

22, 1969

IN THE PRIVY COUNCIL

No. 27 of 1968

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

(CRIMINAL JURISDICTION)

B E T W E E N:

RAJAPAKSE PATHIRANAGE DON JAYASENA Appellant

- and -

THE QUEEN Respondent

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

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 MAR 1970
25 RUSSELL SQUARE
LONDON, W.C.1.

A.L. BRYDEN & WILLIAMS
20, Old Queen Street,
London, S.W.1.

HATCHETT JONES & CO.
90, Fenchurch Street,
London, E.C.3.

Solicitors and Agents for Appellant

Solicitors and Agents for
Respondent

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

(CRIMINAL JURISDICTION)

B E T W E E N:

RAJAPAKSE PATHIRANAGE DON JAYASENA Appellant

- and -

THE QUEEN Respondent

I N D E X O F R E F E R E N C E

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT</u>		
1.	(a) Indictment	24th December 1965	1
	(b) Pleas	25th February 1966	
	(c) Verdict	3rd March 1966	
	(d) Sentence	3rd March 1966	
2.	Court Notes - Opening of Trial	25th February 1966	3
	<u>Prosecution Evidence</u>		
3.	Dr. S. Sabaratnam	25th February 1966	5
4.	J.B.M.R. Yapa Bandara	25th and 28th February 1966	14
5.	W.A.Mansoor P.C.1008	1st March 1966	62

(ii)

No.	Description of Document	Date	Page
	<u>Defence Evidence</u>		
6.	R.P.D. Jayasena (Appellant)	1st March 1966	67
7.	Charge to Jury	2nd and 3rd March 1966	114
	<u>IN THE COURT OF CRIMINAL APPEAL</u>		
8.	Notice of Appeal	3rd March 1966	133
9.	Journal Entry of dismissal	13th May 1966	138
	<u>IN THE PRIVY COUNCIL</u>		
10.	Order in Council granting Special Leave to appeal to Her Majesty in Council	22nd March 1968	139

EXHIBIT

MARK	DESCRIPTION	DATE
S.K.7	Sketch plan (with key) (reproduced separately)	8th August 1965

(iii)

LIST OF DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

DESCRIPTION	DATE
<u>IN THE MAGISTRATE'S COURT</u>	
Proceedings	8th August 1965
Prosecution Evidence	1965
Information of Charge to accused	8th August 1965
Statement of Appellant (1st accused)	8th August 1965
Statement of 2nd accused	8th August 1965
Statement of 3rd accused	8th August 1965
Non Summary Form No. 3	8th August 1965
Plaint	16th August 1965
<u>IN THE SUPREME COURT</u>	
<u>Prosecution Evidence</u>	
Dr. R. Jayaratnam	25th February 1966
K.M.G. Menika (Widow)	28th February 1966
K. Kanapathaipillai P.C. 6104	28th February 1966
P.B. Chandrasekera P.S. 4781	28th February 1966
H.M.A. Herath, Police Inspector	28th February 1966
C. Kulasingham P.C. 5487	28th February 1966
S.D.T. Fernando P.C. 3924	28th February 1966
<u>Defence Evidence</u>	
I. Weerasinghe, Clerk of Assize	1st March 1966
K.D. Piyadasa (2nd accused)	1st March 1966

DESCRIPTION	DATE
Court Notes of Verdict and Sentences. <u>IN THE COURT OF CRIMINAL APPEAL</u>	3rd March 1966
Notice of Appeal of 2nd accused	3rd March 1966
Notice of Appeal of 3rd accused	3rd March 1966
EXHIBITS IN THE SUPREME COURT	
P.4 First Information	7th August 1966
P.5 Statement of K.D. Piyadasa	5th August 1965
P.6 Statement of Appellant	5th August 1965
P.7 Statement of Y.M. Dissanayake (3rd Accused)	5th August 1965
P.8 Post Mortem Examination Report	8th August 1965

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

(CRIMINAL JURISDICTION)

B E T W E E N:

RAJAPAKSE PATHIRANAGE DON JAYASENA Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

10

NO. 1

In the
Supreme Court

- (a) INDICTMENT
- (b) PLEAS
- (c) VERDICT
- (d) SENTENCE

No.1

- (a) Indictment
- (b) Pleas
- (c) Verdict
- (d) Sentence

I N D I C T M E N T

S.C.17/65

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

(Criminal Jurisdiction)

20

At a Session of the said Supreme Court in its Criminal Jurisdiction for the Eastern Circuit, to be holden at Batticaloa in the year One thousand nine hundred and Sixty-five.

THE QUEEN

v.

- 1. Rajapakse Pathiranage Don Jayasena
- 2. Kalawilage Don Piyadasa
- 3. Yapa Mudiyanselage Dissanayake

You are indicted at the instance of the Hon.

In the
Supreme Court

Douglas St. Clive Budd Jansze', Q.C.
Her Majesty's Attorney-General, and the charge
against you is:

No.1

- (a) Indictment
- (b) Pleas
- (c) Verdict
- (d) Sentence
- (continued)

That on or about the 7th day of August 1965, at Unit 34, Rajagala Junction, Gonagolla in the division of Batticaloa within the jurisdiction of this Court, you did commit murder by causing the death of Podiappuhamy Konara Herath and that you have thereby committed an offence punishable under Section 296 of the Penal Code.

10

This 24th day of December 1965.

