooka Pillai.  
1st April, 1960

Examination  
- continued.

Cross-  
examination.

Q. Where was this envelope? A. It was in the drawer of the table.

Examination in chief contd.

Q. Before you left your boutique had you packed all your used things to leave the place? A. This bundle of cloths had been packed and kept in a tin box to be taken away.

Cross-examined by Mr. Wickremaratne:

Q. Your boutique is in Dorawaka wasam? A. Yes.

Q. The V.H. of that wasam was one Podi Nilame at the time of this incident? A. Yes. 10

Q. How long prior to this incident did that V.H. assume duties? A. I cannot say.

Q. Would it be about one year prior to this incident? A. I do not think it would be even one year.

Q. Anyway Podi Nilame was the V.H. at this time? A. Yes.

Q. Prior to Podi Nilame assuming duties Daniel Appuhamy was acting? A. Yes. 20

(To Court: Q. He was the headman of the adjoining wasam? A. Yes.

Q. How far does Daniel Appuhamy live from the Police Station? A. About  $3\frac{1}{2}$  miles away.

Q. Would he have to go very far out of the way if he went to the Police Station before coming to your place? A. He would have to pass my boutique to go to the Police Station).

Q. This Daniel Appuhamy was the V.H. of Weragoda wasam? A. Yes. 30

Q. After Podi Nilame assumed duties as the V.H. of Dorawaka did Daniel Appuhamy also come to that area and assume duties? A. I cannot say that.

Q. So the first time that Daniel Appuhamy came to your village of Dorawaka was on that day to perform any official duties? A. He had come there earlier also.

(To COURT: Q. What for? A. He had come to purchase things)

Q. on the 29th you had closed your boutique?  
A. Yes.

Q. Did Podi Nilame meet you that morning? A. No.

Q. Daniel Appuhamy came to your boutique at 7 p.m.  
A. Yes.

Q How did he come to your boutique. A. He came in a car.

10 Q. And the car was there? A. Yes, it was stopped there.

Q. The first time he came to your boutique was at 7 p.m. in a car? A. Yes.

(To COURT: Q. The car was halted outside? A. Yes.

Q. The driver was in the car? A. There was a driver. (The headman cannot drive).

Q. Were there any others? A. I cannot say.

20 Q. He was the only person who came to your boutique at the time after stopping the car? A. From the car he was the only person who came to the boutique.

Q. Did any Perumal Fulle come to your boutique?  
A. No.

Q. Do you know Perumal Pulle? A. I knew him earlier.

(To COURT: Q. You used to see him there at this time? A. No.)

Q. At the time Daniel Appuhamy came you had closed your shop as a precaution? A. Yes.

Q. Did Daniel knock at your door? A. Yes.

30 Q. Did you open one plank? A. Yes.

Q. Did Daniel Appuhamy come into the shop?  
A. Yes.

Q. Did he suggest anything to you? A. Yes. He said he would safeguard the things for me.

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Q. You did not make a complaint to him did you?  
A. No.

Q. How did he say he would safeguard your property?  
A. He said that in the course of conversation.

Q. What did he say he would do to safeguard your property?  
A. He said that there was an empty boutique belonging to one Karunasena. He said he would take the things and keep them in the boutique. That was close to the V.H.'s house.

Q. It was the V.H. who suggested that to you? 10  
A. Yes.

Q. Daniel Appuhamy did not tell you to take these things to the Police Station? A. No.

Q. And thereafter did he get all the planks of the boutique opened? A. All the planks were not removed.

Q. How many planks were removed? A. Three planks were taken out whilst taking these articles out.

Q. What happened to the car? A. He sent a car to fetch the lorry. 20

(To COURT: Q. And when the lorry came the car also came? A. No, the car did not come).

Q. Whose lorry came there later? A. A lorry belonging to one Suwaris.

Q. You knew Suwaris before this date? A. Yes.

Q. Does Suwaris live in the wasam of Daniel Appuhamy? A. Yes.

Q. He lives close to Daniel Appuhamy's house?  
A. About half a mile away from his house.

Q. In evidence in chief you said that three people entered the boutique? A. Yes. 30

Q. And that one of them was one Podi Singho who has not been arrested? A. Yes.

Q. You knew his name at the time? A. Yes.

Q. Is Podi Singho still in your village? A. He is now a witness for the defence.

Q. Did you mention the name of Podi Singho to the Police? A. Yes.

Q. Opposite your boutique there is the Post Office?  
A. Yes.

Q. And it is equipped with a telephone? A. Yes.

(To COURT: Q. Is there a telephone available right throughout the night? A. I think so)

Q. There is a post master also residing in the Post Office building? A. Yes.

Q. The loading of the goods into the lorry was done by you, Suppiah and the cleaner who was brought by the V.H.? A. Yes.

Q. In what direction was the lorry facing?  
A. In the direction of the headman's house.

(To COURT: Q. After those three men came into the room did the loading of the lorry proceed?  
A. After the loading of the things into the lorry was stopped the accused came into the boutique.)

Q. The lorry was facing you said Daniel Appuhamy's house? A. Yes.

Q. It was not facing the Police Station? A. No.

Q. Is there a boutique opposite your boutique next to the Post Office? A. Yes.

Q. Whose boutique is it? A. It is a tea boutique.

Q. Is that the boutique of Punchi Banda? A. Yes.

Q. Can you remember whether that boutique was open that night? A. I cannot remember.

Q. You said in your examination in chief that your wife was assaulted first? A. Yes.

Q. Were you assaulted at any stage? A. Yes.  
That is after one person was assaulted.

Q. The village headman did nothing to help you when you were being assaulted? A. Yes.

(To COURT: Q. He made no effort to go to the Post Office and to telephone the Police? A. Yes.

Q. He did not even suggest it? A. No.

Q. Nor did he even though he had a car send a message to the Police? A. No.

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Q. Do you know whether even after these people removed the goods in the lorry he complained to the Police?      A. I do not know.)

Q. You remember you gave evidence in the lower Court?      A. Yes.

Q. Did you at any time suspect that Daniel Appuhamy the V.H. was the person who did this thing to you?  
A. Yes, I had a suspicion.

(To COURT: Q. At what stage did you suspect?  
A. After Seda and others came in and assaulted me I suspected that.      10

Q. Was it because of the accused's attitude or behaviour that you suspected or was it because of anything else?      A. Seda is a good friend of the headman.

Q. You knew that earlier?      A. Yes.

Q. When you saw Seda coming and doing all this you suspected the headman?      A. Yes)

Cross-examined by Mr. Walgampaya:

Q. Apart from the headman telling you that some people were coming and looting your boutique he did not mention any names?      A. No.      20

Q. Did you ask the Village Headman who the people were?      A. I did not ask him.

(To COURT: Q. Was the lamp of the boutique in good condition?      A. Yes.

Q. The light was bright?      A. Yes.

Q. How many planks were open when the headman came?  
A. Before he came none of the planks were open.

Q. After the headman came?      A. After the headman came and knocked at the door I opened one plank.      30

Q. Then after the lorry came you said you opened one plank?      A. Yes.)

Q. Before the headman came that night you did not anticipate any trouble to your boutique or to yourself?      A. No.

Q. The whole of the 29th was a peaceful day?  
A. During the whole of the day time the boutique was closed. None of us came out.

- Q. Since when was the boutique closed? (the 26th.) A. Since the 26th.)
- Q. Nobody threatened you on the 29th till these people entered your boutique? A. No.
- Q. And when this loading was going on did the V.H. go outside your boutique at any stage? A. I cannot say whether he at any stage left the boutique.
- Q. When you went to the Police Station you said you found the lorry there? A. Yes.
- 10 Q. And some of the articles were missing? A. Yes.
- Q. There were some of your articles in the lorry which was at the Police Station? A. Yes.
- Q. What fraction of the articles loaded into the lorry were found in the lorry? A. There was about Rs.1500/- worth of things in the lorry.
- Q. When you went to the boutique on the following day with the Police were there any articles in the boutique? A. There were a few other things there, some potatoes, some Bombay Onions, some bags of sugar.
- 20 Q. What was the value of the articles in your boutique the following day? A. When I went the next day to the Police Station there were things to the value of about Rs.2000/- in the boutique.
- Q. You say that goods to the value of about Rs.2000/- were left intact in your boutique the following day? A. Yes.
- Q. And you also say that P7 the used sarees which were in the box in the kitchen were removed?
- 30 A. The tin box had been broken open and the bundle of clothes had been removed.
- Q. How much do you value P7? A. About Rs.150/-
- Q. You were taken by the Police to the house of the 6th accused? A. Yes.
- Q. You together with the Police searched his house? A. Yes.
- Q. Did you find any of your missing articles there? A. They were not found that day.

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Q. Did the Police find any articles on the following day in the house of the 6th accused?      A. I do not know that.

Q. At any stage was anything found in the 6th accused's house in your presence?      A. Not in my presence.

Q. When the 6th accused said that he had come with about 200 people you did not go outside your boutique to see whether there were anyone?      A. No.

Q. You ran out of the front door or the back door?      10  
A. By the back door.

Q. Leaving the entire boutique open?      A. Only three planks of the boutique were open.

Q. The rear door was open?      A. Yes.

Q. When your wife was being slapped you did tell the headman to telephone the Police?      A. No.

Q. Neither did you ask the headman to inform anyone in authority regarding this incident?      A. No.

Q. I put it to you that the 6th accused was never in your boutique on the night of the 29th?      20  
A. He did come. I am definite that he came.

Q. You are mentioning Sada's name because Daniel Appuhamy wanted you to mention his name.  
A. I deny that.

Cross-examined by Mr. Manasinghe:

Q. The V.H. Daniel Appuhamy came to your boutique at 7 p.m.?      A. Yes.

Q. About one hour later the lorry came there?  
A. Yes.

Q. Then you started the loading of goods into the lorry?      A. Yes.      30

Q. Altogether about 2 hours elapsed between the arrival of the V.H. and the arrival of the three men?      A. Yes.

Q. The V.H. Daniel Appuhamy was the whole time seated in your boutique?      A. Yes.

Q. He did not attempt to send a message to the Police within those two hours?      A. No.

Q. On the 29th you say that Perumal did not come?  
A. I do not know about that.

Q. You did not see Perumal Pulle with Daniel?  
A. No.

Q. Did you meet Perumal Pulle at all that day?  
A. I did not meet him that day.

Q. It was Daniel Appuhamy who suggested to you to bring a lorry to take the goods away? A. Yes.

Q. You did not suggest that? A. No.

10 (To COURT: Q. Who selected this lorry to bring the goods? A. It was he who suggested.

Q. In other words he asked his driver to go and bring a particular lorry? A. Yes.)

Q. Did Daniel Appuhamy suggest that the goods should be taken and put in his house? A. No. He suggested keeping the goods in Karunasena Ralahamy's boutique which he said was an empty boutique and which he said was close to his house.

20 Q. When these accused entered the boutique they first assaulted your wife? A. Yes.

Q. Then they assaulted you? A. Yes

Q. Until that time nothing was broken in your boutique? A. Yes.

Q. While you were being assaulted Daniel Appuhamy never tried to go to these people and try to prevent them from assaulting you or your wife?  
A. That is so.

30 Q. Did Daniel Appuhamy have any weapon in his hands as a preventive measure? A. He had nothing in his hands.

Q. He just looked on? A. Yes.

Q. And Daniel Appuhamy set out from the boutique while you were being assaulted? A. I did not observe that.

40 (To COURT: Q. Even before these accused came, soon after you finished loading the lorry, and before these accused came, do you remember whether he went out of the boutique? A. While they were loading the things into the lorry Daniel Appuhamy was in the habit of going out of the boutique and coming in.)

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Q. He did that many times? A. Yes.

Q. Before these accused entered your boutique as you say did you hear any whistle or any signal made to the crowd? A. I did not notice any such sounds.

(To Court: Q. By that do you mean that there must have been a whistle which in your anxiety to load the lorry may not have been noticed by you?

A. AS I was going between the boutique and the kitchen I did not notice any such sounds)

10

Q. After you were assaulted you ran away to the house of Raphael? A. Yes.

Q. Did Raphael come to the boutique on the evening of that day? A. Yes, he had come.

Q. He is a good friend of yours? A. Yes.

Q. Did he assure you that if there was any trouble he would always come to your help? A. No.

Q. But Raphael was one of those people you trusted in the village? A. Yes.

Q. You did not see the 8th accused that day at the scene? A. I did not see him that day.

20

Q. He is a V.C. member? A. Yes.

Q. During the disturbances of 1956 he had come to your aid? A. Yes.

Q. Even a few days before this incident when the tarring campaign was going on he had come with Rapia and told Rapia to look after you? A. He had not asked Rapia to look after me but during the tar brush campaign he had come to my boutique and asked me to be careful.

30

Q. What do you mean - to be careful, to look after yourself? A. What I meant was to look after myself.

Q. Did you go with the police to Maadeniya Estate? A. That night we were staying in Maadeniya Estate, it is also known as Ambawela Estate.

Q. The eighth accused works on that estate? A. Yes.

Q. Did you go there on another occasion with the Police? A. Yes.

40

Q. On that occasion did you meet the 8th accused?  
A. I did not see him.

Q. That day after this incident the 8th accused came and saw you at about 2 o'clock? A. Yes.

Q. You never suspected him? A. No.

Re-examined:

Q. You said at the time the three persons came into your boutique you had stopped loading goods into the lorry? A. Yes.

10 Q. Why had you stopped loading? A. Because the accused came we stopped.

Q. So did you stop loading the lorry after the accused came or before? A. After we had loaded the things and were getting ready to leave the boutique the accused came into the boutique.

COURT: Q. Then you did not intend putting any more things into the lorry? A. Yes.

Q. Why, there was no room? A. The other items were heavy articles which we could not carry.

20 Q. You said in answer to my learned friend that you suspected the headman? A. Yes.

Q. What did you suspect him of trying to do?  
A. Because Seda and the headman happen to be friends I suspected that he got this done.

No. 3

G.R.D. APPUHAMY

CANAIATH RALALAGE DANIEL APPUHAMY: Affirmed. 55 years. Sinhalese, V.H. No. 95, Weragoda-Rabidigala Wasama, residing at Niyadurupola.

30 Q. On 29.5.58 you were village headman of Weragoda?  
A. Yes.

Q. You knew Mookapillai? A. Yes.

Q. He runs a boutique at Thalliyadde? A. Yes.

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Q. Is that boutique in your wasam? A. No, that boutique is in the Dorawaka headman's wasam.

Q. Who was the headman of Dorawaka wasam at that time? A. At that time Podi Nilame was acting village headman.

Q. Did you have any work at Dorawaka Wasam on that day? A. I acted for the village headman of Dorawaka before Podi Nilame.

Q. On 29.5.58 were you acting village headman of Dorawaka Wasam? A. No.

10

Q. Are there Tamil people with boutiques in your Wasama? A. Yes.

Q. Where did you buy your goods? A. From the Co-operative Stores.

Q. Had you bought goods at Mookapillai's boutique? A. No.

Q. How far is Mookapillai's boutique from your house? A. About  $1\frac{1}{2}$  miles.

Q. Is your office in your house? A. Yes.

Q. On 29.5.58 you went to the house of Mookapillai? A. I left with Perumal Pillai a Tamil person who is in a Kongoda boutique which is in my wasama.

20

Q. Why did you go that day to Mookapillai's boutique? A. On a complaint made by Perumalpillai.

Q. Did you go to that boutique as village headman? A. I went on duty to Mookapillai's boutique as a complaint had been made by Perumalpillai.

Q. What did you go to Mookapillai's boutique and do? A. I went and told Mookapillai the Dorawaka people will be coming to remove the goods of your boutique, you better take care of your goods.

30

Q. And what did you suggest that Mookapillai should do about it? A. I asked him to remove the goods to some place.

Q. How did you suggest that he should remove the goods? A. At that stage Perumalpillai asked Mookapillai to remove the goods in a lorry.

Q. At about what time was this? A. About 5.30 or 6 p.m.

- Q. Did a lorry come? A. Perumalpillai went and sent a lorry which came at about 7 p.m. and Perumalpillai did not come back.
- Q. The goods were loaded into that lorry? A. Yes.
- Q. How long did that take? A. About one and a half hours.
- Q. And then some people came into Mookapillai's boutique? A. Yes.
- 10 Q. That must have been about 9.30 p.m.?  
A. About 8.30 p.m.
- Q. You said it is about one and a half miles from your office to Mookapillai's boutique? A. Yes.
- Q. About what time did Perumal Pillai come to your office? A. About 4 p.m.
- Q. I take it that you recorded his complaint?  
A. Yes.
- COURT: Q. That is the first complaint? A. Yes.
- Q. How long have you been a village headman?  
A. 33 years.
- 20 Q. Whenever you record a first complaint you get a signature? A. I usually get the signature but on this particular day I could not take the signature.
- Q. Why? A. As Perumalpillai insisted on going to Mookapillai's boutique as soon as possible I went there as soon as possible and could not get the signature.
- Q. But still you delayed to record his complaint?  
A. Yes.
- 30 Q. But you did not want to delay long enough to take his signature? A. It did not strike me.
- Q. It did not strike you with 33 years service? He came at 4 p.m.? A. About 4 p.m.
- Q. At what time did you set out from your house?  
A. About 4.15 p.m.
- Q. How did you go? A. Walking.