Sgd. A.A. de Silva

Crown Counsel

- (b) Pleas

Thursday, 25th February, 1966

To this Indictment the prisoners (1) Rajapakse Pathiramage Don Jayasena, (2) Kalawilage Don Piyadasa (3) Yapa Mudiyanseelage Dissanayake severally plead not guilty.

Sgd. P. Weerasinghe.

20

Clerk of Assize, S.C. Trincomalee

- (c) Verdict

Thursday the third day of March, One thousand nine hundred and sixty six.

The unanimous verdict of the Jurors sworn to try the matter of accusation in this case is that all the three accused are guilty of murder.

Sgd. Alfred Fernando

Foreman.

- (d) Sentence

Thursday, Third day of March One thousand nine hundred and sixty six.

30

On this Indictment the sentence of the Court, pronounced and published this day, is

3.

that the accused (1) Rajapakse Pathirana Don Jayasena, (2) Kalawilage Don Piyadasa, (3) Yapa Mudiyanseelage Dissanayake be hanged until they be dead.

Sgd. I. Weerasinghe
Clerk of Assize, S.C. Trincomalee

In the
Supreme Court

No.1

(a) Indictment
(b) Pleas
(c) Verdict
(d) Sentence
(continued)

NO.2

COURT NOTES - OPENING
OF TRIAL

No.2

Court Notes of
opening of
trial

25th February
1966

10 S.C. 17/65

M.C. Kalmunsi Case No.
21610

THE QUEEN

vs.

1. Rajapakse Pathirana Don Jayasena
2. Kalawilage Don Piyadasa
3. Yapa Mudiyanseelage Dissanayake

.....

Trial commenced on: February 25, 1966.

Before: The Honourable P.Sri Skanda Rajah,
Puisne Justice.

20 Counsel: J.R.M. Perera, Crown Counsel, for the
Prosecution.

R. Chandrapal, Assigned, for the 1st
accused.

K.C. Kamalanathan instructed by R.
Sampanathan

M.K. Sellarajah, Proctor Assigned, for
2nd and 3rd accused.

Charge: Murder of Podiappuhamy Konara Herath -
Section 296 of the Penal Code.

In the
Supreme Court

No.2

Court Notes of
opening of
trial

25th February
1966
(continued)

Plea: All three accused severally plead not guilty

Court to Accused: You all understand only Sinhala?

Accused: Yes.

Court: All evidence given in any language other than Sinhala will be interpreted to the accused into Sinhala.

(At this stage the Clerk of Assize informed court that one of the defence witnesses is ill and warded in the hospital).

10

Mr. Kamalanathan: That witness has been summoned by the 3rd accused. I might indicate that I will not be needing this witness.

English speaking jury empanelled.

Court to Accused: Tell them that they have the right to object to any juror they do not want to be empanelled.

20

Names of Jurors:

Lansberge Cyril Britto - Challenged by Counsel for 1st accused.

1. S.K. Soundararajan - all three accused have no objection to this juror being empanelled.

2. Beedle Charles Namasivayampillai - No objection.

3. S. Balasubramaniam - no objection.

Kanaganayagam Vyramuttu - challenged by Counsel for 1st accused.

30

4. Pathkunanadan Mylvaganam - no objection.

5. R. Jeganathan - no objection.

6. K. Kunaratnam - no objection.

5.

7. Alfred Fernando - no objection.

FOREMAN: Alfred Fernando

Jurors Nos. 7, 2 and 1 sworn.

Jurors Nos. 3, 4, 5 and 6 affirmed.

1. Crown Counsel: May I with Your Lordship's permission hand over the sketches to the Jury without the key?
2. Court: Have you any objection?
Mr. Chandrapal: No, My lord.
Mr. Kamalanathan: No, My Lord.

In the
Supreme Court

No.2

Court Notes of
Opening of
trial

25th February
1966
(continued)

NO.3

DR. S. SABARATNAM

Dr. SARAVANAMUTTU SABARATNAM: affirmed, 36 years, District Medical Officer, District Hospital, Amparai.

Examination in chief:

3. Q. On the 7th August, 1965, were you the District Medical Officer at the District Hospital, Amparai? A. Yes.
4. Q. And on that day was the deceased Podi Appuhamy Konara Herath admitted to your hospital that morning? A. Yes.
5. Q. At what time? A. 11.40 a.m.
6. Q. At the time of admission was the patient conscious? A. Yes.
7. Q. Was he able to speak? A. Yes.
8. Q. Did you notice any injuries on the man at the time of admission? A. Yes.

Prosecution
Evidence

No.3

Dr.S.Sabarathnam
25th February
1966
Examination

In the
Supreme Court

Prosecution
Evidence

No.3

Dr. S. Sabaratnam

25th February

1966

Examination
(continued)

9. Q. Can you briefly tell us first of all what sort of injuries were they?
A. There were twenty external injuries on the patient of which 18 were incised wounds which could have been caused by a sharp-cutting weapon.
10. Q. And what were the other two?
A. Abrasions most probably caused by a blunt weapon.
11. Q. Could they also have been caused by falling on some rough ground? 10
A. Yes.
12. Q. Did you speak to the deceased man at that time? A. Yes.
13. Q. When you started to give him medical attention? A. Yes.
14. Q. What did you ask him? A. I asked him what had happened to him and he told me he was assaulted.
15. Q. You asked him what had happened to him and how he came by his injuries? A. Yes. 20
16. Q. You asked in Sinhalese? A. Yes.
17. Q. You are able to speak in Sinhala?
A. Yes.
18. Q. Did he give you any reply? A. Yes.
19. Q. What did he say? A. He told me he was assaulted by one Wadu Baas of Unit 34, House No.15. I have noted below as "cut".
20. Q. Tell us what you have noted? A. That 30
he was assaulted by one Wadu Baas, Unit 34 House No. 15, and one Piyasena of Unit 34, House No. 26, and another.
21. (To Court: Q. Piyasena or Piyadasa?
A. I have noted as Piyasena).

Examination in chief contd.

22. Q. Yes? A. And another working with the Baas as Golaya. Then I asked him with

what he was assaulted. Then he told me that Wadu Baas has cut him with a sword and the other two assaulted with KALA KIRINCHA.

23. Q. With a knuckle duster? A. Yes.
24. Q. Did you note down what the patient Herath told you at the time you questioned him? A. Yes.
- 10 25. Q. Did you note down the replies in English? A. I wrote in English.
26. Q. You understood the Sinhalese in which he spoke? A. Yes.
27. Q. What was the condition of the patient in your opinion in view of the injuries you found on him? A. His condition was poor.
28. Q. Very low? A. Yes.
29. Q. And did you send a message to the police at Amparai to have his dying deposition recorded? A. Yes.
- 20 30. (To Court: Q. I suppose, it was not recorded?
A. By the time they came he was dead)

Examination in chief continued.

31. Q. Did you telephone the Amparai Police Station at 12.10 p.m. on the 7th of August? A. Yes.
32. Q. At what time did the person come to record the dying deposition?
A. I did not make a note of the time.
- 30 33. Q. He came much later? A. After I sent the message to the police station; I do not know at what time they came. It is only after that I despatched him. Later the Unofficial Magistrate came.

In the
Supreme Court

Prosecution
Evidence

No.3

Dr.S.Sabaratnam

25th February
1966

Examination
(continued)

In the
Supreme Court

Prosecution
Evidence

No.3

Dr. S.Sabaratnam

25th February
1966

Examination
(continued)

34. Q. You say in response to your telephone message a police officer came to the hospital? A. Yes.
35. Q. Is that P.S.4781 Chandrasekera? A. Yes.
36. Q. At the time the Police Sergeant came was the patient able to talk? A. Yes.
37. Q. And did the Police Sergeant at your request question the man in your presence? A. Yes.
38. Q. Were you present when the patient spoke to the Sergeant and told him what had happened to him ? A. Yes. 10
39. Q. You said you had found altogether 20 external injuries, 18 of which were incised? A. Yes.
40. Q. Can you briefly tell us in what parts of the body you found those injuries?
A. On the right side of the head there were two incised wounds, on the right side of the back of head two incised wounds, on the right upper arm there was one stab wound, right forearm there was one wound. 20
41. Q. When you say stab wound, it is inflicted with a pointed weapon? A. Depth is more than the breadth.
42. Q. And an incised wound you referred to as a cut? A. Yes. On the right hand five incised wounds, on the left forearm one, left hand three wounds, on the right shoulder there was one incised wound, and there were two abrasions on the back of chest, left upper arm there was one incised wound and another wound on the back of chest which appeared to be a stab. 30
43. Q. Did you arrange for this patient to be transferred to any other hospital?
A. Yes, to the Batticaloa hospital.
44. Q. And was he eventually despatched to the Batticaloa hospital by ambulance?
A. Yes. 40

45. Q. At what time? A. 1.10 p.m. on the same day.

46. Q. Thereafter you did not see the patient again? A. No.

In the
Supreme Court

Prosecution
Evidence

No.3

Cross-examined by Counsel for 1st accused: Nil.

Dr.S.Sabaratnam

Cross-examined by Counsel for 2nd and 3rd accused:

25th February
1966

Examination
(continued)

10

47. Q. Who is the person who generally admits these cases to hospital? A. The Apothecary on duty.

No Cross
examination
(for Appellant)
Cross-
examination (for
2nd and 3rd
accused)

48. Q. I take it, in this case also the Apothecary must have admitted the injured person? A. Yes.

49. Q. Would it also be correct to say that if somebody takes an injured person to a hospital and gets him admitted the Apothecary enters up the history of the case? A. Not in all cases.

20

50. Q. But generally it is done? A. He will write the history and say, D.M.O. to see, and then admits. Unless he is bad he will order some treatment.

51. Q. Would it be correct to say that on the day that this injured was brought to the hospital there were a number of other persons who came along with him? A. I saw some crowd.

30

52. (To Court: Q. Whether they brought him or not you cannot say? A. I was in the O.P.D. When I saw him there were a number of people in the ward).

Cross-examination by Counsel for 2nd and 3rd accused continued.

53. Q. Nobody in the crowd told you, apart from what the injured told you, anything as to how this happened? A. I did not ask them.

In the
Supreme Court

Prosecution
Evidence

No.3

Dr.S.Sabaratnam

25th February
1966

Cross-
examination
(for 2nd and
3rd accused)
(continued)

54. (To Court: Q. Only the Magistrate will address the crowd?
A. Even if they said we wont take it down.

55. Q. It is not a part of your function? A. Yes).

Cross-examination by Counsel for 2nd and 3rd accused continued

56. Q.You spoke of three head injuries?
A. Yes. 10

57. Q.Injury No. 1 was an incised wound 2½" long and half an inch deep on the right side of head starting half an inch behind upper end of the right forehead?
A. Yes.

58. Q.And injury No. 2 is also another incised wound on the right side of head starting 1" behind the posterior end of injury No. 1? A. Yes.