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Examination in chief contd.

Q. How long did it take you to get to Mookapillai's boutique? A. About  $\frac{3}{4}$  of an hour.

Q. Then you reached Mookapillai's boutique about 5 p.m.? A. About 5 or 5.30 p.m.

Q. If you set out at about 4.15 p.m. and you took about three quarters of an hour you must have got there about 5 p.m.? A. About 5 p.m.

Q. Was it dark when you got there? A. Not too dark, there was a little light. 10

Q. Were the lamps lit in Mookapillai's boutique? A. There was a lamp burning.

Q. Why did you not go to the village headman of Dorawaka? A. I went to see him at about 4.45 p.m. but he was not at home.

Q. That is you went there before going to Mookapillai's boutique? A. Yes.

Q. Did you leave a message there? A. I did not leave any message, on inquiries at his house I learnt that he had not returned after he had left home in the morning. 20

COURT: Q. A state of emergency had been declared on the 27th? A. Yes.

Q. And there was the military and police patrolling the streets certainly on the 28th? A. Yes.

Q. On your way between your house and Mookapillai's boutique did you meet any police or Military patrol? A. No.

Q. You went wearing your village headman's badge? A. I did not take the badge with me. 30

Examination in chief contd.

Q. You were aware that there was a curfew imposed at that time? A. Yes.

Q. Having got to Mookapillai's boutique you said some goods were loaded into a lorry? A. Yes.

Q. What happened then? A. Three people including Seda the 6th accused came to the boutique?

Q. For how long have you known Seda? A. I came to know Seda when I was acting village headman of Dorawaka.

Q. Was Seda a friend of yours? A. No.

Q. Who were the others who came with him?

A. I do not know their names but I know them.

COURT: Q. Are they here? A. The three persons who accompanied Seda are not here.

10 Q. Of the persons who came to the boutique that night only Seda is here? A. Of those four persons who came that night into the boutique only Seda is here.

Q. What happened after Seda came to the boutique?

A. Seda struck a large bottle containing acetic acid with a club.

Q. You saw only Seda and three others? A. Yes, only those 4 persons came inside the boutique and about 50 persons came near the lorry.

Examination in chief contd.

20 Q. Did Seda come into the boutique and say anything? A. No.

Q. Did you say anything? A. I told them if you have come to remove the goods from this boutique you can do so after killing me but you will not be able to remove the goods without killing me.

Q. So you thought they had come to the boutique to remove the goods? A. Yes, the whole crowd came shouting and rushed in.

30 Q. What happened after Seda broke that bottle? A. One of the three persons who accompanied Seda struck the radio with a sword.

Q. Were all the people who came to the boutique armed? A. Seda had a club in his hand, another person had a club in his hand, another person had a sword in his hand and the other person had a knife in his hand.

40 Q. What happened after this man struck the radio? A. Another person struck the glass show-cases and the person who had the sword in his hand tried to cut me with it then Seda asked him not to cut the village headman.

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(COURT: Q. Seda is a friend of yours? A. No.)

Q. While all this was happening where was Mookapillai? A. He was near the table in his boutique watching all this.

Q. Where was his wife? A. She was seated on a chair near the table.

Q. While all this was being done she was seated on a chair? A. Yes.

Q. And Suppiah? A. He too was near the table.

Q. While the lamp, the radio and the show-cases were broken by these people did Mookapillai say anything? A. Mookapillai did not say anything but Seda struck him. 10

Q. With what? A. I saw him raising his hand but I do not know whether it was with a club.

Q. Surely if he had a club in his hand you would have seen him if he struck with it? A. I saw him having a club in one hand but he raised the hand which did not have the club.

Q. Then what is your difficulty in saying whether he struck with a club or not? A. I saw him raising his hand. 20

Q. Did you see it coming down? A. No.

Q. How long did he keep his hand raised? A. As soon as he raised his hand he lowered it.

Q. Where did the hand strike? A. On Mookapillai's face.

Q. Did that hand have the club? A. No.

Q. Then what was your difficulty in saying whether Seda struck Mookapillai with a club or with his hand? The gentlemen of the Jury are watching you, whether you are speaking the truth or a pack of lies. You will have to be very careful. 30

Q. Apart from hitting Mookapillai did Seda do anything else? A. Seda pushed Mookapillai's wife after he struck Mookapillai.

Q. Then what did Mookapillai and his wife do? A. They rushed to the rear of their boutique.

Q. After they left the boutique what happened?  
 A. The people got into the lorry and removed the things which were loaded into the lorry and went away.

(COURT: Q. The lorry was halted at a place which was not so well lighted? A. Half the planks of the boutique were open and half closed.

Q. Would it be correct to say that only 3 planks were open? A. Only three planks were open.)

10 Q. What happened in the boutique after Mookapillai and his wife left? A. Seda and the others got out from the front of the boutique onto the road and went away.

Q. What did you do? A. I Looked for Mookapillai in the rear of the boutique and could not find him and I closed his boutique.

20 Q. How long after the 6th accused Seda left did you go and look for Mookapillai? A. As Mookapillai and his wife rushed to the rear of his boutique the four persons who came into the boutique went away.

Q. Then what did you do? A. I looked for Mookapillai and could not find him and I closed his boutique.

(COURT: Q. Were the people still ransacking the goods in the boutique when Mookapillai left?  
 A. No.

Q. At any stage did the people rush into the boutique and remove the goods from the boutique?  
 A. No.

30 Q. Then you say it is not possible that a box in the kitchen was broken open and the clothes inside were removed? A. No.

Q. Mookapillai has identified in this court some clothes as belonging to him and which were in the box in the kitchen. Please be careful. Whatever happens to the accused in this case you better be careful. You are giving evidence here on oath and quite apart from what will happen to the accused you will get into serious trouble.)

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Q. At what stage did you see people removing goods from the lorry? A. At the stage that Seda and the other three persons had come into the boutique and were assaulting him I came to the place where the planks were open and I looked in the direction of the lorry.

Q. How far was the lorry from the front door of the boutique? A. About two or two and a half fathoms.

Q. What did you see when you looked out? A. I saw people getting out of the lorry and going away with the goods 10

Q. Did you identify any of those persons? A. I identified them but I do not know their names.

Q. Are any of them in Court today? A. Yes, the 1st to the 7th accused except the (all the accused stand up) 8th accused.

(COURT: Q. These people got into the lorry and removed the goods? A. Yes.

Q. Then Seda also got into the lorry and removed the goods? A. No. Seda took a parcel which was near the lorry.) 20

Q. At what stage did he do that? A. As he was going from the boutique.

(To COURT: Q. He did not think of taking anything from inside the boutique? A. He did not take.

Q. Why? A. I do not know.

Q. But there were very valuable things in the boutique? A. Yes.

Q. But he did not think of taking any things from inside the boutique? A. Yes. 30

Q. Who smashed the radio set? A. The person who had the sword.

Q. Did Seda strike the acetic acid bottle? A. Yes.)

Q. Did you go near the door before or after Mooka-pillai was assaulted? A. After he was assaulted.

(To COURT: Q. How long after you first went to the boutique with Perumal Pillai did you send Perumal Pillai? A. About 10 or 15 minutes later.

Q. During those 10 or 15 minutes you, Perumal Pillai and Mookapillai were talking to each other? A. Yes.

Q. Did Mookapillai see Perumal Pillai clearly? A. Yes.

10 Q. Can you explain why he should say that he never saw Perumal Pillai that day? A. What Mookapillai says is false.)

Q. For how long had you known Perumal Pillai before this day? A. About 2 or 3 years.

Q. Before this incident you knew him well? A. Yes.

(To COURT: Q. Where were you when Perumal Pillai came and gave you this information? A. I was in my house.

20 Q. What were you doing? A. I was writing something at my table.

Q. Where is your table? A. In a room.

Q. In your house is there a verandah and two rooms on either side of the verandah? A. Yes.

Q. And one of those rooms is used as an office room? A. Yes.

Q. Did Perumal Pillai come alone or with anybody else? A. He came alone.

30 Q. Did you attend to him at once or did you finish what you were writing? A. I stopped my writing and recorded in the note book what Perumal Pillai told me.

Q. What were you wearing at the time you were writing in the house? A. A white cloth similar to the one I am wearing now and a gauze banian.

Q. And having recorded it you set out for Mookapillai's boutique  $1\frac{1}{2}$  miles away? A. Yes.

Q. Did you put on a shirt or a coat or did you set out in your gauze banian? A. I put on the coat which was in the office room.

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Q. But you did not have time to take down Perumal Pillai's signature? A. It did not occur to me at that time to do so.

Q. After this robbery you went to the Police Station you said? A. Yes.

Q. And you gave information to the Police about it? A. Yes.

Q. Did you say this to the Police, "Today at about 4 p.m. I came to Tillalidiya in Dorawaka Wasama"?

A. I cannot remember.

10

Q. When you went to the Police how did you go?

A. In the lorry with Suwaris.

Q. Suwaris was the driver? A. Yes.

Q. Did you say having gone in the lorry in the company of Suwaris "Today at 4 p.m. I came to Tillalidiya in the Dorawaka Wasama?" A. I cannot remember what I stated at that time. An attempt was made on my life at the spot and I was in fear at the time I made the statement.

Q. After the crowd disappeared you went in search of Mooka Pillai also? A. Yes.

20

Q. Did you state further, "At Dorawaka Wasama I came to know from some people unknown that the Dorawaka people were waiting to break into Mooka-pillai's boutique? A. I remember having stated that.

Q. That you heard some unknown people giving that information? A. I remember saying that.

Q. Why did you tell a lie like that? A. I was in fear.

30

Q. But at that time you had in your pocket the diary in which you had recorded Perumal Pillai's first complaint? A. Yes.

Q. And you had a clear recollection of the name of the man who gave you that information?

A. At that time I was excited.

Q. Two years later you were able to remember the name of the person who gave that information, the place, what you were doing at the time he came, what you were wearing etc. and still you admit having said that some unknown persons met you and told

40

you that some persons were going to break into Mookapillai's boutique? A. I cannot remember what I told the Police at that time.

Q. But you narrated just what happened about half hour or one year ago? A. (No answer)

Q. Did you say Mooka Pillai sent a message to Suwaris to bring the lorry? A. Yes, I said that.

Q. You have not mentioned a word about Perumal Pillai going to fetch a lorry? A. (No answer))

10 Cross-examination contd.

Q. This statement was read over to you and was signed by you? A. Yes.

(To COURT: Q. And you said that Seda came inside the boutique with three others in this court? A. Yes.)

Q. Did you tell the Police, "Seda and four others entered the boutique"? A. What I said was four persons including Seda.)

20 Q. At about what time was it that they left the lorry and went away? A. They left from near the lorry at about 8 p.m. or 9 p.m.

(To COURT: Q. Did you immediately come in a lorry with Suwaris to the Warakapola Police Station? A. Yes. I reached the Police Station at about 11.

Q. What is the distance from Mooka Pillai's boutique to the Police Station? A. About 2½ miles.

Q. Why did you take such a long time? A. The driver had run away and we took time to find him.

Q. By us you mean who? A. By "we" I mean "I".

30 Q. Nobody came there? A. Not near the lorry.

Q. The cleaner of the lorry did not run away? A. No, he remained near the lorry. The driver ran away.)

Q. Have you got your 1958 diary? A. Yes.

Q. About how long were you at the door at the time you identified these accused? A. About 8 minutes.

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Q. Were you waiting while they were unloading the goods? A. Yes.

Q. Did you make any attempt to stop them?

A. I did not get on to the road but in the boutique I told Seda that the people were removing the goods. I said, "Do not remove the goods unless you kill me"

Q. If you were prepared to be killed why did you not interfere and try to stop them? A. I shouted out from where I was.

Q. Why did you not try to hold one person and strike even one down? A. I was only one person. 10

Q. Why did you not lift even one finger? Why did you not run to the Police Station. You stayed about 8 minutes near the door. Altogether that crowd must have spent about 30 to 40 minutes at that place? A. About 50 minutes.

Q. And if you get out to go to the Police Station you may have met a car or you may have been able to get a ride on a bicycle? A. Yes.

Q. How far have to proceed along the main Kandy Colombo road to go to the Warakapola Police Station? A. When coming from Taleliyada about  $\frac{1}{8}$ th mile). 20

Q. Did you at any time go and meet the V.H. of Dorawaka? A. No.

Q. In your village is there a man called Karunasena? A. Karunasehera.

Q. Does he have a boutique? A. Yes.

Q. You know Karunasekera? A. Yes.

Q. Well? A. Yes.

Q. He lives close to your house? A. Yes. 30

Q. Is he related to you? A. Yes.

Q. How? A. Distantly related to me as a cousin and as a fellow villager.

(To COURT: Q. But he is a good friend of yours? A. Yes.)

Does Mooka Pillai come very often to your area? A. No.

Q. Have you ever seen Mooka Pillai come to Karunasekera's boutique? A. No.

Q. Did you tell Mooka Pillai that you would take the goods to Karunasekera's empty boutique?

A. Perumal Pillai suggested that.

Q. You said that the 8th accused was not one of the persons who came into the boutique or took things from the lorry? A. He did not take things from inside the lorry but he picked something from the ground.

10

Q. So the 6th accused and the 8th accused took things from the ground? A. Yes.

Q. And the other accused took things from the lorry? A. Yes.

Q. In the Magistrate's Court there was an identification parade? A. Yes.

Q. You were asked to identify the persons whom you had recognised that day? A. Yes.

20

Q. Did you identify anybody? A. I identified seven accused.

Q. Who were the accused whom you did not identify? A. At that time there were no other accused in the parade.

Q. You identified all seven suspects in the parade? A. Yes.

(To COURT: Q. Who was the one who was not there? A. The 8th accused.

30

Q. After the parade did you see the 8th accused anywhere? A. Yes. While we were returning in the Police jeep with the Police a person came and gave some information. We turned back and proceeded towards Warakapola in the Jeep. Then we saw the 8th accused in the bus stand. I pointed him as one of the persons who took the goods and he was taken into custody.

Q. Where is Perumal Pillai's complaint? (Witness shows diary).

(To COURT: Q. Has this Perumal Pillai a boutique of his own? A. Yes.

40

Q. Where is that? A. At Kongoda in my wasam.

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Q. Did you take any precaution about guarding his boutique?      A. Yes. I got the goods in the boutique removed to the house of a cousin of mine.

Q. When did you attend to that matter?      A. We entrusted that to my cousin when we left for Mooka Pillai's boutique.

Q. Perumal Pillai left his boutique unattended to go to Mooka Pillai's boutique?      A. There were two brothers of Perumal Pillai there.

Q. At no stage did you mention Perumal Pillai's name to the Police?      A. I cannot remember. I cannot remember whether I mentioned the names or not. 10

Q. In the statement you made on the 29th you did not say anything?      A. Yes.

Q. All that you said is that some persons unknown in the Dorawaka wasana told you?      A. Yes.)

Cross-  
examination.

Cross-examined by Mr. Wickremenatne:

Q. Did Mooka Pillai make any complaints to you?      A. No. 20

Q. You did not arrest any of the accused at the spot?      A. No.

Q. Was there a boutique opposite Mooka Pillai's boutique?      A. Yes.

Q. Did you notice whether it was open or closed at the time?      A. At the commencement the boutique was open. When these people rushed there the people in the boutique closed it.

Q. Are you referring to Punchi Banda's boutique?      A. Yes. 30

Q. According to you Punchi Banda's boutique was open till about what time?      A. About 7.30 or 8 p.m.

Adjourned for the day.

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Gamalath Ralalage Daniel Appuhamy, re-affirmed.

COURT:

Q. (Shown diary) You said this is the complaint of Perumal Pillai which you recorded?      A. Yes.

Q. I will mark that K1. Will you read that out?  
A. (Read in Sinhalese. Not interpreted)

Q. After the word "Keewa", there is no full stop to show that that sentence ended? A. No.

Q. And the statement is continued with the word "eetapassu"? A. Yes.

Q. You have mentioned in that statement that Perumal Pillai mentioned this to you at his boutique? A. Yes.

10 Q. So your evidence in this court that he came to your office and made this complaint is not correct?  
A. I recorded the statement at my desk in the house.