59. Q.Would you exclude the possibility of those two injuries having been inflicted from behind? 20

Court: They are on the right side and a right handed man would have naturally hit from behind. A person hitting me from behind would hit me on the right.

Mr. Kamalanathan: Except this, that considering the direction of the wound, Your Lordship sees, the first wound was directed horizontally backwards. 30

Court: Backwards means, the direction is here (shown) When you cut like this, (shown) the direction is backwards.

Mr. Kamalanathan: The first was directed horizontally backwards.

Court: Ask one by one.

Cross-examination by Mr. Kamalanathan continued

60. Q. The first wound was directed horizontally backwards 4 inches above the right ear. Would you say that that injury was caused from the front and not from the rear? 40

A. If the assailant is a right handed person the injury is likely to be caused from behind.

In the
Supreme Court

61. (To Court: Q. Similarly incised wound No. 2? A. Yes).

Prosecution
Evidence

Cross-examination by Mr. Kamalanathan continued.

No.3

Dr.S.Sabaratnam

10

62. Q. Would you concede this, that having regard to the nature of the head injuries, the injured must have bled profusely as soon as he received those injuries? A. There must have been a certain amount of bleeding.

25th February
1966

Cross-
examination
(for 2nd and
3rd accused)
(continued)

63. (To Court: Q. Does the head bleed profusely? A. Yes, compared to the other parts of the body).

Cross-examination by Mr. Kamalanathan continued.

20

64. Q. You would concede that any form of head injury bleeds more than an injury on any other part of the body? A. Except the genitalia, lips.

65. Q. Head injuries generally they bleed quite a lot? A. Yes, compared to the skin of the body.

30

66. (To Court: Q. I suppose, it is because the scalp is thicker than the skin? A. The blood supplied to the scalp is richer than the blood supplied to the skin).

Cross-examination by Mr. Kamalanathan continued.

67. Q. It would be correct that when you questioned the deceased he did not speak to any attack by either the second or third accused with knives? A. He did not tell me.

40

Re-examined: Nil.
To Foreman: Nil.

No re-
examination

In the
Supreme Court

Court: Call the last witness.

.....

Prosecution
Evidence

DR. S. SABARATNAM: re-affirmed

No.3

69. (To Court: Q. What was his condition when he was admitted?
A. His condition was very poor and he was in a state of shock.

Dr.S.Sabaratnam
25th February
1966

Examination
by Court

70. Q. Was he conscious?
A. He was conscious and able to speak. 10

71. Q. But still in a state of shock?
A. Yes.

72. Q. Did you commence treatment before you spoke to him?
A. Yes.

73. Q. What was the treatment that you gave? A. I gave saline, intravenous drips.

74. Q. And when you questioned him in Sinhala he was able to speak continuously? A. Now and then he complained of pain and paused for a while. 20

75. Q. What is shock? A. Shock is a state of collapse of the blood circulation.

76. Q. The state of collapse in the blood circulation, how does it affect the patient's mental qualities? A. Lack of blood supplied to the brain also. 30

77. Q. Then? A. If no treatment is given to combat the blood lost the brain may go into irreversible action in which there will be a change from which he cannot recover).

To Crown Counsel:

78. Q. Did you question the patient after you gave him saline treatment?

A. Yes.

79. Q. And his condition slightly improved as a result of your treatment? A. Yes.

To Mr. Kamalanathan:

80. Q. After you gave saline you said his condition improved and he was in a fit condition to speak? A. Yes.

81. Q. After you gave him saline the patient was in quite a fit condition to answer your questions? A. Yes.

82. (To Court: Q. What do you mean by in a quite fit condition?

A. He was able to answer my questions I put to him.

83. Q. How do you know that he was quite fit; he had improved?

A. I can only say he had improved).

To Mr. Kamalanathan continued.

84. Q. Did he give you any indication that he was unable to follow your questions?

A. No, he only complained of pain now and then when I started speaking.

To Foreman: Nil.

.....

In the
Supreme Court

Prosecution
Evidence

No.3

Dr.S.Sabaratnam

25th February
1966

To Crown Counsel

To Defence
Counsel

To Court

To Defence
Counsel

10

20

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

J.B.M.R. YAPA BANDARA

YAPA BANDARANAYAKA MUDIYANSELAGE RANASINGHE
YAPA BANDARA: Affirmed, 29 years, Cultivator,
Bakiella, Amparai.

Examination in chief

220. Q. Were you cultivating any place called
Henyaya? A. Yes.
221. Q. That is near the 17th mile post?
A. Yes. 10
222. Q. For how long prior to August 1965
had you been cultivating in that area,
in Henyaya? A. For about 3 years.
223. Q. What were you cultivating?
A. Paddy, manioc and other catch
crops.
224. Q. Did you know the deceased Podi
Appuhamy Konara Herath?
A. I do not know him.
225. (To Court: Q. You do not know him?
A. No. 20
226. Q. Before this incident?
A. I do not know him.
227. Q. You do not know him at all?
A. No.
228. Q. You had not seen him even?
A. No, there is a boutique
belonging to a brother of
his. I used to go there
and I do not know who and who 30
they are.
229. Q. But you knew the brother?
A. It is true he has a brother
called Marasinghe and I go to
his boutique.

230. Q. How do you know that this man was Marasinghe's brother?
A. After this incident I came to know).

In the
Supreme Court
Prosecution
Evidence

Court: I must warn you, if you do not speak the truth there will be trouble.

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

Examination in chief continued.