Q. Then you made that record in your diary while you were seated at your desk? A. Yes.

Q. Perumal Pillai was standing by your table when he gave you this information? A. Yes.

Q. Read the first sentence again. A. (Reads).

20 Q. How did you happen, while seated at your table in your house, to write down those words, that Perumal Pillai mentioned this to you at his boutique when in fact he came to your house and gave you this information? A. I have written that wrongly.

Q. When you went to the Police Station on the night of the 29th you did not mention anything about Perumal Pillai having made this statement? A. No.

Q. On the other hand you told the Police that some unknown persons gave you this information? A. Yes.

Q. And that you got this information at Thalaliyadde?  
A. Yes.

30 Q. You made no reference to this statement which was in your diary which was in your pocket at the time you made your statement to the police? A. No.

Q. You did not mention anything about Perumal Pillai's statement? A. No.

Q. Whose initials are those on the top of the page?  
A. The D.R.O.'s.

Q. You took the diary to the D.R.O. at 11.15 a.m. and got him to initial it? A. At 6 a.m. on the 29th I appeared before the D.R.O.

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Q. And that is the time at which he initialled the diary? A. Yes.

Q. But he has written 11.15? A. I remained at the D.R.O's office till 11.a.m.

Q. And he initialled the diary at 11.15? A. Yes.

Q. That is the first sentence? A. Yes.

Q. That has nothing to do with Perumal Pillai's statement? A. No.

Q. After the word "Keewa" there is the word "ettapassu". A. Yes.

10

Q. Read what follows. A. (Read. Not interpreted).

Q. Is it not the fact that you wrote the whole thing at the same time after the incident?

A. I went after Perumal Pillai made this complaint.

Q. Then you recorded this statement immediately?

A. Yes.

Q. After recording what Perumal Pillai told you have gone on to record what you did as a result of that complaint? A. Yes.

20

Q. When did you write that? A. On the same day.

Q. At what time? A. After the people removed the goods from the boutique.

Q. Before or after you went to the police station? A. Before I went to the police station. I went to the police station having recorded that first.

Q. You had the presence of mind to make an entry of what you did after these robbers had entered the boutique. You have recorded that? A. Yes.

Q. You wrote that after the robbers took the goods away from the lorry? A. Yes,

30

Q. You wrote that in Mookapillai's boutique? A. Yes.

Q. And after that you got into the lorry and went to the Police Station? A. Yes.

Q. That is a few minutes after writing "thereafter" and so on? A. Yes.

Q. But you forgot all about Perumal Pillai at the Police station - you did not mention anything about his statement to the police? A. That is so.

Q. In other words, you told the police a deliberate falsehood? A. No.

Q. Or else this story of Perumal Pillai coming and making a complaint to you before you went to Mooka Pillai's boutique is utterly false? Which is true?  
A. The fact that I recorded Perumal Pillai's statement and went with him to Mooka Pillai's is also true.

Q. You say that that is true? A. Yes.

Q. Then your statement to the police that you came to Thalaliyadde and that there some persons unknown to you gave this information is false? A. Yes.

Q. What? A. I cannot remember now what exactly I told the police.

COURT: Take charge of the headman's diary and keep it.

20 Cross-examined by Proctor Wickremaratne:

Q. I put it to you that you went to Mooka Pillai's boutique by car with one Somapala? A. I deny that.

Q. When you went to Mooka Pillai's boutique, Perumal Pillai never was there? A. I deny that.

Q. You have been village headman of Weragoda for 33 years? A. Yes.

30 Q. For a short period you were acting for the village headman of Dorawaka where Mooka Pillai's boutique is situated? A. Yes.

Q. Later Podi Nilame was appointed to that post? A. Yes.

Q. What was your period as acting village headman of Dorawaka? A. From 1957 to January 1958.

COURT: Q. That was in addition to your normal duties? A. Yes.

Cross-examination contd.

Q. So that after January 1958 you had no official duties in the wasama in which Mooka Pillai's

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boutique was situated? A. No.

Q. During this long period of 33 years you have recorded hundreds of complaints? A. Yes.

Q. Apart from the experience you gained in recording complaints, the diary provided by the Government contains instructions as to how complaints should be recorded? A. Yes.

Q. It is absolutely necessary that you should get the thumb impression or the signature of the complainant in the diary? A. Yes. 10

Q. In this particular case you have not done that? A. I forgot to do so at that time.

Q. You said that Perumal Pillai came to your house about 4 p.m. A. Yes.

Q. Did he tell you at what time this looting was to take place? A. He said in the evening. He did not mention any time.

Q. Did he tell you that the boutique was to be looted somewhere at midnight? A. No.

Q. When you set out from your home about 4 or 4.30 with Perumal Pillai you went with the intention of performing some official duty? A. Yes. 20

Q. Normally when you go out on duty you wear the village headman's badge? A. I do not wear my badge when I attend to my duties in the village.

COURT: Q. But anyway you have it in your pocket? A. No, I wear my badge when I attend to courts only.

Cross-examination contd.

Q. But in this instance you went outside your jurisdiction? A. Yes. 30

Q. But still you did not wear the badge? A. I did not.

Q. You said that you walked with Perumal Pillai to Mooka Pillai's boutique? A. Yes.

Q. If Mooka Pillai tells the court that you came by car that would not be correct? A. It is an untruth. I did not travel in a car.

Q. You arrived at Mooka Pillai's boutique about 5 or 5.30 p.m.? A. Yes.

Q. If Mooka Pillai tells the court that you arrived at his boutique at 7 p.m. that would be false? A. Yes.

Q. You also said that you came to Mooka Pillai's boutique with Perumal Pillai? A. Yes.

10 Q. You went further and said that you and Mooka Pillai and Perumal Pillai discussed this matter for ten or fifteen minutes? A. Yes.

Q. If Mooka Pillai tells the court that Perumal Pillai was not there at that time, nor did he see him on that day, that would be false? A. Yes.

Q. You went further and said that you and Mooka Pillai and Perumal Pillai discussed this matter for ten or fifteen minutes? A. Yes.

Q. If Mooka Pillai tells the court that Perumal Pillai was not there at that time, nor did he see him on that day, that would be false? A. Yes.

20 Q. When you went, the boutique was closed. A. Half closed.

COURT: Q. It is not correct to say that you had to knock at the door and Mooka Pillai had to open the door? A. I did not knock at the door.

Cross-examination contd.

Q. It was not necessary for you to knock at the door and get it opened? A. No.

30 Q. If Mooka Pillai tells the court that the door was locked and you had to knock at the door and get the boutique opened, that would be false? A. Yes.

Q. Did you suggest that the goods should be taken to Karunasekera's boutique? A. No.

Q. Then what did you suggest to Mooka Pillai? A. I asked to transfer the goods somewhere.

Q. You did not tell him to take the goods to the Police Station? A. No.

Q. You did not tell him to lock up the door to barricade it, that you would protect the boutique? A. No.

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examination  
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Q. The only suggestion made by you was that the goods should be removed to another place? A. Yes.

Q. Who suggested Karunasekera's boutique?  
A. Perumal Pillai.

Q. You sent Perumal Pillai to get the lorry?  
A. Mooka Pillai asked Perumal Pillai to fetch the lorry.

COURT: Q. Which lorry? A. He did not refer to any particular lorry but Perumal Pillai said "I will bring Suwaris' lorry".

10

Cross-examination Contd.

Q. Mooka Pillai's boutique is situated in a residential area? A. Yes.

Q. There is a post office opposite Mooka Pillai's boutique? A. Yes.

Q. The post master resides there? A. Yes.

Q. Adjoining the post office is Punchi Fanda's boutique? A. Yes.

Q. There is a veda mahattaya's dispensary there?  
A. Not at that time.

20

Q. On the same side as Mooka Pillai's boutique lives a veda mahattaya? A. Not at that time.

Q. Just adjoining Mooka Pillai's boutique is a row of 5 boutiques? A. Yes.

COURT: Q. Sinhalese or Tamil? A. One boutique is occupied by a Moor man; the others were occupied by Sinhalese.

Cross-examination Contd.

Q. All these people knew you as the village headman of Weragoda? A. Yes.

30

Q. If you requested them to help you to maintain law and order they would have done so? A. I think that at the time they would not have assisted me.

Q. You made no effort to go and contact the post master. There was a telephone there? A. Yes.

Q. You knew it at that time? A. Yes.

Q. There is a direct communication to Warakapola?  
 A. I think so, I have not taken any call.

Q. You could easily have contacted the police from the post master's bungalow? A. Yes,

Q. But you made no effort to contact the police?  
 A. When those people rushed in, the post office was closed.

COURT: Q. But you were in that boutique for two hours before the accused rushed in? A. Yes.

10 Q. It was only two hours after you first warned Mooka Pillai that these people were threatening to rob the boutique that the robbers really arrived?  
 A. Yes.

Q. The post office was open during those hours?  
 A. Yes.

Cross-examination Contd.

Q. Before these people came, the other boutiques were also open? A. Yes,

20 Q. It was only after they came that they closed their boutiques? A. Yes.

Q. Was it when the robbers were shouting and coming at a distance or after they arrived at Mooka Pillai's boutique that the other boutiques were closed? A. After they rushed into Mooka Pillai's boutique.

30 Q. Why did you not think of contacting the police from 4 till 7.30 or 8? You had the facilities and the opportunity to do so? A. I thought it would be more advisable to go to the police station personally.

Q. That was after the incident? A. Yes.

Q. Before the incident you had no intention of contacting the police? A. I did not think of contacting the police before the incident because I felt that I would be able to provide the necessary protection for the boutique.

40 Q. You did not get the police or the people round about this boutique to help you? A. I had no way of getting the assistance of the people close by because all of them closed their shutters.

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Q. That is why you brought Perumalpillai from your own village, Niyadurupola? A. Yes.

Q. That is why you brought a lorry from your own village Niyadurupola? A. Perumal Pillai fetched the lorry.

Q. But the lorry is from your own village Niyadurupola? A. Yes.

Q. The lorry driver and cleaner are from your own village? A. Yes.

Q. And Karunasena's boutique where you wanted to take these goods is also in Niyadurupola? 10  
A. Yes.

Q. So that not a single person was from Dorawaka?  
A. No.

Q. You said in evidence in chief that Karunasena's boutique was empty? A. Yes.

Q. Had he gone bankrupt? A. He had given the boutique and goods and cash to the Multi-purpose Co-operative Society.

Q. Then where were you going to store these goods? 20  
A. The boutique in Thalaliyadda which was occupied by Mooka Pillai also belonged to Karunasena.

Q. I put it to you that this looting was planned by you and it was carried out by you? A. I deny it.

Q. I put it to you that a complaint was not made to you on the 29th afternoon by Perumal Pillai?  
A. I deny the suggestion.

Q. That is why in P9 the complaint made by you to the police about three hours after the incident you did not mention about Perumal Pillai? A. I deny the suggestion. 30

Q. And I put it to you that this complaint which you say had been made to you by Perumal Pillai is a fictitious one? A. I deny that.

Q. It is a fabrication made by you after the 29th of May? A. I deny that.

Q. That is why Perumal Pillai has not signed it?  
A. I deny that.

Q. And Perumal Pillai is not a prosecution witness in this case? A. The police have recorded a statement of his.

Q. I put it to you that you went by car on 29.5.58 to Mooka Pillai's boutique with one Somapala?

A. I deny that.

Q. And after Mooka Pillai agreed to your suggestion you sent the car with Somapala to bring the lorry.

10 A. A boy accompanied Perumal Pillai, I do not know his name.

Q. And this Somapala whom you sent came back with the lorry? A. I cannot remember, I did not see.

Q. According to your evidence in chief the lorry came to the spot at about 7 p.m. A. Yes.

Q. But in your statement made to the police 3 hours after this incident you have given the time as 5.30 p.m.? A. I cannot remember what I stated to the police.

20 Q. I take it you saw the lorry coming and the lorry being parked opposite Mooka Pillai's boutique? A. Yes.

Q. When the lorry was parked for loading in what direction was it facing? A. In the direction of Niyadurupola.

Q. That is your village? A. Yes.

Q. And Mooka Pillai, Suppiah and the cleaner loaded the lorry according to your evidence? A. Yes.

30 Q. It was after the lorry was loaded that you heard people shouting anti-Tamil slogans? A. When the loading was just finished.

Q. Those people would have been shouting at the top of their voices? A. Three or four persons shouted aloud.

Q. At what distance did you first hear these people shouting? A. On the other side of the road.

Q. You made no effort to close the planks of the boutique? A. No.

Q. You left the planks open? A. Yes.

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Cross-  
examination  
- continued.

Q. And according to you 3 people came into the boutique? A. Three people along with Seda came.

Q. And one of them according to you assaulted, who was assaulted first? A. Mooka Pillai.

COURT: Q. By? A. Seda.

Cross-examination continued.

Q. And thereafter according to your evidence in chief Papachy the wife of Mooka Pillai was pushed? A. Yes, when she was pushed she fell on to a chair.

Q. If Mooka Pillai has told His Lordship and the gentlemen of the jury that his wife was assaulted first that would be false? A. Yes. 10

Q. And if Mooka Pillai had told His Lordship and the gentlemen of the jury that his wife was assaulted that would be false? A. Yes.

Q. Were you assaulted? A. An attempt was made to cut me with a sword.

Q. Then immediately according to your evidence in chief the inmate of the house went to the rear of the boutique? A. Yes. 20

Q. And the people who came in went out through the front door? A. Yes.

Q. According to your evidence in chief if the accused removed any goods they were goods either from the lorry or near the lorry? A. Two persons, Seda and John removed goods from the ground near the lorry.

COURT: Q. Who is John? A. The 8th accused.

Cross-examination contd.

Q. According to your evidence nothing was removed from the boutique? A. Not at that stage. 30

Q. And all the accused did was to damage a radio and that acid bottle? A. Yes, and the glass of a show-case was damaged.

Q. They did not remove a scrap of paper from the boutique? A. I did not see them taking anything from the boutique at that stage.

Q. You immediately closed the shutters? A. Yes.

Q. No one was inside the boutique at that time?

A. No.

Q. Whatever happened happened in the front portion of Mooka Pillai's boutique? A. Yes.

Q. You also said in evidence in chief you made an effort to search for Mooka Pillai? A. Yes.

10 COURT: Q. Was it before or after you made a note of what happened in your note book? A. I recorded that last portion after the people removed the goods.

Q. And after recording you looked for the driver? A. Yes.

Q. Did you lock up the boutique or close the planks before or after you recorded what happened? A. After I recorded.

Q. With planks open you wrote that note? A. Whilst standing I recorded.

Q. But when you went to the Police Station you forgot everything that happened? A. Yes.

20 Cross-examination Contd.

Q. I put it to you you went to the police station because you feared Mooka Pillai would go to the police station and make a complaint against you? A. I deny that.

Q. That is why you spent three hours thinking about it to save your own skin? A. I deny it.

Q. From where did Suwaris the driver of the lorry come after this incident? A. I do not know from where he came.

30 Q. You were the last to leave the scene? A. Yes.

Q. And Suwaris came as soon as you went to the lorry? A. No.

Q. How long after the crown left did Suwaris come to the scene? A. About one hour.

Cross-examined by Mr. Walgampaya.

Q. You told us last Friday that why you forgot to mention Perumal Pillai's name to the police was because you were frightened because an attempt was made on your life? A. Yes.

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Cross-  
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examination  
- continued.

Q. Therefore when you made that statement to the police the foremost thing in your mind was the attempt made on your life with a sword?       A. Yes.

Q. Then why did you not mention to the police in your complaint that an attempt was made on your life?       A. My impression is that I told the police that an attempt was made to cut me with a sword.

Q. You have not mentioned that to the police, why have you not mentioned it to the police?       10  
A. I cannot remember whether I stated that or not.

Q. It is not so recorded by the police? - No answer.

Q. For how long have you known the 6th accused Seda?       A. For about one year at the time of this incident.

Q. You used to go about with him?       A. I had not gone about in his company, but I used to meet him in the village.

Q. If Mooka Pillai says he has seen you and Seda going about in the village it is false?       A. Yes.       20

Q. The 6th accused is the President of the Rural Development Society of that area?       A. Yes.

Q. He is a respected person in the village?

CROWN COUNSEL: I object to the question?

DEFENCE COUNSEL: He is the village headman he should know.

CROWN COUNSEL: He is not the village headman of the 6th accused's area.

COURT: You may put the question.

Cross-examination contd.       30

Q. He is a respected person in the village?  
A. He is a man of a fair amount of property.

Q. Having been the village headman for 33 years you would have known most of the people of Dorawaka?  
A. I know most of the people but I do not know them by their names.