- 10 231. Q. Did you know Marasinghe mudalali?
A. Yes.
232. Q. For how long prior to August, 1965 had you known Marasinghe Mudalali?
A. During those three years I had dealings in his boutique.
233. Q. Did Marasinghe Mudalali have a boutique? A. Yes.
234. Q. What did he deal in that boutique?
A. On one side there is textiles and on one side there is a barber saloon and on other side there is a tea kiosk.
- 20 235. Q. Do you know Wilson's boutique?
A. I know it.
236. Q. How far away from Wilson's boutique is Marasinghe's boutique?
A. about 2½ miles.
237. Q. Did you know the first accused in this case prior to the date of this incident? A. Yes.
238. Q. What is his name? A. Jayasena.
- 30 239. Q. Is he also known by any other name?
A. He is also called Baas Unnahe.
240. Q. For how long had you known the first accused, Baas Unnahe?
A. I have no association with him, but I know him.
241. Q. I did not ask you about your association I asked you for how long you had known Baas Unnahe? A. For about three years I knew him.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

242. Q. What was his occupation?
A. He is a carpenter.
243. Q. Did he have a carpentry shed? A. Yes.
244. Q. Roughly how far from Wilson's boutique was the first accused's carpentry shed?
A. A short distance away.
245. Q. Was that on the same road as Wilson's boutique, this carpentry shed or on the other road? A. On the Uhana tarred road. 10
246. Q. First accused's carpentry shed is on this Uhana road? A. Yes.
247. Q. And the Uhana road crosses the Navagiriyaru road. There is a road going by the channel? A. Yes.
248. Q. And this Uhana road crosses that road which runs alongside the channel at a junction? A. Yes.
249. Q. Near Wilson's boutique there is a junction? A. Yes. 20
250. (To Court: Q. Is Wilson's boutique also on the same Uhana road or on the other road? A. It is between the road to Navagiriyaru and Uhana road.
251. Q. Which does it face?
A. It is facing the tarred road. The Uhana road runs by the side of the boutique).

Examination in chief continued.

30

252. Q. Do you know the second accused in this case? A. I do not know him.
253. (To Court: Q. (Let the 2nd accused stand up). Do you know him?
A. I have not seen him.
254. Q. When did you not see him?
A. Prior to this incident I had not seen him.

255. Q. On the day of the fight did you see him? A. It was on the day of the fight I saw him. In the Supreme Court
256. Q. What is he with respect to the first accused? A. He is called pupil or Golaya. Prosecution Evidence
257. Q. You had known that fact before the incident? A. It was after the fight at the boutique that I came to know.) No.4
Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

10

Examination in chief continued.

20

258. Q. Today you know that he is the Golaya? A. Yes.
259. Q. Did you know that at the time of the incident that he was working in the first accused's carpentry shed as Golaya? A. It was after this incident that I came to know of that. Prior to that I did not know him.
260. Q. Do you know the third accused? A. I know him.
261. Q. What is his name? A. Dissanayaka.
262. Q. Which house did he live in at the time of this incident, what is the number of the house? A. House No. 26.
263. Q. Is Dissanayaka known by any particular name in that area to identify him? A. I know that his name is Dissanayaka.
264. (To Court: Q. Do you refer to the house also if you speak about him? A. No.
265. Q. Dissanayaka of No. 26? A. Although he is called Dissanayake of No. 26 I have not been to their house.
266. Q. So you knew him as Dissanayaka of No. 26 A. Yes. That was also after this incident).

30

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

Examination in chief:

267. Q. Who has been giving you all this information after the naduwa?
A. People talk here and there and through those talks I gathered.
268. Q. Where are you living now?
A. At Henyaya.
269. Q. Roughly how long prior to this incident did you know the third accused as Dissanayaka? A. I do not know him so much. I came to know details in regard to him after this incident. 10
270. (To Court: Q. But you had known him as Dissanayaka before this incident? A. Yes.

Examination in chief continued.

271. Q. How far from this Wilson's boutique is your field at Henyaya? A. $2\frac{3}{4}$ miles away.
272. Q. And you frequently come to that boutique to buy your requirements? 20
A. There is a boutique close by, boutique No. 11 in Unit 36.
273. Q. People who are cultivators in this area generally walk along and go to the boutiques in that area?
A. People go.
274. (To Court: Q. Did you go to boutiques there walking? 30
A. Yes, when I come for buses I go to these boutiques there.
275. Q. Do you go to Wilson's boutique?
A. Yes.

Examination in chief continued

276. Q. On the 7th of August 1965 did you go to Wilson's boutique? A. Yes.

277. Q. At what time did you go there that morning? A. About 10.15 when I went to that boutique.

278. Q. Did you buy anything from Wilson's boutique? A. I had a cup of tea there.

279. Q. When you were having a cup of tea in Wilson's boutique did anybody come to Wilson's boutique? A. One person came.

280. Q. That is your answer?

10 Court: And he also said, second accused.
A. One person came when I was having tea.

281. Q. Who was at the boutique when you went and had a cup of tea there?
A. The owner of the boutique was there.

282. Q. What is his name? A. Wilson.

283. Q. Who else was in the boutique?
A. There was no one else. When I was finishing my tea the second accused entered.

20 284. Q. You know the deceased Herath? A. Yes.

285. Q. That is Marasinghe's brother?
A. It was after this incident that I came to know his name.

286. (To Court: Q. Did he come there?
A. He came in a car. He came in a car and halted the car in the compound.