Q. You said you identified the 1st to the 7th accused that evening?       A. Yes.

Q. Why did you not mention that fact to the police in your statement?

COURT: He has said that about 50 persons came there and most of the people were known to him but he did not know their names.

Cross-examination Contd.

Q. How many were produced before you at the identification parade? A. Seven.

10 Q. Apart from the 6th accused you did not mention the names of the other accused to the police because they were not there? A. I deny that.

Q. Because you wanted time to think of the people to mention to the police? A. I do not know their names.

Q. You planned this entire thing and you got some people to do this looting? A. I deny that.

Q. You were arrested by the police in this connection? A. No.

20 Q. Do you deny that you were arrested by the police and that you were in police custody? A. I was not in police custody.

Q. Did you at any stage that evening whistle to some people? A. No.

Q. I once again put it to you that you got some people to do this looting and that you directed the operations? A. I deny that.

Q. You said after the looting it took you about one hour to locate the driver of the lorry? A. Yes.

30 Q. Why did you not go to the post office and telephone the police even at that stage? A. At that time the post office was closed.

Q. But the post master lives inside the post office? A. Yes.

Q. Why did you not go and speak to him? A. I did not go because the post office was closed.

Q. Did you knock at the door of the post master? A. No.

Q. There was a state of emergency during this time and the police and military were on patrol? A. Yes.

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Cross-  
examination  
- continued.

Q. And you were a responsible officer? A. Yes.

Q. Why did you not at the earliest opportunity contact the police? A. I thought it would be better to go to the police personally than telephoning.

Q. That was after everything was over? A. Yes.

Q. You did not know after the looting whether Mooka Pillai and his wife were murdered or not?

A. I know that they ran away.

Q. You knew that they ran but you did not know whether they were alive or dead? A. I thought they would be alive. 10

Q. Why did you think that? A. Except for that blow dealt on the hand there was no other harassment meted out to them.

Q. Therefore you thought they were alive? You knew well they were alive because it was you who planned this looting? A. I deny that.

Q. None of these accused were in that shop that evening? A. They came in.

Cross-examined by Mr. Mangala Moonesinghe: 20

Q. Mooka Pillai's boutique is on the Salgala-Warakapola road? A. Yes.

Q. It would not take more than 15 minutes to come from his boutique to the Warakapola police station by car? A. That is so.

Q. When you heard that this boutique was to be looted you did not inform the police? A. No.

Q. When Perumal Pillai came to your house who was there? A. Only my wife and children, no one else. 30

Q. Then hurriedly took down his statement and went to Thalalidde? A. Yes.

Q. Did you meet anyone on the way? A. I met a boy.

Q. Did you speak to him? A. No.

Q. You went straight to the headman of Thaladiyadde's house? A. I went to the Dorawaka village headman's house.

Q. Then you went to Mooka Pillai's boutique?

A. Yes.

Q. You are quite sure of that? A. Yes.

Q. When Perumal Pillai told you that people were waiting to attack his boutique and Mooka Pillai's boutique you did not take any precaution to protect Perumal Pillai's boutique? A. Arrangements had been made to place a cousin of mine and two brothers of Perumal Pillai to look after Perumal Pillai's boutique.

10

Q. Perumal Pillai did not come back after going to get a lorry? A. No. Perumal Pillai is related to Mooka Pillai.

Q. How long have you known the 8th accused John? A. For about one year at the time of this incident.

Q. As V.C. member did the 8th accused contest a relation of yours? A. No.

Q. You remember around December, 1957, you held an inquiry where a child had taken Rs.10/- from a man? A. I cannot remember.

20

Q. You said as soon as these looters arrived the rest of the boutiques closed their planks? A. Yes.

Q. Only three planks in Mooka Pillai's boutique were open? A. Yes.

Q. When you face the road from the place where the boutique was open the lorry was parked in front of the boutique on the right or left? A. The lorry was exactly in front and when I was standing at the opening I was directly facing the road.

30

Q. The only light that was on the road was from Mooka Pillai's boutique? A. There was light in Punchi Banda's boutique also.

Q. What kind of lamp was it? A. A Petromax lamp.

Q. But you said that those boutiques were closed as soon as these people arrived there? A. As they rushed those boutiques keepers closed the boutiques.

Q. So that there was no light once they entered Mooka Pillai's boutique falling on the road? A. There was the light from Punchi Banda's boutique.

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Cross-  
examination  
- continued.

Q. Immediately after the incident you said that you took down notes as to what happened? A. Yes.

Q. But in those notes you have not mentioned the name of the 8th accused John? A. Yes.

(COURT: Q. You knew his name? A. I did not know his name at that time)

Cross-examination Contd.

Q. You knew him for about one year you said? A. Yes.

Q. You know he is a V.C. member? A. Yes.

10

Q. You did not mention his name to the police? A. Yes.

Q. It was for the first time in this Court that you say that you saw the 8th accused picking up a parcel from near the lorry? A. Yes.

Q. It was only after you saw John actually on the 14th that you pointed him out to the police? A. Yes.

Q. I put it to you that you never saw John the 8th accused that night? A. I deny that.

20

Re-examination.

Re-examined:

Q. You said you did not know the boy whom you met on the way to Thaladiadde? A. I do not know his name.

Q. (Shown boy called Somapala) Is this the boy? A. Yes.

(To COURT: Q. Where did you meet him?  
A. He was on the road when they were proceeding to Thaladiadde.

Q. Did he accompany you? A. He went behind us.

30

Q. Where did he go? A. He did not follow us right up to the boutique but he came up to Thaladiadde to a point close to the boutique.

Q. Did you see him again that night? A. He had travelled in the lorry.

Q. Did he also go with you in the lorry?  
A. I did not see him travelling in the lorry. He had got into the lorry from behind.

Q. You saw him at the police station? A. Yes.

Q. So he must have been near Mooka Pillai's boutique too at the time of this incident? A. I am not sure whether he was there but he may have been there).

Re-examination Contd.

Q. You remember you made your statement to the Police at the Police station? A. Yes.

Q. That was in the charge room? A. Yes.

10 Q. Who were the other people in the room besides yourself? A. I am not able to say. I do not know the people.

Q. Where was the driver of the lorry? A. He was near the lorry.

Q. And the cleaner? A. He was also near the lorry.

Q. The boy Somapala? A. He came to the Police Station and he again went back to the lorry.

20 Q. After making your statement what did you do?  
A. I came to the scene in the company of the Police Officers.

Q. Immediately after you made your statement did you remain in the charge room? A. I remained there.

Q. Did you see the driver of the lorry making a statement? A. No.

Q. For how long were you in the charge room?  
A. For about  $\frac{3}{4}$  of an hour.

30 Q. Immediately you came back from the Police Station did you come back to the scene? A. Yes.

Q. You say you did not see any of the others who came in the lorry making a statement?  
A. I did not see.

To Jury: Nil.

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No. 4

R.D. SUWARIS

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No. 4

R.D. Suwaris.  
4th April, 1960  
Examination.

RANPATI DEWAGE SUWARIS - Affirmed. 42, Sinhalese,  
lorry driver living at Niadurupola.

Q. You know the village Headman Daniel Appuhamy?  
A. Yes.

Q. For how long have you known him? A. For  
about 30 or 40 years.

Q. Is he a good friend of yours? A. Not a good  
friend but I knew him as the village headman of  
the village. 10

Q. Is he a friend of yours? A. Not a friend.

Q. You do not like to be associated with him?  
A. I do not associate with him.

Q. You remember the 29th May, '58? A. Yes.

Q. That night you were in the village? A. Yes.

Q. That evening did you receive a message from the  
Village Headman? A. Yes.

Q. Having received the message what did you do?  
A. I inquired from the Messenger as to what the  
message was. 20

Q. You were given the message? A. Yes.

Q. What did you do then? A. I said that I was  
coming a little later and that I cannot come as  
soon.

Q. Coming where? A. To Thaladiadde.

Q. Where about in Thaladiadde? A. To the boutique  
of Mooka Pillai.

Q. Did you know where the boutique of Mooka Pillai  
was? A. Yes. 30

Q. Did you go to the boutique of Mooka Pillai?  
A. Yes.

Q. At about what time was it? A. At about 5.30  
or 6 p.m.

Q. Was it dark at the time? A. Not dark.

Q. Who else went with you? A. The lorry cleaner  
Gunapala went with me.

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Q. Who else? A. The two persons who came with  
the message also came with me. One of them got  
down on the way and the other proceeded in the  
lorry.

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Evidence

Q. Who were the two persons who came?

No. 4

A. One was Somapala and the other was Perumal Pillai.

R.D. Suwaris.

Q. Somapala is the boy here? A. Yes.

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10 Q. You are sure a man called Perumal Pillai also  
came? A. Yes.

Examination  
- continued.

Q. Who got down from the lorry? A. Perumal  
Pillai got down.

Q. Somapala? A. He came in the lorry up to the  
boutique.

(To COURT: Q. You made a statement to the Police?  
A. Yes.

20 Q. Did you tell the Police this that Somapala came  
and told you something that the Village Headman had  
asked you to do? A. Yes.

Q. And then you came to Thaladiadde at about 8.15  
p.m. with your cleaner Somapala? A. I said that  
the loading was over at 8.30.

Q. Will you admit that in your statement to the  
Police you did not mention a word about Perumal  
Pillai? A. Yes.

Q. You will also admit that you gave evidence in  
the lower court? A. Yes.

30 Q. Did you admit that you then said that you took  
the lorry to Mooka Pillai's boutique with Gunapala  
at about 8.15 p.m.? A. No.

Q. Did you also say in cross-examination that it  
was one Gunapala who came and told you the message  
that the V.H. sent you? A. I said that two per-  
sons came. (Passage marked X2 and X3).

Q. You will admit that nowhere in your statement  
either to the Police or to the Magistrate have you  
mentioned anything about Perumal Pillai?

A. I mentioned.

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Examination  
- continued.

Q. In your statement to the Police did you say that you are the owner of lorry No. CL 5136? A. Yes.

Q. You made your statement on the same day as the day of this incident? A. Yes the same night at the Police Station.

Q. Did you say this, "Today at 8 p.m. I was at home. At that time Somapala came and told me something"? A. I did not say so.

Q. What happened after you took your lorry to the boutique. A. The headman was in the boutique. There was a stone wall near the boutique. He was standing on that. 10

Q. You came from your house? A. Yes.

Q. What is the name of your village?  
A. Niadurupola.

Q. You came up to the boutique of Mooka Pillai?  
A. Yes.

Q. Did you turn your lorry round? A. The headman asked me to turn the lorry.

Q. Having turned your lorry what happened?  
A. The headman said, "There are some goods of Mooka Pillai to be taken to Niadurupola and those goods will be loaded into the lorry. 20

Q. How long did the loading take place?  
A. About two hours.

Q. And at about what time was it that it finished?  
A. At about 8.30 p.m.

Q. What happened then? A. A large number of people came shouting from the direction of the field which was in front of the boutique. 30  
Q. About how many people? A. About 40 to 50 persons.

Q. Were you able to distinguish anything what they were saying? A. I heard certain things.

Q. What were the things you heard? A. "Who are loading the goods of the Tamil men's boutiques. Take them to be eaten".

Q. How far away were they from the lorry when you heard this? A. About 5 or 6 fathoms away.

Q. What did you do? A. We ran. That is myself and the cleaner Gunapola.

Q. What happened to the boy Somapala? A. I did not see him at that stage.

Q. Where did you run to? A. We ran in the direction of our village.

Q. How far did you run? A. About 50 to 60 fathoms.

10 Q. Having run that distance what happened?  
A. There was a dispensary there. We went up to that dispensary.

Q. From the dispensary were you able to see the boutique of Mooka Pillai? A. It could not be seen.

Q. So that you could not identify anybody? A. Yes.

Q. Were you able to hear what was happening?  
A. I did not hear. If I were to hear from there it should be a loud shout.

20 Q. How long were you at this Vedamahathmaya's dispensary? A. We remained at the dispensary at about 10 minutes.

Q. And having waited there for 10 minutes what did you do? A. The shouts stopped. Then we came to the lorry.

Q. When you came to the lorry what did you see?  
A. I saw only the headman there. He was in the boutique.

Q. What was he doing in the boutique when you came?  
A. He was not doing anything.

30 (To COURT: Q. Was he standing sitting or sleeping?  
A. I cannot remember.

Q. You cannot remember whether he was standing sitting or lying down? A. I cannot remember.

Q. You cannot say in which part of the boutique he was? A. Yes.)

Q. Having seen the headman there what did you do?  
A. I asked from the headman what the matter was.

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Examination  
- continued.

(To COURT: Q. Even at that stage you cannot remember where he was? A. He came towards the lorry and then I asked him.)

Examination Contd.

Q. Did you notice anything about the lorry?

A. No.

Q. You had seen the goods being loaded into the lorry? A. Yes.

Q. Were those goods still there? A. I did not look.

10

Q. Did you see any goods on the ground?

A. There were goods on the ground.

Q. Scattered about? A. Yes.

Q. What did you do then? A. Then the headman told me that a lot of goods were lost and therefore we must proceed to the Police Station.

Q. Did you go to the Police Station? A. Yes.

Q. Did you go straight to the Police Station?

A. We turned the lorry round and went to the Police Station.

20

Q. How far is it from there to the Police Station?

A. Two and a half miles.

Q. Along a tarred road? A. Yes.

Q. After you went to the Vedamahatmaya's house at about that time was it that you came back to the boutique? A. I came immediately at about 8.30 or 9 p.m.

Q. How long were you at Mooka Pillai's boutique before you set out to the Police Station?

A. I did not remain there. The headman wanted the lorry to be turned round immediately before proceeding to the Police Station.

30

Q. How long were you there? A. About 5 minutes.

(To Court: Q. Not more than 5 minutes? A. No. The headman asked me to turn the lorry round. That was the duration of the time).

Q. At what time did you go to the Police Station?

A. At about 9.30 p.m.

Q. When you got to the Police Station was your statement recorded? A. Yes.

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Q. Where was your statement recorded? A. At the place where the complaints are recorded inside the Police Station.

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Q. Where was the headman when your statement was being recorded? A. He was also there close to me.

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10 Q. Did you see the cleaner making a statement?  
A. After I made my statement I came out.

Examination  
- continued.

Q. Did the headman come also? A. He remained at the entrance.

Cross-examined by Mr. Wickremaratne:

Cross-  
examination.

Q. The boy Somapala is from the headman's village?  
A. From Uduwaka.

Q. That is from the next village? A. About 5 minutes from the headman's village.

Q. The village headman has a brother running a cinema? A. Yes.

20 Q. And this boy Somapala worked with him?  
A. I do not know.

Q. Do you know the Somapala also works for the V.H. in his house? A. No.

Q. You said that you took shelter in the Vedamahathmaya's garden? A. Yes.

Q. And after the incident you came back direct to the lorry? A. Yes.

Q. Did the Village Headman tell you that he was searching for you? A. No.

30 Q. It was not necessary for the Village Headman to search for you? A. Yes.

Q. In fact you had come to the lorry before the V.H. had come there? A. Yes.

Q. And you were ready to take whatever orders he gave you? A. Yes.

Cross-examined by Mr. Walgampaya: Nil  
Cross-examined by Mr. Munasinghe: Nil  
Re-examined: Nil  
To Jury: Nil.

In the  
Supreme Court

No. 5

N.A. SOMAPALA

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NISSANKA ARATCHIGE SOMAPALA - affirmed.  
21, Sinhalese, cultivator living at Kongoda.

No. 5

N.A. Somapala.

4th April, 1960.

Examination.

Q. You know the V.H. of Kongoda? A. Yes.

Q. That is Daniel Appu? A. Yes.

Q. How far away from his house did you live?

A. About  $\frac{3}{8}$  of a mile.

Q. Are you employed? A. I am a cultivator.

Q. Whose fields do you cultivate? A. I cultivate 10  
our fields.

Q. Your parents' fields? A. Yes.

Q. On the 29th May, 1958 did you meet the V.H.?

A. Yes.

Q. Where? A. At Kongoda.

Q. After meeting him did you go anywhere? A. Yes.

Q. Where? A. I went near Thalliadde Post Office.

Q. Then what happened? A. Then Mooka Pillai  
asked me to fetch a lorry.

Q. Did you fetch one? A. Yes.

20

Q. Whose lorry? A. Suwaris' lorry.

Q. Suwaris' lorry is at Niadurupola? A. Yes.

Q. How far is that place where Suwaris' lorry is  
from Mooka Pillai's boutique? A.  $3\frac{1}{2}$  miles.

Q. How did you go in search of the lorry?

A. I went by car.

Q. Where did you find the car? A. At Kongoda.

Q. How did you come to Mooka Pillai's boutique?

A. On foot.

Q. You went back to Kongoda by car? A. Yes.

30

Q. How far is Kongoda from Mooka Pillai's boutique?

A. About  $1\frac{1}{4}$  miles.

Q. From there to Suwaris' house is about another 1½ miles? A. Yes.

Q. Did Mooka Pillai or the headman tell you to go to fetch such a car? A. Perumal Pillai and I both set out together and it was Perumal Pillai it was who engaged the car.