287. Q. That is the car which he normally drives? A. Yes.

30 288. Q. Did the deceased park his car in front of the boutique? A. In the (midula) compound of the boutique.

289. Q. Is the midula in front of the boutique? A. Yes.

290. Q. In front of the boutique?
A. He stopped the car in front of the boutique and he came into the boutique.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

291. Q. And you were in the boutique at the time? A. Yes.
292. Q. And who is the one who came first, the deceased or second accused? A. Second accused came first.
293. Q. How long after the second accused came did the deceased come? A. According to my recollection about fifteen minutes after).

10

Examination in chief continued.

294. Q. Was the second accused in the boutique all the time before the deceased came? A. Yes.
295. Q. Did you talk to him? A. No.
296. Q. What was he doing in the boutique? A. He was smoking a beedi.
297. Q. When the deceased stopped his car in front of the boutique and came into the boutique did the deceased purchase anything from the boutique? A. He bought a cigarette. 20
298. Q. From whom? A. From Wilson.
299. Q. Did he light it? A. Yes.
300. Q. When the deceased lit the cigarette what happened? A. He tendered a Rs.5/- note to Wilson.
301. Q. Then what happened? A. When the Rs. 5/- note was tendered Wilson said that he had no change. 30
302. Q. Then what happened? A. Having lit the cigarette he turned in the direction of the road.
303. Q. Then what happened? A. When he turned he observed the presence of the second accused.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

10

304. Q. Where was the second accused at that time? A. At that time he was leaning against the post smoking the beedi.

305. Q. Did the deceased say anything at that time? A. Yes.

306. Q. What did he say? A. He asked, "brother, I heard that you people have got ready to stab me, is that true?"

307. Q. Did the second accused say anything? A. Yes.

308. Q. What did he say? A. He patted the driver (deceased) and said "who told that lie to you. 'kowde boruwe kiwe".

309. Q. Then? A. Then the first accused and the third accused came.

310. Q. Where did they come to? A. Came in front of the boutique.

311. Q. That is to the compound? A. Yes.

20

312. Q. Then what happened? A. Then the second accused called the basunnah and said that a falsehood has been said to the driver that he would be stabbed.

313. Q. That is the second accused told that to the first accused? A. Yes.

314. Q. Did the first accused say anything? A. He said "why can't this fellow be stabbed! stab him."

30

315. Q. To whom were these words referred to? A. He told these words to the second accused.

316. Q. Then? A. Then he put his hand underneath his shirt which he was wearing over his sarong and pulled out a knife and held him in an embraced position (demonstrates) and stabbed the deceased.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

317. Q. Where did he stab him? A. On the back of the chest.
318. Q. What did the deceased do? A. Having received the blow the deceased stepped out.
319. Q. Then? A. Before he could go the other accused obstructed him.
320. Q. Who are the other accused?
A. They are the first and 3rd accused.
321. Q. Then what happened? A. Then the first accused carried a weapon like a sword (it was about this length - witness shows the length of his arm). 10
322. Q. Then? A. Then the driver did not go forward. He turned.
323. Q. Then? A. He turned and when he was going the first accused dealt a blow on his head.
324. Q. With what? A. With a sword on his head.
325. Q. Then? A. Then the second accused stabbed him again with that weapon he had. 20
326. Q. Then? A. The third accused also went behind. The deceased was stabbed and cut and he was put down.
327. Q. We want all the details that you can remember because that is very important at the stage when you said the deceased set out in the direction of the boutique you said there was an obstruction? A. Yes. 30
328. Q. And you say as the deceased turned, the first accused cut him on his head?
A. Yes.
329. Q. And did you see the 3rd accused also doing anything? A. Yes.
330. Q. What did you see him doing?
A. He had a weapon in his hand.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

331. Q. What sort of weapon? A. It was a pointed weapon.
332. Q. What did he do with that?
A. He also stabbed the deceased. All three got together and attacked the deceased.
333. Q. And what did the deceased do when he was being attacked like that? A. The deceased ran shouting.
- 10 334. Q. In which direction did he run?
A. He ran along the bund.
335. Q. In fact he ran along the road on the top of the bund? A. He ran along the wewapara.
336. Q. And these three persons and he ran along that bund? A. Yes.
337. Q. And the three of them attacked him?
A. Yes, then the deceased fell down.
- 20 338. Q. Then? A. After he fell down also another blow was dealt on the head.
339. Q. Before that blow was dealt were any words uttered by anyone? A. Yes.
"He is not dead, cut him."
340. Q. Who said that? A. Dissanayake the 3rd accused.
341. Q. When he said these words you said the first and second accused cut him?
A. Yes.
- 30 342. Q. Then what happened?
A. "This fellow is not dead, cut this fellow".
343. Q. Who said that? A. Dissanayake.
344. Q. Then? A. The first accused cut him.
345. Q. What happened to the deceased then?
A. The deceased rolled on another spot.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

346. Q. What happened then? A. Thereafter they chased after him. Then I got into a bus and saved my life.
347. Q. So there was a bus on the road at that time? A. The time was 10.30 and a bus came that way.
348. Q. So there was the 10.30 bus at that time when you came to that boutique that morning? A. Yes.
349. Q. Where did you go on this bus? A. I went to Amparai. 10
350. Q. Why did you go there? A. I went to see that land.
351. Q. Did you go and see that land? A. No.
352. Q. Why? A. Because of this disturbance I could not do anything.
353. Q. Then what did you do? A. Then the bus went away and I got on to another vehicle and came to Gonagalla.
354. Q. Then? A. I told Marasinghe that Marasinghe's brother had been cut and he is lying fallen. 20
355. Q. Then? A. At that time Marasinghe had been taken into custody by the Amparai Police.
356. Q. Did you get hold of a vehicle witness? A. Yes.
357. Q. And from there did you return to the place where Herath was, at any stage? A. Having got into a vehicle I went to Gonagala. 30
358. (Court: Q. So did you come back to the scene? A. I did not come back).