Q. Perumal Pillai and you set out from where? A. From Kongola.

(To COURT: Q. How did you happen to meet him? A. From Kongola, Perumal Pillai myself and the headman went together.)

Q. You spoke to Suwaris? A. Perumal Pillai spoke to him?

Q. What did you do? A. I remained by him.

Q. What happened after you spoke to Perumal Pillai? A. I spoke to him and came in the lorry.

Q. Suwaris brought the lorry? A. Yes.

Q. And you? A. I got into the lorry from behind and travelled in it.

Q. And came where? A. To Thaliadde.

Q. Did you come straight to Thaliadde? A. Yes.

Q. What happened to Perumal Pillai? A. He got down at Kongola.

Q. Having got down at Thaliadde what happened? A. The lorry turned towards Kongola and Mooka Pillai and a boy who was with him loaded goods into the lorry.

Q. Did you also help him? A. No.

Q. Why not? A. As they were loading goods I remained there without doing anything.

Q. How long did the loading of goods take? A. About 3 hours.

Q. What happened then? A. A crowd of about 50 people armed with swords and clubs came from the direction of Dorawaka asking who were loading the goods of the tamil men's boutiques. When they rushed there we ran away.

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Evidence

No. 5

N.A. Somapala.

4th April, 1960

Examination.

- continued.



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Supreme Court  
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Prosecution  
Evidence

No. 5

N.A. Somapala.  
4th April, 1960.

Examination.  
- continued

Q. Where did they rush to? A. To the boutique.

Q. You say about 50 people armed rushed into the boutique? A. Yes.

Q. The lorry was just by the boutique? A. Yes.

Q. What did you do then? A. I ran away.

Q. Did you come back? A. I came after the headman called me.

(To COURT: Q. When you ran away did you take any goods with you? A. No. I came back when the headman called me. The headman said, "Let us go to the Police Station. Do not run away".

10

Q. You could not have run very far? A. I ran about 50 fathoms.

Q. The headman came up to where you were and said "Do not run"? A. He spoke from near the boutique. By that time those people had left.)

Q. You heard him? A. Yes.

Q. You came and went in that lorry to the Police Station? A. Yes.

Cross-examination.

Cross-examined by Proctor Wickremaratne:

20

Q. For how long have you known the headman?  
A. About 10 years.

Q. At times you worked for him? A. Yes.

Q. Where did you meet the headman on the day of this incident? A. Near Perumal Pillai's Boutique at Kongoda.

Adv. Walgamapaya: No questions.

Adv. Moonesinghe: No questions.

Re-examined: No questions.

No. 6

No. 6

30

G.P. Perera.  
4th April, 1960  
Examination.

G. P. PERERA

GONGODAWILLAGE PIYADASA PERERA, affirmed. 39 years. Sinhalese; Police Sergeant 3557, Piliyandala Police Station.

Q. On 29th May, 1958 you were Police Constable

No. 3357 attached to the Warakapola police?  
A. Yes.

Q. That night you were on reserve duty? A. Yes.

Q. Did the village headman, Daniel Appuhamy, come to the Police Station? A. Yes.

Q. At what time? A. 11 p.m.

Q. How did he come? A. In a lorry.

Q. Did anybody else come with him? A. Driver Suwaris, Somapala and Gunapala.

10 Q. The headman made a complaint which you recorded?  
A. Yes.

Q. Did you read over and explain the statement to him? A. Yes.

Q. He signed it? A. Yes.

Q. Please read out that complaint. A. (Read P9).

Q. Did you look at the lorry? A. Yes.

Q. What was inside? A. There were sugar bags, rice bags and provision bags.

Q. Were there any textiles? A. No.

20 Q. Then? A. Then I recorded the statement of Suwaris, N.A. Somapala and G. Gunapala in that order. Then I left for the scene with two other police officers in the Land Rover.

Q. At this stage the emergency had been declared?  
A. Yes.

Q. And work was very heavy at the station? A. Yes.

Q. You went to the boutique of Mooka Pillai?  
A. Yes. I found all the articles in the boutique had been damaged.

30 Q. Specifically did you notice anything?  
A. I found the radio set P8 had been damaged and the petromax lamp P1 had been damaged. I found P10 a bag containing aerated water bottles outside the boutique. There were some boxes in the room which had been forced open.

COURT: Q. What is that jar? A. It was cut.

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Examination contd.

Q. Then? A. I made inquiries for Mooka Pillai. I found him at 6.35 a.m. at Ambagalla division on Madeniya estate. I recorded his statement. His wife and Suppiah were with him. I sent Police Constable 3212 Hendrick, 4796 Siriwardena and 4712 Wickremasinghe along with the complainant Mooka Pillai to make inquiries for Seda. I instructed the P.C.'s to pick up the headman and go in search of the accused.

10

Examination  
- continued.

Q. Having sent Mooka Pillai and the constables to get Seda, did you meet the constables again?  
A. At 1.30 p.m. on the following day they came and produced before me Seda, the sixth accused, and Jinadasa, the seventh accused, and they also produced three rice ration books before me.

Q. (Shown P2) Are these the rice ration books?  
A. Yes.

Q. On 14.6.58 did you go to Kegalle? A. I took Daniel Appuhamy, Mooka Pillai, his wife and Suppiah to the A.S.P.'s office in Kegalle.

20

Q. From that office is one able to see the court?  
A. No.

Q. How did you take them? A. In the Land Rover.

Q. At what time did you get to Kegalle?  
A. 7.15 a.m. Having got there I handed over the witnesses to Police Sergeant 851 Jayasingha of the Kegalle Police. After that I went to Court.

Q. While the witness Daniel Appuhamy was with you had he any opportunity of seeing any of these suspects? A. No.

30

Q. Did you point out any of them to the headman at any stage? A. No.

Cross-  
examination.

Cross-examined by Pr. Wickremaratne:

Q. At what time did you record the headman's statement? A. 11 p.m.

Q. It was 1.30 p.m. on the 30th that Seda and Jinadasa were produced before you? A. When I was inquiring into the case at Palaliyadde they were brought to Mooka Pillai's boutique.

40

COURT: Q. Mooka Pillai was there? A. He came with them.

Q. At what time did you send the police constables to trace the suspects? A. 10.45 a.m. on the 30th.

Q. Daniel Appuhamy went with them?

A. I instructed the constables to pick him up and go in search of the accused.

Q. Did Daniel Appuhamy go from the police station with the other two police constables? A. No.

10 Q. Where were the rice ration books? A. When I was in Mooka Pillai's boutique inquiring into the case the constables brought the accused and the rice ration books.

Q. Did the headman come with the constables and the accused? A. Yes.

Q. At the time the rice ration books were produced he was also there? A. Yes.

Mr. Walgampaya: No questions.

Mr. Moonesinghe: No questions.

Re-examined: No questions.

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Cross-  
examination  
- continued.

20

No. 7

No. 7

K. JAYEKODDY

K. Jayekoddy.

KANDAPPAH JAYEKODDY, son of Kandappah, affirmed.  
45 years; Ceylon Tamil; Advocate, Point Pedro.

4th April, 1960.

Examination.

Q. On 14.6.58 you were Magistrate, Kegalle?

A. Yes.

Q. On that day at the request of the police you held an identification parade? A. Yes.

Q. The suspects to be identified were the first to the seventh suspects in this case? A. Yes.

30 Q. What steps did you take thereafter? A. I got the police to line up thirteen persons of almost similar build, appearance and social status and I sent the peon to bring the witness. I informed the suspects to take any place in the parade and to change their costumes.

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No. 7

K. Jayekoddy.  
4th April, 1960.

Examination  
- continued

Q. Did they select any particular place?

A. The first suspect took the place between the 6th and 7th man in the parade. The second took the 1st place. The third suspect took the place between the 9th and 10th in the parade. The fourth suspect took the place between the 7th and 8th in the parade. The fifth suspect took the place between the 14th and 15th in the parade. The sixth suspect took the place between the 4th and the 5th in the parade. The seventh suspect took the place between the 13th and 14th in the parade.

10

Q. Were there thirteen people including the accused.

A. Apart from the accused. There were twenty people in all.

Q. Then you sent the court peon, Siriwardena, to bring Daniel Appuhamy?

A. Yes.

Q. He was called? A. Yes. He was asked to identify the persons who entered the boutique of Mooka Pillai in the company of the suspect Seda, assaulted the inmates and caused damage to property.

20

Q. Did he point out anybody. A. He pointed out the fifth and third suspects, to one Seda, Pura, Jinadasa and the fourth suspect.

Q. The fifth suspect is Babiya? A. Yes.

Q. The third suspect is Albiya? A. Yes.

Q. The sixth suspect is Seda? A. Yes.

Q. The first suspect is Pura? A. Yes.

Q. The seventh suspect is Jinadasa? A. Yes.

Q. The fourth suspect is Peiris? A. Yes.

COURT: Q. Did he point out any others? A. He also pointed out two others who were not produced as suspects.

30

Mr. Wickremaratne: No questions

Mr. Walgampaya: No questions.

Mr. Moonesinghe: No questions.

No. 8

T.M. SENEVIRATNE

THOTAGODAWATTE MUDIYANSELAGE SENEVIRATNE, affirmed  
58 years; Police Sergeant 264; Kegalle Police.

Q. On 14.6.58 you arrested the eighth accused in  
this case, S.P. John? A. Yes.

Q. Where? A. At the Kegalle bus stand.

Q. How did you come to arrest him?  
A. On information received.

10 COURT: Q. Did anyone point out him?  
A. The village headman of Weragoda

Q. That is Daniel Appuhamy? A. Yes.

Mr. Wickremaratne: No questions

Mr. Walgampaya: No questions.

Mr. Moonesinghe: No questions.

No. 9

T. G. HENDRICK

THANBAWITA GURUNANSELAGE HENDRICK: Affirmed.

30 years; Sinhalese, trader, living at Uduwaka.

20 Q. On 29.5.58 you were police constable 3212,  
Hendrick attached to Warakapola Police Station?  
A. Yes.

Q. And on that day did you accompany P.C. Perera  
to Mookapillai's boutique? A. Yes.

Q. And did you receive any instructions?  
A. P.C. Perera asked me to go along with two other  
police constables and arrest the accused whom Mooka-  
pillai would point out.

30 Q. Where did you go to? A. I went to Dorawaka  
village, and from Borawaka I went to the village of  
Yakdehimulla and in that village Mookapillai pointed

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No. 8

T.M.Seneviratne.

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No. 9

T.G. Hendrick.

4th April, 1960

Examination.

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T.G. Hendrick.

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Examination.

- continued.

out the 6th accused Seda who was near a boutique, thereafter Seda's house was searched and we did not find anything.

Q. Then? A. Thereafter we went to the house of the 7th accused Jinadasa.

Q. Where did you come across Jinadasa?

A. I met Jinadasa also on the way.

Q. Did you search Jinadasa's house? A. Yes. In Jinadasa's house I found 3 rice ration books belonging to Mooka Pillai, his wife, and another occupant of his boutique. 10

Q. - shown P2 - 3 ration books. You found these ration books? A. Yes.

Q. Where did you find them? A. They were inside an almirah in Jinadasa's house.

Q. In what language are the names on those ration books written? A. In Sinhalese and Tamil.

Q. Having discovered that what did you do?

A. I took Jinadasa into custody and I produced them before constable Perera. 20

COURT: Q. You found the rice ration books in the almirah or under the almirah? A. Inside the almirah.

Cross-  
examination.

Cross-examined by Mr. Wickramaratne:

Q. On the 30th you started your operations from Mookapillai's boutique? A. Yes.

Q. Not from the Police Station? A. P.C. Perera took me to Mookapillai's boutique from the Police Station.

Q. That is at 10.45 on the 30th? A. Earlier than 10.45. 30

Q. The village headman was there? A. I met the headman on my way to Dorawaka from the boutique.

Q. Did the headman tell you that he had also gone to the boutique that morning before you went there? A. I cannot remember.

Q. From the Police Station to go to Dorawaka you will have to go close to Mookapillai's boutique? A. Yes. 40

Q. None of these other goods were in Jinadasa's house? A. No.

Q. You made a search but you did not find anything else? A. No.

Mr. Walgampaya: I think my learned friend Mr. Wickremaratne had made a mistake when he cross-examined regarding the 7th accused, I am for the 7th accused.

Mr. Wickremaratne: Yes My Lord.

10 Cross-examined by Mr. Walgampaya:

Q. Are you sure you found these ration books inside the almirah or under the almirah? A. In the almirah.

Q. Did you not say in the lower court that you found them under an almirah? A. What I said was in an almirah under a paper.

Q. Did Mookapillai also accompany you to Jinadasa's house? A. He accompanied me up to his house but did not enter Jinadasa's house.

20 Q. Are you sure that Mookapillai did not introduce the ration books into Jinadasa's house? A. Not when I was there.

Cross-examined by Mr. Moonesinghe: Nil.

Re-examined:

Q. You went with Mookapillai up to Jinadasa's house and Jinadasa remained out and you went inside the house? A. Yes.

COURT: Q. Who were in Jinadasa's house?  
A. Jinadasa's grandmother was in the house.

30 Q. Jinadasa was close to you when you were searching his house? A. Yes.

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examination.  
- continued

Re-examination.



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Supreme Court

No. 10

R.v. Pura et. al.

A.M. RATNAYAKE

Prosecution  
Evidence

AMERAKOON MUDIYANSELAGE RATNAYAKE: Affirmed.  
43 years; Sinhalese, Inspector of Police, Kegalle.

No. 10

Q. Are you still at Kegalle? A. Yes.

A.M. Ratnayake.

Q. You are now doing criminal investigation work?  
A. Yes.

4th April, 1960

Examination.

Q. On 29.5.58 where were you? A. I was temporarily attached to Warakapola Police Station as Officer-in-charge of that station. 10

Q. When were you sent to Warakapola? A. On the 26th of May.

Q. Till when were you there? A. Till about 1st June, 1958.

Q. On 27.5.58 a state of emergency had been declared in view of the communal disturbances?  
A. Yes.

Q. And was there a lot of work to be done by the police? A. Yes.

Q. The Police Station I take it, was a very busy place? A. Yes. 20

Q. What was the first intimation that you had of this incident? A. I was informed of a complaint made by the village headman in connection with this case.

Q. Did you read the complaint? A. Yes, and subsequently two suspects, Sediris and Jinadasa had been produced at the police station and I questioned them.

Q. Did you question the 7th accused Jinadasa? A. Yes. 30

Q. Having questioned Jinadasa what did you do?  
A. I accompanied him to his house in Dorawaka.

Q. Why did you do that? A. As a result of a statement made by him.

COURT: Q. On what day and at what time was that?

A. On the 30th May, at about 8 p.m.

Q. Is it 8 p.m. A. Yes.

Q. What time did you reach his house?

A. At 10.45 p.m.

Examination-in-chief Contd.

Q. What did you do at his house? A. Jinadasa dug the ground in the garden close to his house and unearthed a parcel.

10 Q. How deep was it? A. About one foot.

Q. With what did he dig? A. With a mamoty.

Q. What did you come across? A. A Parcel which was covered with a gunny.

Q. Did you take charge of it? A. Yes.

Q. What was in that parcel? A. Pieces of textiles.

Q. (Shown P5) Is this the parcel of textiles?

A. Yes.

20 Q. You said you went there in consequence of a statement made by the 7th accused? A. Yes.

Q. Was that statement about the parcel? A. Yes.

COURT: Q. Who took you to the place? A. The 7th accused.

Q. And he dug the place? A. Yes.

COURT: Let the jury retire.

The Jury retire.

COURT: All that is relevant is that the 7th accused knew where certain articles were?

30 CROWN COUNSEL: Yes, but I am entitled to put in that portion of the statement made by the accused which relates to the discovery of the parcel.

Crown Counsel cites in support the case of King vs. Jinadasa and King vs. Pakeer Thamby and states that that part of the accused's statement is admissible under section 27.

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Argument.

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CROWN COUNSEL: The portion I seek to get out is at page 9 i.e. "I buried the parcel that same night in our garden close to the house". In order to show that the parcel was discovered in consequence of a statement made by the 7th accused I am entitled to elicit the actual contents of the statement.

COURT: I allow the portion "I buried the parcel that same night in our garden close to the house"

CROWN COUNSEL: And I propose my Lord to elicit similar portions with regard to other statements?

10

COURT: Yes.

The Jury return.

Examination  
- continued.

Examination-in-chief Contd.

Q. You said you went there in consequence of a statement made to you by the 7th accused? A. Yes.

Q. What did he say? A. He said "I buried that parcel that same night in our gardens close to our house".

Q. It was as a result of that statement that you got the 7th accused to dig up that part of the garden? A. Yes.

20

Q. What did you do after that? A. I kept the 7th accused in the land rover and went to the house of the 1st accused Pura in Yakdimulla.

Q. Was he there? A. No.

Q. Did you find the 1st accused? A. I found him in a chena called Minimarakanda which is on top of a hill about 2½ miles from his house.

Q. Was the 1st accused alone? A. He was sleeping along with four others.

30

Q. Who were the others? A. R.P. Albia the 3rd accused, Y.P. Martiya the 2nd accused W.P. Peiris the 4th accused and E. Babiya the 5th accused.

Q. Did you find a sword there? A. Yes.

Q. (Shown sword P11) Is that the sword? A. Yes.

Q. Where was P.11 found? A. It was close to the accused Albia.

Q. Did you try to find out to whom it belonged?  
A. Yes.

Q. Did anyone claim that sword? A. Albia.

COURT: How is that relevant?

CROWN COUNSEL: It is part of the conduct of the 3rd accused Albia.

10 MR. WAIGAMPAYA: I object to that, it amounts to hearsay and it is unfair by the defence.

COURT: What is the legal ground?

MR. WAIGAMPAYA: It amounts to hearsay.

COURT: The accused is present in Court and he is a competent witness.

MR. WAIGAMPAYA: But my Lord if the accused is not prepared to give evidence it is unfair by him.

COURT: The remedy is in your hands.

Examination-in-chief Contd.

20 Q. Having found that what did you do? A. I took charge of that sword and searched the accused persons and the hut and I brought them to the Police Station.

Q. Did you question them? A. I questioned them at the Police Station.

30 Q. Whom did you question first? A. I first questioned E. Babiya the 5th accused and recorded his statement and I also questioned the other suspects whom I brought and recorded their statements. After Albiya's statements I recorded the statement of the 4th accused W.P. Peiris, I next recorded the statement of the 1st accused W.P. Pura, I next recorded the statement of Y.P. Martiya the 2nd accused and I also recorded the statement of one W.P. Weerasena.

Q. Having done that did you go anywhere?  
A. I went to Meddegammedda with the suspects.

Q. Why did you go there, were you looking for anything?  
A. As a result of a statement made by

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the 4th accused W.P. Peiris, I went there.

Q. Did you go and look for anything?      A. He took me to a heap of refuse and took out a parcel.

Q. What did that parcel contain?      A. It contained 7 gauze banians, 2 camboys, a muffler and a piece of cloth.

Q. (Shown P6) These?      A. Yes.

Q. From there where did you go?      A. Then I went to MinimaruKanda again.

Q. What happened there?      A. There the 1st accused W.P. Pura took out a parcel from some of the "Iluk" bushes and handed it to me.      10

Q. (Shown P3) is that the parcel?      A. Yes.

Q. And then?      A. The suspect Martiya that is the 2nd accused was with me at the time and he too took out a parcel almost from the same iluk bushes and handed it to me.

Q. He was one of those who were together with the 1st accused in that hut?      A. Yes.

Q. What did that parcel contain?      A. It contained 5 used sarees, two used jackets and a piece of sarong in which they were wrapped.      20

Q. (Shown P7) These?      A. Yes.

Q. Then what did you do?      A. Then I went to the garden of Albia the 3rd accused. He led me to a kamatha and from under a heap of straw he took a parcel containing 3 umbrellas that appeared to be brand new.

Q. (Shown) 3 umbrellas?      A. These are the three umbrellas.      30

Q. You produce the articles which were recovered by you?      A. Yes.

Argument.

CROWN COUNSEL: At this stage may the Jury retire. My Lord, I wish to get a ruling from Your Lordship on a certain point.

The Jury retire on the direction of His Lordship.

CROWN COUNSEL: I propose leading in evidence a portion of a statement made by the 6th accused, this portion "At about 8 p.m. we came to Thalliyadde, the complainant's boutique was open. There I saw the village headman of Weragoda seated on a bar inside the boutique". That portion I propose leading in the form of an oral admission made by the 6th accused to the Inspector.

COURT: Admission of what?

10 CROWN COUNSEL: That he came to Thalliyadde at about 8 p.m. that night to the complainant's boutique I propose leading that under section 21.

HIS LORDSHIP: Those cases are admissions by a person or incidents proved to his advantage.

CROWN COUNSEL: An admission cannot be proved to his advantage.

HIS LORDSHIP: Yes.

20 CROWN COUNSEL. Your Lordship sees Section 17. (reads). It is a statement made by the accused to the effect that he came to Thalaliadde.

HIS LORDSHIP: Every confession is an admission. Every admission is not a confession.

CROWN COUNSEL: Otherwise there is nothing to prevent me from admitting a confession made by somebody. Your Lordship sees Sec.21 (reads) So that I would be entitled to prove as an admission against the accused, to prove that he came to Thalliliadde at 8 p.m. that night.

30 COURT: But then there is the other limitation Sec. 121 of the Criminal Procedure Code.

40 CROWN COUNSEL: As far as Jinadasa is concerned I draw a distinction between an oral statement made to the Police Inspector and a written record of that statement I propose asking the Inspector whether he can remember what was told him. If he cannot he can refresh his memory. My submission is that it would be clearly admissible, an admission clearly in the interests of the accused. I can cite to Your Lordship instances where such admission have been put in. Your Lordship sees in the case of Jothige vs. Queen. That is a case where Mr. Jayasinghe was shot. In that case the Crown put in

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Cross-examined by Mr. Wickremaratne:

Q. You found all these articles in the bushes and in heaps of refuse, not in any particular house?

A. Yes.

Q. Nothing was found inside the houses of these accused by you? A. No.

Q. You say that the 7th accused dug a spot in the garden of the parents and you found P5? A. Yes.

10 (To COURT: Q. Is that the garden of his parents?  
A. I believe he was living with his parents.)

Q. How deep in the ground did you find these textiles? A. It was not very deep. It was just sufficient to cover the parcels. It was about 1 foot deep.

Q. Those textiles were in a pot? A. They were in a parcel and put in a gunny bag.

Q. Is that gunny bag a production in the case?  
A. No.

20 (To COURT: Q. The 13 pieces of textiles have been produced without the gunny bag? A. Yes.)

Q. You say the 3rd accused showed you a spot where P14 was? A. Yes.

Q. Also the 2nd accused produced P6 and P7?  
A. Yes.

Q. Where was P6 found? A. In a heap of refuse near his father's boutique.

Q. You say that six of these accused went with you and that each one recovered various items marked here and gave them to you? A. Yes.

30 Q. I put it to you that these three persons were assaulted by you? A. I did not assault them.

Q. And that these articles which you mentioned as having been shown by these accused persons were introduced by the V.H. Daniel Appuhamy?  
A. I deny that.

Q. These articles were shown to you by these accused.

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They were not found on their statement but was found on a statement made to you by Daniel Appuhamy?  
A. I deny that.

Cross-examined by Mr. Moonesinghe: Nil,  
Re-examined: Nil.  
To Jury. Nil.

(To COURT: Q. Was Daniel Appuhamy with you when you took these accused. A. No.)

The statements of the accused are read.

No. 11  
A.P. Wijetileke.  
4th April, 1960  
Examination by  
Court.

No. 11

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A. P. WIJETILEKE

AMURADURA PIYASIRI WIJETILEKE, Affirmed.

To COURT: 39 Singalese, Clerk of Assize, Supreme Court, Kurunegala, I have with me the record in M.C. Kegalle 22585.

Q. In the evidence of Suwaris did he say this, "I took the lorry to Mooka Pullai with Gunapala at about 8.15 p.m. A. Yes. (X2).

Q. Did he further say, "One Somapala came and told me that the V.H. wanted the lorry"? A. Yes. 20

Q. In the evidence of Suwaris had he mentioned a word about his seeing Perumaal? A. No.

Cross-examined by Crown Counsel: Nil.

Cross-examined by Mr. Wickremeratne Nil.

Cross-examined By Mr. Walgampaya. Nil.

Cross-examined by Mr. Munasinghe: Nil.

No. 12

G. P. PERERA  
(Recalled)

CONGODAWILAGE PIYADASA PERERA - affirmed P.C.3357  
(Recalled)

In the  
Supreme Court  
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Prosecution  
Evidence

No. 12

G.P. Perera  
(Recalled)

4th April 1960  
Examination by  
Court.

To COURT:

Q. You recorded the statement of Suwaris? A. Yes.

Q. Did he tell you that he was the owner of a lorry?  
A. Yes.

10 Q. Lorry No. CL 5136? A. Yes.

Q. Did he tell you where he was on that day at  
about 8 p.m. A. He said he was at home.

Q. Did he say what happened at that time?  
A. He said that Suwaris came and informed him that  
the village headman wanted him to come in the lorry.

Q. Did he say what he did on receipt of the message?  
A. He said that he came to Thalaliadde.

Q. At what time? A. At 8.15 p.m.

20 Q. Did he say with whom he went? A. He said he  
came with a cleaner called Gunapala.

Q. Did he anywhere in his statement mention any-  
thing about his meeting Perumal Pillai? A. No.

Cross-examined by the Crown Counsel: Nil.

Cross-examined by Mr. Moonesinghe: Nil.

Cross-examined by Mr. Wickremaratne: Nil.

Cross-examined by Mr. Walgampaya: Nil.

To Jury: Nil.

Crown Counsel closes his case.  
Mr. Wickremaratne closes his case.  
Mr. Moonasinghe closes his case  
Mr. Walgampaya closes his case.

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In the Supreme Court	<u>Court Note</u>	<u>5.4.60.</u>	<u>11 a.m.</u>
<u>R.v. Pura et al.</u>	Trial resumed.		
Court Note.	Accused present.		
5th April, 1960.	Same Counsel.		
	Crown Counsel addresses the jury.		
	Mr. Wickremaratne addresses the jury.		
	Mr. Walgampaya addresses the jury.		
	Mr. Moonesinghe addresses the jury.		
	Charge to the jury.		

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Charge to Jury.  
5th April, 1960.

No. 13

10

CHARGE TO JURY

S.C.19

M.C. Kegalle No.22585

Charge to the Jury - 5.4.60.

D.E. Wijeyewardene Esqr., Commissioner of Assize:

Gentlemen, I have asked that each of you be handed a copy of the indictment.

The very first point that I have to deal with is that in considering any criminal case you must remember that every accused gets into the dock clothed with a presumption of innocence. That means that you have to consider each of these accused to be a law-abiding citizen, honest and of good character. When a charge is brought against a person, who is clothed with that presumption of innocence and whom you invest with a good character, the burden of proving that charge rests fairly and squarely on the shoulders of the prosecution. That burden is of such a nature that the Crown must prove the charge beyond all reasonable doubt. That is to say, you have to be as certain of the guilt of the accused as it is humanly possible to be certain about a matter to which you yourselves have not been eye-witnesses and about which you have to depend upon the evidence of other people whom you have listened to giving evidence and whom you have seen. It is only when you are certain that the prosecution has proved its case that you can say

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that presumption of innocence has been broken down and that the accused are guilty. The prosecution, as I told you, must prove its case beyond all reasonable doubt.

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10 On questions of fact, gentlemen, you are the sole judges. If in the course of my summing up I express an opinion on a question of fact with which you do not agree, please remember that it is your right and your duty to disregard my opinion and to act upon your own opinion, because it is a right of the accused to be tried by the jury, by seven gentlemen who will bring to bear on the consideration of the case their experience of life, of men and matters. So remember you are the sole judges on all questions of fact. But on questions of law you are bound by my directions.

20 Gentlemen, in this case both the prosecution and the defence are agreed upon on one point, and I too would commend to you the submissions made by the defence and by the prosecution with regard to the evidence of the headman, Daniel Appuhamy. His evidence has been unsatisfactory. He told you that he set out from his village as a result of the complaint of Perumal Pillai which he recorded in his note book. That complaint has been produced, has been read out to you, and I have to point out to you that Perumal Pillai himself was not called as a witness, and I allowed that complaint to be produced purely to enable you to judge the credibility of this witness, the village headman; because if you are satisfied that Perumal Pillai never went and made such a complaint to the headman and that the headman's record X1 is a fictitious record which he concocted, then, gentlemen, that will taint the rest of his evidence and you will approach the facts of this case from that angle. But another question arises. It is that the headman was a witness called by the prosecution, that evidence is the version of a witness called by the prosecution.

30 Learned Crown Counsel has told you that the highest he can place the evidence of Daniel Appuhamy is that of an accomplice. Gentlemen, does that mean that the unsatisfactory nature of his evidence - your difficulty in relying or acting on the evidence of Daniel Appuhamy, does that necessarily taint the rest of the evidence? Consider that.

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Gentlemen, the evidence of Mooka Pillai on one point is this:

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"Q. What did you suspect him (that is Daniel Appuhamy) of trying to do?  
A. Because Seda and the headman happened to be friends, I suspected that he had got this done."

Mooka Pillai first suspected Daniel Appuhamy the moment he saw Seda entering that boutique with the others because he was aware that Seda was a particular friend of Daniel Appuhamy. You will remember Mooka Pillai's evidence. He said three people entered the boutique. The only people among these accused whom he recognised were the sixth accused, Seda, and the first accused, Pura. He certainly did not try to implicate any of the other accused.

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The other evidence is the evidence of Suwaris. His evidence was also challenged. As a matter of fact, I myself put to him a previous statement which he made on another occasion in order to test his credibility on a particular point. In this Court, you will remember, he tried to corroborate Daniel Appuhamy that Perumal Pillai accompanied Daniel Appuhamy to the boutique of Mooka Pillai; but it was pointed out to him that when he made his statement on a different occasion he made no reference whatsoever to Perumal Pillai having come along with Daniel Appuhamy to the boutique of Mooka Pillai. Of course, a statement made by a witness outside this Court is put in only for the purpose of testing his credibility. That previous statement cannot be regarded as substantive evidence.

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The evidence in this case against these accused is the evidence of Mooka Pillai who says that he identified the first accused and the sixth accused among those who entered the boutique.

Then, of course, there is the evidence of the police officers who said that on arresting these accused these accused took them to various places and pointed out - the seventh accused went and dug up the garden of his parental home and picked up - I cannot remember the exact production ...

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MR. WAIGAMPAYA: P5 a bundle of textiles.

Charge continued: Yes. Inspector Ratnayake is presently stationed at Kegalle, but at the relevant period he had been posted to Warakapola because of

the emergency, from the 26th May to the first of June 1958. He told you that when he went up and found these five accused lying down on top of that hill he recorded their statements and as a result of their statements he took them to various spots. And this is his evidence. As a result of a statement made by the 4th accused I went to Meddagammeda.

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Q. Did you go and look for anything?

10 A. He took me to a heap of refuse and took out a parcel. That parcel contained 7 gauze banians two camboys, a muffler and a piece of cloth. They were produced as P6. You will remember that Mooka Pillai identified them as property which had been removed from his possession on the night in question. Then he went to Minimarukanda again and there the 1st accused took out a parcel from some iluk bushes and handed them to him. That was P3, P3 being five kadhar sarees, the red coloured productions, and he said that the suspect Martiya the 20 2nd accused took out the parcel from some iluk bushes and handed them to him. He was one of those who was present with the 1st accused in the hut. The parcel contained five used sarees, two used jackets and a piece of sarong in which they were wrapped. That is P7.

30 You will remember the evidence of Mooka Pillai that these articles were in a box in the kitchen. It had been broken open after he had left the boutique. Then he says that Albiya the 3rd accused led him to a heap of straw and he took out from it a parcel containing three umbrellas that appeared to be brand new. These articles were produced and identified by Mooka Pillai. So Gentlemen you find the accused being aware or being in a position to take the Police on the 30th just a few hours after the incident to a place where these articles were found. It was suggested that these statements were forced out or were extracted from these accused as a result of force.

40 It was suggested that it was the headman who had hidden these articles at the various spots. The Inspector of Police has denied that. There is no evidence to contradict that. Gentlemen, an accused has the right to give evidence. He has the right to make a statement from the dock, but he is under no obligation to do so, and generally in a criminal trial there is usually no reference made to the absence of evidence on the part of the defence, but

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in this case Gentlemen, when you come to consider whether the Prosecution has discharged its burden of proof beyond reasonable doubt, and when you are considering this question that the accused were in a position, knew or were in a position to find out where these stolen property was very soon after the incident, and when you come to consider what weight you will attach to that circumstance, then Gentlemen, I would ask you to consider these accused, consider the fact that these accused who had the right to make a statement from the dock, who had the right to give evidence remained silent. You will consider what effect their silence has on this question as to whether the Prosecution has or has not discharged the burden which devolves on them, beyond reasonable doubt.