Examination continued.

359. Q. Do you know who took the deceased to hospital? A. I know.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

360. Q. Who took him? A. Some of his relations removed him to hospital.

361. Q. Did you also go to hospital? A. Yes.

362. Q. Did you also accompany the deceased in a car when he was taken to Amparai hospital? A. Yes.

363. Q. And was he admitted to Amparai hospital? A. I do not know whether he was admitted but the police came in search of me.

10

364. Q. All the details will be elicited by the defence counsel; for the present we want some essential evidence; so the injured man was taken to the Amparaia hospital and was he admitted there? A. Yes.

365. Q. Did you make a statement to the police on the same day that afternoon? A. Yes.

366. Q. Did you point out to the police the place where you saw the attack on the deceased by these three accused? A. Yes.

20

367. Crown Counsel: That is the spot marked D in the sketch. And did you point out the place where the deceased went and fell down? A. Yes.

368. Q. You said you remember the deceased's car was parked in front of that boutique? A. Yes.

369. Q. And after the three accused came and attacked the deceased what happened to the car? A. The car was pushed.

30

370. Q. Who pushed? A. The three accused got together and pushed the car.

371. Q. Who directed the car? A. The second accused was directing it.

372. (Court: Q. Where was he? A. The second accused was in the driving seat).

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Examination
(continued)

373. Q. Did you see the second accused get into the driving seat? A. Yes.

374. (Court: Q. And the other two? A. And the other two assisted by one other person pushed the car).

Examination continued.

375. Q. In which direction did they push the car?
A. The car was pushed and halted in front of the carpentry shed of the first accused.

10

376. Q. After the first and second accused pushed this car near the carpentry shed what did they do? A. Having left the car there, they came to the junction.

377. Q. Then? A. Then he took the sword and brandishing the sword at the people who were there said "the same fate will also come to you and cut with the sword on the tarred road and then licked the blood that was on the sword and went away.

20

378. Q. In which direction were they going?
A. They went in the direction of Maha Oya, that is all the three accused.

379. Q. That is, is it that they went in the opposite direction to Uhana?
A. They went up.

380. (Court: Q. Not in the direction of Uhana?
A. They went in the opposite direction).

Examination continued.

30

381. Q. Did you point out to the police the place where he cut the road? A. Yes. He cut the road that is across the bridge.

Court adjourns for the day

February 28, 1966

9.15 a.m.

In the
Supreme Court

Trial resumed. Appearances as before. All three accused present.

Prosecution Evidence

YAPA BANDARANAYAKE MUDIYANSALAGE RANASINGHS
YAPA BANDARA: Re-affirmed.

No.4

382. Court to Crown Counsel: Have you any more questions to ask him?

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

Crown Counsel: No, My Lord.

Cross-examination by Mr. Chandrapal:

Cross-examination
(for Appellant)

10 383. Q. You did not know the deceased Podi Appuhamy Konar Herath prior to this incident? A. No.

384. Q. In fact, the deceased was a person whom you did not know at all? A. I did not know him.

20 385. Q. I suggest to you that you are taking up this position before His Lordship because you want to create the impression that you are an independent and impartial witness?

386. Court to Witness:

Q. The Defence suggests that you say you did not know the deceased in order to show that you are an impartial witness? A. Yes.

387. Q. Then you knew him before that? A. No. It was only after the fight that I came to know him.

30 388. Q. If that is so, then your answer to the question should have been in the negative? A. I said so because I did not know him. It was only after the incident that I came to know him.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

389. Q. The suggestion made by Counsel is that you know him but that you are now giving false evidence by saying that you did not know him? A. I came to know him only after the incident.

Cross-examination continued.

390. Q. You remember that you gave evidence at the Magisterial inquiry? A. Yes.

391. Q. After you gave evidence, your evidence would have been read over and explained to you and you would have signed it?

10

Court to witness:

392. You gave evidence at the spot? A. Yes.

393. Q. You signed your evidence? A. Yes.

394. Q. Was it read over and explained before you signed it? A. It was not explained to me. I was asked only to sign it.

Cross-examination continued.

395. Q. At the Magisterial inquiry, all questions asked of you were interpreted to you into Sinhalese?

20

Court to witness:

396. Q. At the Magistrate's inquiry, the questions were put to you in Sinhalese as they are being done now? A. I cannot remember that.

397. Q. If you had been questioned in English, you would not have understood what was being said? A. That is so.

30

Cross-examination continued.

398. Q. The questions were interpreted into Sinhalese?

Court to witness:

399. Q. The Inspector or the Police Officer who led evidence, would have questioned you in Sinhalese? A. Yes.

400. Q. And you answered in Sinhalese? A. Yes.

Cross-examination continued.

401. Q. You understood the questions well?
A. Yes.

10

Court to Mr. Chandrapal: That is not what the law requires. The law requires that the statement must be read and explained before it is signed.

Cross-examination continued.

402. Q. Did you say this at the Magisterial inquiry. (Top page 4, the first line, My Lord). "I know the deceased, Podi Appuhamy Konar Herath. I have known him....."