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Gentlemen, it is a rule of commonsense, it is not a rule of law that a man who is possessed of stolen goods soon after the theft is the thief or has received the goods knowing them to be stolen unless he can account for his possession. There is no rule of law to that effect, but you as men of the world with your knowledge of the world will consider whether it is so or not and draw an inference from that fact, and if so what inference you will draw from the fact that these accused were in a position to find out these articles. The crown has candidly told you that the Crown would not expect you to hang a cat on the evidence of Daniel Appuhamy for himself may be regarded as a participant in the Crime. It is very necessary that I should warn you that it is dangerous to act on his evidence unless his evidence is corroborated on very material particulars and cogently corroborated by independent evidence. It is only then that you should consider the evidence of Daniel Appuhamy against any of these accused. Even if you view the evidence of Daniel Appuhamy as against these accused from that angle I would ask you to consider whether the finding of these articles as a result of these statements in these places is or is not material and cogent corroboration of his evidence. But these are questions of fact of which you are the sole judges.

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Gentlemen, then with regard to the 8th accused the only evidence is the evidence of Daniel Appuhamy. Now when you come to consider the evidence of an accomplice it is unsafe to act on the evidence of an accomplice unless it is corroborated in material particulars by independent evidence and such corroboration is totally absent, and I think

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it would be your duty, of course you are the sole judges on questions of fact, but I think it is your duty to acquit the 8th accused.

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With regard to the 7th accused Jinadasa there is the Police evidence that they found those sarees, and there was also the evidence of the finding of the rice ration books inside the almirah. To take the suggestion of introduction seriously one would consider if the headman had introduced these pro-  
ductions, would he have gone and introduced the rice ration books into an almirah inside the house and the red sarees I believe and the other textiles, that he should have gone and buried them in the compound. They were widely removed spots in which these articles were found and of course they would have had absolutely no evidentiary value against these accused if they had been found independently of these accused because they were found in absolute-  
ly neutral spots. That does not mean that the find-  
ing of these articles cannot tell against these  
accused. It is a fact that the accused knew where they were and took the Police Officers and pointed them out. Therefore if it was Daniel Appuhamy who took these articles and hid them amongst the iluk bushes in Minimarukanda and then went to Medagammeda and some other articles under a refuse heap, he  
would also have had to arrange to get these accused to point them out to the Inspector of Police and get the Inspector of Police to co-operate and then  
falsely say that these accused came and pointed out these articles to them. It is only the finding of the articles that would tell against the accused.

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sic.

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Then there is the evidence of Mooka Pillai with regard to the 1st accused whom he definitely identified as one of the accused who entered the boutique. There is the evidence of Mooka Pillai with regard to Seda. I would particularly point out to you his statement "It is when I saw Seda that I began to suspect the headman."

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Gentlemen, if you will look at the copies of the indictment which were handed to you, the first charge is that on or about the 29th May, 1958 at Thalliade, Dorawake, in the division of Kegalle, within the jurisdiction of this court these accused with others unknown to the prosecution did agree to commit or abet or act together with a common purpose for or in committing or abetting an offence, to wit, illegally removing goods and articles from



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the boutique of Mooka Pillai, an offence against regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations published in Government Gazette No.11,321 of the 27th May, 1958, and made by the Governor-General under section 5 of the Public Security Ordinance No.25 of 1947 (as amended by Act No.22 of 1949 and Act No.34 of 1953) and that they are thereby guilty of the offence of conspiracy to commit or abet the said offence, which offence was committed in consequence of the said conspiracy and that they have thereby committed an offence punishable under regulation 22 of the said Regulations read with sections 113B and 102 of the Penal Code.

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The essence of the charge is that they agreed to commit an offence. The crown has to prove that these accused along with others unknown to the prosecution did agree to commit or abet or act together with a common purpose for or in committing or abetting an offence. The essence of the charge is the agreement to commit or abet or act together with a common purpose for or in committing or abetting an offence. In this case there is no direct evidence that these accused sat down in solemn conference and entered into an agreement, but that is not necessary. There may be conspirators who do not know each other's names, who may not have met each other; they may have contacted each other through a third person only; but there must be evidence of such an agreement having been entered into. In this case it is only from the subsequent conduct of the accused that the Crown asks you to infer that there was such an agreement entered into between these people.

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There is the evidence of Suwaris that they all came rushing up saying, "Who is that trying to load a Tamil person's goods into a lorry? Let us eat him up." Gentlemen, would people have behaved in that way if there had not been a previous agreement? Does it conclusively prove that there had been such an agreement, an agreement with a common purpose of removing goods from the boutique of Mooka Pillai? Well, that is a matter you will have to consider.

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The second count is that at the time and place aforesaid and in the course of the same transaction, the accused with others unknown to the prosecution were members of an unlawful assembly the common object of which was to commit house trespass in order to commit theft by entering the boutique in the

occupation of the said P. Mooka Pillai, an offence under section 437 of the Penal Code, and to illegally remove goods and articles from the said boutique, and that they are thereby guilty of an offence against regulation 22 of the said regulations punishable under the said regulation 22.

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The offence of house-trespass, gentlemen, is the more aggravated form of criminal trespass. Now criminal trespass is defined in this way.

10 CROWN COUNSEL: Section 427, My Lord.

Charge continued: I was looking at the Criminal Procedure Code.

"Whoever enters into or upon property in the occupation of another with intent to commit an offence, or to intimidate, insult, or annoy any person in occupation of such property, or having lawfully entered....." We are not concerned with that.

20 "Whoever enters into or upon property in the occupation of another with intent to commit an offence, or to intimidate, insult, or annoy any person in occupation of such property, is said to commit criminal trespass." Then Gentlemen,

"Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or in any building used as a place for worship or as a place for the custody of property, is said to commit house-trespass."

30 Now, gentlemen, count two charges the accused with being members of an unlawful assembly the common object of which was to commit house trespass. To constitute an unlawful assembly there should be at least five persons and those five persons should share a common unlawful object, the common object alleged in this case being the commission of the offence of house trespass. In other words, gentleman, if five or more persons joined together with the common object of committing an offence - in this case the common object alleged is house trespass - then, whoever intentionally joined that  
40 unlawful assembly or continued to be a member of that unlawful assembly - it matters not if only one person, one member, committed the offence in prosecution of the common object - would be guilty.

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The gravamen of the charge is membership of an unlawful assembly, sharing the common object. If these accused intentionally joined that unlawful assembly for the purpose of removing goods from the boutique of Mooka Pillai and only some of them entered that boutique and removed the goods while the others remained outside, still every one who was a member of that unlawful assembly and who intentionally continued to be a member of that assembly would be guilty of the offence of being members of that unlawful assembly. The essence of the charge is the membership, sharing the common object of the unlawful assembly. Of course, each person must be aware of the common object at the time he joined the assembly and he must have joined intentionally.

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Then the third charge is that at the time and place aforesaid and in the course of the same transaction - shall we adjourn at this stage and resume at 2 o'clock?

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Adjourned for Lunch - 1 p.m.

Resumed after lunch - 2 p.m.

Gentlemen, before the adjournment I was dealing with the third charge. The third charge is that at the time and place aforesaid and in the course of the same transaction one or more members of the unlawful assembly aforesaid did commit house trespass in order to the committing of theft by entering the said boutique which offence was committed in prosecution of the common object of the said unlawful assembly and they being members of the said unlawful assembly at the time of the committing of the said offence are thereby guilty of an offence punishable under section 437 read with section 146 of the Penal Code.

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Gentlemen, the second count you will observe has been framed under the Emergency Regulations. Apart from that the offence described is identical. (To Crown Counsel: Is that not so?

Crown Counsel: Yes.) The third charge is framed under the Penal Code, under the ordinary law of the land. I have already explained to you that the essence of the charge is membership in an unlawful assembly, and that an unlawful assembly is an assembly of five or more persons gathered together with a common object of committing an offence. It

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is not necessary that there should be in such a case five accused. There may be only person who is brought to trial because only he has been identified, but if it is proved that he was a member of an unlawful assembly, then that is sufficient. You must be satisfied beyond reasonable doubt that there was an unlawful assembly with the common object specified in the indictment and that the particular accused was a member of that unlawful assembly sharing the common object and that he intentionally joined it and continued to be a member of the unlawful assembly. In this case the common object is alleged to be the committing of theft by entering the boutique of Mookapillai - to commit house trespass in order to commit theft by entering the boutique of Mookapillai. The offence of theft is defined in this way, "Whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft. But it is subject to the other qualification that whoever removes the movable property must act dishonestly, that is with the intention of causing wrongful loss to the person or wrongful gain to himself, and he must remove that property out of the possession of the person without that person's consent. Then the necessary ingredients of theft are complete. I have already explained what the offence of criminal trespass is. That is Section 437. House trespass is an aggravated form of criminal trespass. That is entering into property in the possession of another with the intention of committing an offence, in this case the offence is theft, is said to commit criminal trespass.

Then the 4th charge is that at the time and place aforesaid and in the course of the same transaction one or more members of the unlawful assembly aforesaid did commit theft of bundles of textiles and banians exceeding Rs.200/- in value property in the possession of the said Mooka Pillai which offence was committed in prosecution of the common object of the said unlawful assembly and that you being members of the said unlawful assembly at the time of committing the said offence are thereby guilty of an offence punishable under Section 367 read with Section 146. That is to say if they shared the common object and had intentionally been members of the assembly sharing in the common object and commits theft. It matters not whether one or

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two committed the theft but all who were members of the assembly sharing in the common object are equally guilty.

Then the 5th count is that at the time and place aforesaid in the course of the same transaction you did commit house trespass in order to commit the theft by entering into the said property in the occupation of P. Mooka Pillai and you have thereby committed an offence punishable under Section 437 of the Penal Code. That is the offence of house trespass simpliciter. In other words apart from being members of the unlawful assembly these accused are charged with that they did in the course of the same transaction commit house trespass in order to commit theft. House trespass means entering a house with the intention of causing annoyance, and you will have to consider there that against each of these accused there is the evidence of their having individually entered a house.

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When you come to consider the 5th charge there is no unlawful assembly specified there - in other words it is not necessary that there should be five or more persons. The allegation in the 5th charge is that these accused did commit house trespass, but in considering that you will also have to consider another section, Section 32 "When a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if it were done by him alone". So it is not necessary that there should be five persons and if two or more persons acted in furtherance of the common intention of a preconceived plan, it may be that the preconceived plan had been entertained instantaneously, a few seconds before they may have arrived at the common intention, but if they shared the common intention of entering the house of Mooka Pillai, if out of 50 persons who shared a common intention only one person entered the house, but if the others were present and if the entering of the house by that one person was done in furtherance of a common intention shared by them all, then they are all guilty, as it is sometimes said that they also serve who stand and wait. For instance if 10 people intend to rob a bank. They agree to rob a bank. They agree that they will kill anybody who offers resistance and one man stands at the door to give a signal to the others but they have all agreed to rob the bank, they have all agreed that they will overcome any resistance even by causing death, then

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the man who stands at the door hoping to give a signal in case he finds a constable or somebody approaching, is equally responsible, is equally liable as the person who entered the bank, or who shoots down the cashier or who rifles the safe. They are all guilty of the same offence provided you are satisfied that it was done in furtherance of the common intention.

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10 Now in dealing with common intention you must distinguish it from similar intention. Suppose there are two robberies and the members of such party play different parts quite unknown to the other, they all have the same intention of robbing the bank. They intend to enter the bank at the same time but that is not in pursuance of a common intention. They individually have the intention of robbing the bank, the intention being held by them independently of the other party, then gentlemen they have a similar intention but it is not done in  
20 furtherance of the common intention.

In this case the evidence of Suwaris is that the crowd came together. You remember that there were about 50 people who came together shouting and Mooka Pillai's evidence is that only the 1st, 6th and another who is not here entered the boutique. The evidence of Daniel Appuhamy is that only the 6th came and the 6th came with about 3 others whom he did not identify. If you are satisfied that  
30 these accused acted in furtherance of a common intention, then they can all be found guilty, all the accused who you are satisfied did act in furtherance of a common intention, can be found guilty under count 5. Under count 6 the offence is that at the time and place and in the course of the same transaction they did commit theft of the said bundles of textiles property in the possession of the said Mooka Pillai and you have thereby committed an offence punishable under Section 367 of the Penal Code. My remarks with regard to common intention  
40 would apply to this count too. In the fifth charge the offence is one of house trespass. In the second it is the offence of theft, of removing movable property from the possession of Mookapillai without his consent. If you are satisfied that all these accused or any of these accused had the common intention of committing theft and that they went there sharing in that common intention, then it matters not that only one or two actually removed the articles: each and every one who shared that  
50 common intention would be equally liable.

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Gentlemen, much has been said about this witness Daniel Appuhamy, I shall refer to a portion of his evidence relating to the recording of Perumal Pillai's complaint. It is true that he was a witness called by the Crown; he was a witness for the prosecution. The Crown has to present its case on the brief. When facts were elicited in cross-examination and in answer to questions put by me which revealed that the witness's conduct required further examination, I considered it my duty to put these questions and get out the first complaint of Perumal Pillai which he recorded. It was in answer to my questions that the following evidence was elicited.

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"Q. (Shown diary) You said this is the complaint of Perumal Pillai which you recorded? A. Yes.

Q. I will mark that X1. Will you read that out? (It was read in Sinhalese)."

I shall read out to you the translation.

"Today at about 4 p.m. Perumal Pillai of Kongoda boutique informed me as follows at the boutique. I have received information to the effect that people of Dorawaka would come and break my boutique and the boutique at Thalliade tonight. What shall be done about it? Thereafter at about 5.30 p.m. Perumal Pillai and I having gone there spoke to Mookapillai and told him: People of Dorawaka would be breaking your boutique tonight. Therefore remove the goods to Karunasekera's boutique at Kongoda. Said Perumal Pillai thereafter. Perumal Pillai having gone and fetched the lorry of Suwaris of Niyadadupola, the goods were loaded into the lorry. Then at about 7 p.m. about fifty people from Dorawaka rushed into the boutique. Seda and three others. Other people took the goods into the lorry. Know the people. Do not know their names."

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He went on -

"Q. After the word 'keewa' there is no full stop to show that the sentence ended? A. No.

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Q. And the statement is continued with the word 'eetapassu'? A. Yes.

Q. You have mentioned in that statement that Perumal Pillai mentioned this to you at his boutique? A. Yes.

"Q. So your evidence in this court that he came to your office and made this complaint is not correct? A. I recorded that statement at my desk in the house.

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Q. How did you happen, while seated at your table in your house, to write down those words, that Perumal Pillai mentioned this to you at his boutique when in fact he came to your house and gave you this information? A. I have written that wrongly.

Q. When you went to the police station on the night of the 29th you did not mention anything about Perumal Pillai having made this statement? A. No.

Q. On the other hand, you told the police that some unknown persons gave you this information? A. Yes.

Q. And that you got this information at Thalaliy-adde? A. Yes.

20 Q. You made no reference to this statement which was in your diary which was in your pocket at the time you made your statement to the police? A. No.

Q. You did not mention anything about Perumal Pillai's statement? A. No.

Q. Whose initials are those at the top of the page? A. The D.R.O's.

30 Q. You took the diary to the D.R.O. at 11.15 a.m. and got him to initial it? A. At 6 a.m. on the 29th I appeared before the D.R.O.

Q. And that is the time at which he initialled the diary? A. Yes.

Q. But he has written 11.15? A. I remained at the D.R.O's office till 11 a.m.

Q. And he initialled the diary at 11.15? A. Yes.

Q. That is the first sentence? A. Yes.

Q. That has nothing to do with Perumal Pillai's statement? A. No."

That would be, gentlemen, on the 29th morning,



In the  
Supreme Court  
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Charge to Jury.  
5th April, 1960  
- continued.

because the statement, "Today at 6 a.m. having left home, went to Warakapola, appeared before the D.R.O. and returned home at about 3 p.m." - that sentence is here before the record of Perumal Pillai's complaint.

There is no evidence that this complaint was produced before the police or in the lower court. Gentlemen, you will take into account the conduct of the headman in not making the slightest effort to inform the police. You will remember Mookapillai's evidence that he came by car. He denied that he came by car. Then you will also remember Somapala's evidence. He too says they went walking, but Somapala when he was asked, "How did you go in search of the lorry?" he said, "I went by car". You will ask yourselves, From where did he get that car.

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"Q. Where did you find the car? A. At Kongola.

Q. How did you come to Mookapillai's boutique?  
A. On foot."

But you will remember Mookapillai's evidence that the headman came to his boutique by car and he sent the car back to fetch the lorry, and as it was pointed out by the defence, the lorry and the lorry driver were from his village.

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Taking all those matters into account, I would ask you to consider whether or not you consider it your duty to return a rider indicating what you feel about the evidence of this headman. A headman is a person appointed to protect the public, to serve the public, especially at a time of stress like the emergency; and if a headman conducts himself in a way that jeopardizes the safety of the public, surely, you, gentlemen, who sit in judgment in the highest tribunal of the land, will consider whether it is not your duty to indicate what you think about his conduct, whatever your decision with regard to the accused may be.

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Gentlemen, you may ask yourselves, why is it that if the headman was an accomplice, if he collaborated with the accused and others who are not here before you, when he went to the police he should have given the name of the accused Seda. In considering that, gentlemen, you will remember the evidence of Mooka Pillai. He says, "I began to suspect the headman when I saw Seda coming into the boutique, because he was a particular friend of the

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10 headman." The headman would have known that Mookapillai saw Seda, that Mookapillai's wife saw Seda; the headman knew that Mookapillai and his wife had run out of the boutique and that they were still alive to give evidence against Seda. The headman would also have known that Mookapillai would have known that Seda and he were friends. So, is it too much to think that the headman would have said to himself, Mookapillai saw Seda, Mookapillai knows that I saw Seda, and if I try to conceal his name in my complaint to the police, will it not bring suspicion on me? You will remember that Seda's name was the only name mentioned to the police. It is only in the realm of speculation, I admit, but I mention these matters for your consideration.

20 Then, gentlemen, there is the evidence that the sixth accused, Seda, was the President of the Rural Development Society. He does not seem to be of the same class as the other accused. It was pointed out to you that the only accused who did not point out any stolen property was Seda, the sixth accused. It is a matter for you - it may or may not be that he was of a different class and acted more intelligently, that he did not perhaps go and add those things and point them out to the Police. The Inspector of Police says that he saw the 1st, 2nd, 3rd, 4th and 5th accused.

MR. WAIGAMPAYA: Not the 5th accused.

30 Summing-up (contd.) that he saw the 1st in the company of the 3rd, 4th and 5th accused on the top of the hill Minimarukanda. They were together. The 1st accused was a man if you accept Mooka Pillai's evidence who had entered the boutique and just a few hours later they were found together on top of a hill and all of them are in a position to point out the place where certain articles were concealed, not in places of safety but concealed, and they were aware where they were concealed.

40 The 1st accused was a man who if Mooka Pillai's evidence is accepted did take part in this incident, and the others are in the company and were also aware where the loot was. Learned Crown Counsel suggested that it was possible to deal with the evidence of Daniel Appuhamy in two ways. First you will consider him as an accomplice and if you consider him as an accomplice then treat his evidence with suspicion and not act on his evidence, that

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part of his evidence which is not corroborated by any other persons.

Then with regard to the finding of these articles and the fact that the 1st, 2nd, 3rd, 4th and 5th accused were found together, there is the evidence of Mooka Pillai that the 1st accused was identified as one of them. There is the evidence that the 7th accused also pointed out some of the stolen property - The 5th accused did not point out. That is a matter you will bear in mind when considering the case.

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CROWN COUNSEL: The first count is that they did conspire to illegally remove goods and other articles from the possession of the said Mooka Pillai, The 7th count is one of mischief, that they did commit mischief by damaging the show case and furniture of the said boutique.

HIS LORDSHIP: Gentlemen there is another count that at the time and place aforesaid in the course of the same transaction they did commit mischief by damaging the show cases and furniture of the said boutique and that they have committed an offence punishable under Section 410 of the Penal Code. Well what I said with regard to common intention will apply there too. The offence of mischief is defined in this way. Whoever with the intention of causing or knowing that he is liable to cause wrongful loss or damage to any property or any person causes the destruction of any property or any such change in any property or in the situation thereof also destroys or diminishes its value or utility or affects it injuriously commits the offence of mischief. That is the legal definition. I think we all know what mischief is. That means the destruction of any property or any such change in any property or such as to diminish its value or utility with the intention of causing wrongful loss to the owner of the property. There is the evidence that an acid jar had been broken. There is the evidence of the Police Officer who saw a gunny bag full of broken bottles and aluminium vessels cut in two and show cases damaged and the radio set damaged.

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Gentlemen with regard to the very first count. I have not read out to you the Section which is Section 113. I will read it out to you. "If two or more persons agree to commit or abet or act together with the common purpose for or in committing

or in abetting the offence with or without any person's consent or deliberately aids the offence is guilty of the offence of conspiracy to commit or abet the offence as the case may be. So that the essence of the charge is that two or more persons should agree to commit or to abet or to act together with the common purpose in committing or abetting the offence. The offence referred to in the first charge is illegally removing goods or articles from the boutique of P. Mooka Pillai.

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Gentlemen in considering evidence, contradictions no doubt are a test of the truth but there is a better test which I may suggest to you, that is the test of watching the witnesses and asking yourselves what impression they made on your minds, whether they were witnesses who were truthfully trying to recount to you what they saw or what they heard or were they trying to mislead you by relating a false story. What is the impression that say Daniel Appuhamy made on you. Did he strike you as being a witness who was truthfully trying to recount to you what he had seen or what he had heard or was he trying to concoct something? Was he trying to mislead you? On the other hand take the evidence of Mooka Pillai. Was he relating to you what he had actually seen what he had actually heard? You will remember his reference to the headman. It is only when he was asked he referred to that. The headman denied that. He said, "When I saw Seda I suspected him". You will ask yourselves whether that is a spontaneous answer showing the truthfulness of the witness.

I also wish to point out to you one other rule of law. Section 134 of the Evidence Ordinance provides that no particular number of witnesses shall in any case be required for the proof of any fact. One witness may be sufficient in the generality of cases provided that the witness convinces you to such an extent that you can say, "I believe this case. I believe that this is the truth" and also convinces you as it is humanly possible to be convinced to be about a matter which you yourselves have not seen and about which you have to form an opinion by listening to the evidence of others. That is the degree of proof that is demanded.

Then the question of proof beyond reasonable doubt. If you have a doubt certainly the accused is entitled to it. If you have a doubt you cannot say "I believe". I am certain about it as certain

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as it is humanly possible to be on any matter and you must resolve that doubt in favour of the accused. That is the standard of proof which is expected of the Crown. Gentlemen I think I will leave you now to consider your verdict. Is there anything else?

COUNSEL: No My Lord.

Charge to the jury resumed and concluded.

The jury retire at 2.35 p.m. and return at 3.15 p.m.

No. 14  
Summary of  
Verdicts and  
Sentences on  
Accused.  
5th April, 1960.

No. 14

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SUMMARY OF VERDICTS AND SENTENCES  
ON ACCUSED

The unanimous verdict of jury was that the accused Nos.1, 2, 3, 4, 5, 6 and 7 were guilty under each of counts 1 to 6 and not guilty under count 7 and that accused No.8 was not guilty under any of the counts. The Record as to this last accused subsequently reads as follows :-

Clerk of Assize: Are you unanimously agreed upon your verdict with regard to the 8th accused S.P. John? 20

Foreman: Yes.

Court: Do you find him guilty on any count?

Foreman: No. The headman may be dealt with for giving false evidence.

Court: to 8th accused: You are acquitted and discharged.

Court to the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th accused:

I agree with the verdict of the jury. On the 1st count I sentence each of you to five years rigorous imprisonment, on the 2nd count also for five years rigorous imprisonment, on the 3rd count to two years rigorous imprisonment, on the 4th count to three years rigorous imprisonment, on the 5th count to two years rigorous imprisonment and on the 6th count to three years rigorous imprisonment, the sentences to run concurrently, that is, each of you will serve in all a term of five years rigorous imprisonment. 30

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No. 15

SENTENCE ON G.R.D. APPUHAMY.In the  
Supreme CourtR.v. Pura et al.

No. 15

Sentence on  
G.R.D.Appuhamy.  
5th April, 1960.COURT:

The Jury have brought a rider against you that you should be dealt with for giving false evidence. Have you any cause to show why you should not be dealt with?

PROCTOR WIJESINGHE

10 I appear for the witness my Lord. I beg that your Lordship will be pleased to give me time till tomorrow.

COURT:

I am dealing with him summarily.

PROCTOR WIJESINGHE:

20 The witness is about 55 years of age and he is in fact on the verge of retirement. He should have retired about February last year and on account of this case probably, he has been kept on. He has 4 children, the youngest of whom is 8 years old and any period of incarceration might not be in the interests of the children. He has been a loyal servant of the government for about 31 years and this appears to be the only instance where he has deviated from the path of virtue. In these circumstances I beg of Your Lordship to treat him with mercy.

COURT to witness:

Have you any cause to show?

Witness Gamalath Ralalage Daniel Appuhamy:

30 I beg your Lordship's pardon.

COURT: Your offence is a very serious one. I sentence you to three months' rigorous imprisonment.

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In the  
Privy Council

No. 16

No. 16

ORDER GRANTING SPECIAL LEAVE TO APPEAL

Order granting  
Special Leave  
to Appeal.

AT THE COURT OF BUCKINGHAM PALACE

The 3rd day of August, 1960

3rd August,  
1960.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

EARL OF PERTH

MR. SECRETARY WARD

MR. SECRETARY MACLEOD  
(acting as Lord President)

SIR MICHAEL ADEANE

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 5th of July 1960 in the words following, viz.:- 10

"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 Gama-lath Ralalage Daniel Appuhamy in the matter of an Appeal from the Supreme Court of Ceylon (Summary Jurisdiction) between the Petitioner and Your Majesty Respondent setting forth (amongst other matters): that the Petitioner prays for special leave to appeal from the Order dated the 4th April 1960 made by the Supreme Court in its original Assize jurisdiction whereby at the conclusion of a trial before Mr. D.E. Wijewardena a Commissioner of Assize and a Jury at which the Petitioner gave evidence as a prosecution witness the learned Commissioner summarily sentenced the Petitioner to three months' imprisonment under Section 440 (1) of the Criminal Procedure Code (Chapter 16 Vol. 1 of the Legislative Enactments of Ceylon 1938 Revision) for giving false evidence within the meaning of Section 188 of the Penal Code: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Order dated the 4th April 1960 made by the Supreme Court of Ceylon (Summary Jurisdiction) or for such further or other relief: 20 30 40

"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 thereof and 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 Supreme Court of Ceylon (Summary Jurisdiction) dated the 4th day of April 1960:

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"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

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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.

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.

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Sgd. W.G. AGNEW.

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In the  
Privy Council

                      
No. 16

Order granting  
Special Leave  
to Appeal.

3rd August,  
1960.

- continued.



ExhibitsEXHIBITS

P9

EXHIBIT P9 - RECORD of COMPLAINT to POLICE by  
G.R.D. APPUHAMY.Record of  
Complaint to  
Police by  
G.R.D.Appuhamy.

29th May, 1958.

P 9.  
Intld. K.J.  
Magistrate, Kegalla  
15/9Extract from the Information Book of Warakapola.

Date: 29.5.58. Time: 11 p.m. Page: 21 Para. 303.

Complaint of Mischief and robbery.

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G.R. DANIEL APPUHAMY, V.H.No.93, Weragoda Wasama, appeared at station in lorry No.CL 5136 with driver Suwaris and states:- "Today at about 4 p.m. I came to Thalaliadde in Dorawaka Wasama. There I came to know from some people unknown that Dorawaka people are waiting to break Mooka Pillai's boutique tonight. I then informed Mooka Pillai that his boutique will be broke tonight and asked him to remove his goods to Kongoda. He then sent a message to Suwaris to bring his lorry. At about 5.30 p.m. Suwaris came with the lorry. Then Mooka Pillai and his servant loaded the goods into the lorry. When the lorry was about to finish loading a crowd of about 50 people came armed with swords and clubs etc. I can point out all of them. They are well known to me I do not know their names. Only I knew one person. He is Seda of Pillawa. This Seda and four others entered into the boutique. One of them damaged the Radio set. Seda damaged a large acid bottle containing acid. After that he dealt a blow on Mooka Pillai's wife with a club. Then Mooka Pillai, his wife and others rushed into the boutique and ran away from the back door. After that four of them damaged all the articles which were in the boutique. Rest of them removed half of the goods from the lorry. Most of them removed clothes and umbrellas. Other articles were left in the lorry and went away. I warned them not to do this but they did not listen to me. I cannot say the amount of goods they removed. Mooka Pillai requested me to wait until he loaded the goods. This is a provision and textiles boutique. After the crowd left I made search for Mooka Pillai and others who were in the boutique but there is no trace of them. I then closed the door shutters and

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came to the Police Station in the lorry. When Seda dealt a blow on Mooka Pillai's wife she fell down from the chair. I cannot say on which part of the body the blow was alighted. They were smelling of liquor. When the crowd came rest of the boutiques and houses in the vicinity were opened. On seeing the crowd they closed the doors immediately. Sgd. G.R. Daniel Appuhamy (in Sinhalese). Read over and explained and admitted as correct. xxx xxx  
Sgd. PC 3357 Perera.

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I certify that the foregoing is a true copy from the Information Book of Warakapola Police Station.

Sgd/ H.N. Schokman  
O.I.C., Warakapola.  
15.9.'58.

Exhibits

P9

Record of  
Complaint to  
Police by  
G.R.D.Appuhamy.

29th May, 1958  
- continued.

EXHIBIT X1 - TRANSLATION of ENTRY in HEADMAN'S  
DIARY of G.R.D. APPUHAMY

X1

TRANSLATION OF X1

Translation of  
Entry in Head-  
man's Diary of  
G.R.D.Appuhamy.

20 May, 1958, Thursday, 29.

29th May, 1958.

Today at 6 a.m. having left home, went to Warakapola, appeared before the D.R.O. and returned home at about 3 p.m.

Today at about 4 p.m. Perumal Pulle of Kongoda botique informed me as follows at the botique.

I have received information to the effect that people of Dorawaka would come and break my botique and the botique at Talliadde tonight. What shall be done about it.

30 Thereafter at about 5.30 p.m. Perumalle and I having gone there spoke to Mooka Pulle and told him: People of Dorawaka will be breaking your boutique tonight. Therefore remove the goods to Karunasekera's botique at Kongoda. Said Perumal Pulle thereafter.

40 Perumal Pulle having gone and fetched the lorry of Suwaris of Niyadadupola, the goods were loaded into the lorry. Then at about 7 a.m. about 50 people from Dorawaka rushed into botique. Seda and three others. Other people took the goods in the lorry. Know the people. Do not know their names.

Intld. Daniel

Translated by:  
Sgd. A.P. Wijayatilaka  
Interpreter, S.C.

ExhibitsEXHIBIT X2 & X3 - DEPOSITION of R. SUWARIS

X2 &amp; X3

Deposition of  
R. Suwaris.  
27th February,  
1959.  
Examination.

RANAPATIDEVAGE SUWARIS, affirmed, 46 years, Sinhalese, Lorry Driver, residing at Niyadurupola. I have a lorry bearing No. CL 5136 and I am the driver of it. G. Gunapala is the cleaner of the lorry. On 29.5.58. I received a message from the V.H. Weeragoda to bring my lorry to Mukapulle's boutique. I took the lorry to Mukapulle's boutique with Gunapala at about 8.15 p.m. When I went there the Headman and Mukapulle's family members were there. A pressure lamp was burning at the time. This boutique is about 5 or 6 fathoms from the main road. I halted the lorry on the road opposite the boutique. Mukapulle and his assistants loaded the goods into the lorry. I was seated in the driving seat. At that time a crowd of about 15 people came shouting. They were armed with clubs. They shouted who is loading the goods of Tamil man's boutique. The crowd was hostile. I expected trouble and I ran away. Gunapala also ran away. I could not identify any of those people who came shouting. They came from the direction of Dorawaka village. I do not know these accused. I hid myself in the verandah of Wedamahatmaya's boutique. I could hear the shouts and the noise of damaging the boutique. When the shouts stopped I came back and saw articles including a radio thrown out. Cleaner told me that someone took out the goods from the lorry. There was no one in the boutique except the V.H. V.H. suggested us to go to the Police Station. Thereafter I came to the Police Station and made a complaint to the Police.

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Cross-  
examination.

XXD by Mr. Suraweera. One Somapala came and told me that the V.H. wanted the lorry. I did not ask the V.H. whether he would pay the hire. No one present volunteered to pay the hire. I used to work by transporting goods of the proprietor of the boutique.

XXD by others. Nil

RE-XD. Nil.

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Sgd/R.D. Suwaris (in Sinhala) Sgd/V.M.Coomaraswamy  
Magistrate  
27.2.59.

Read over and interpreted to the witness in Open Court in the presence of accused and admitted by the witness to be correct.

Intld. V.M.C. Sgd/Q. Ranaweera  
Magistrate. Interpreter.  
27.2.59.