20

Court to Mr. Chandrapal: So many questions. In most of the courts things are not done properly. Ask him one question at a time.

Cross-examination continued.

403. Q. Did you say this to the Magistrate: "I have known the deceased, Podi Appuhamy Konar Herath"?
A. No. I came to know him only after the incident.

30

Court to witness:

404. Q. You said that? A. Yes.

Cross-examination continued.

405. Q. Did you say: "I have known him for 5 or 6 years? A. No. I did not say so.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

Cross-
examination
(for
Appellant)
(continued)

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

Court to witness:

406. Q. For how long have you been in that area?
A. I came to Gal Oya about 5 years ago.

407. Q. Is that five years from now?
A. Yes. At first I lived in Amparai.

408. Q. Where did you live in Amparai?
A. In Tissapura.

409. Q. For how long? A. For four years and
a few months.

410. Q. Now where do you live? A. In
Suduvechchitalawa, in Bakiella.

10

Cross-examination continued.

Defence Counsel: My Lord, I mark that passage
1D1. It is at top page 4 the first
two lines of the evidence in chief of
this witness.

411. Q. Marasinghe, the brother of the deceased
is a person well known to you? A. Yes.

412. Q. In fact, you have visited him on a
number of occasions prior to this
incident? A. I have gone to his
boutique.

20

413. Q. It is in the boutique that Marasinghe
resides? A. Yes.

Court to Witness:

414. Q. Why did you go to the boutique?
A. To drink tea and purchase goods.
There are textiles there, and I go to
buy clothes. I also go to have my
hair cut. There are three boutiques
there.

30

415. Q. Did you go to his house to pay social
visits? A. No.

Cross-examination continued

416. Q. Maharasinghe resides in Gonnagolla
which is about 2½ miles from Bakiella?
A. Yes.

Court to witness:

417. Q. How far away is Amparai from Gonnagolla? A. about 13 miles.
418. Q. Where did this incident take place? A. At Bakiella which is near the 15th mile post.
419. Q. Is Gonnagolla between Amparai and Kalmunai. A. It is on the other road, the road to Badulla. On the Maha Oya road, there is Uhana, Gonnagolla and Bakiella.

10

Cross-examination continued.

420. Q. At the time of this incident you were residing at Bakkiella? A. Yes. Near the 17th mile post.
421. Q. On the day of the incident, you visited Marasinghe's boutique before you went to the Amparai hospital? A. Yes.
422. Q. You have already told His Lordship that you informed Marasinghe about this incident? A. Yes.

20

Court to witness:

423. Q. What did you tell him? A. I said: "Marasinghe Mudalali your brother has been cut and stabbed and put down".
424. Q. Is that all that you told him? A. Yes.

Cross-examination continued.

425. Q. After you spoke to Marasinghe, on the same day the police came and took Marasinghe into custody? A. Yes.
426. Q. Why was Marasinghe taken into custody?

30

Court to Mr. Chandrapal: You must ask the police that.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

Cross-examination continued

Witness: I do not know why Marasinghe was taken into custody.

427. Q. How far is Wilson's boutique from where you live? A. About $2\frac{1}{2}$ miles away.

428. Q. Why did you go to Amparai on the day of the incident? A. I have been given an allotment of land by the Gal Oya Board and I was staying there previously. I went to see that land. 10

429. Q. At what time did you leave your house on that day? A. At 9.45 a.m.

Court to witness:

430. Q. This incident took place at Bakiella? A. Yes.

431. Q. How far is Marasinghe's boutique from Bakiella? A. About $2\frac{1}{2}$ miles.

Witness: The distance between the place where this incident took place and to the place where I live is $2\frac{1}{4}$ miles. 20

Court to witness:

432. Q. That is Marasinghe's boutique is in one direction and your house is in another direction? A. Yes.

Cross-examination continued

433. Q. You live about $2\frac{1}{2}$ miles from Wilson's boutique? A. Yes.

434. Q. The bus to Amparai does not pass your house? A. There are buses only up to Bakiella. They do not come on our road. 30

435. Q. Wilson is a person known to you for quite a long time? A. No. I came to know him only after I began going to his boutique.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

436. Q. You have been to this boutique on a number of occasions? A. Yes.
437. Q. As a result, you know Wilson quite well? A. When one is a mudalali, one comes to know that person.
438. Q. Wilson's boutique is situated at a central spot? A. It is situated at a spot where four roads meet.
- 10 439. Q. It is called the depot boutique because the buses halt there? A. Yes.
440. Q. Wilson's boutique is a common meeting place? A. When it is a boutique, people patronise it.
441. Q. Do you go to meet Marasinghe in that boutique? A. No.
442. Q. Do you meet Podisingho Herath there? A. No.
443. Q. You meet the deceased at the boutique? A. No.
- 20 444. Q. Do you know Podisingho? A. No.
445. Q. On the day in question, you went to Wilson's boutique is it? A. Because the bus was getting late to come, I went to the boutique for a cup of tea.
446. Q. At the time you were in Wilson's boutique having a cup of tea, the second accused came there? A. Yes.
- 30 447. Q. Before entering Wilson's boutique, did you see the car No. EY 3670? A. While I was having my tea in the boutique, this car came and halted there.
448. Q. Your position is that after the second accused came to the boutique, the deceased came there? A. Yes.
449. Q. The car came along the wewa road? A. Yes. It came from the left hand side of the boutique and stopped. (witness demonstrates).

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

450. Q. You were in the boutique? A. Yes.

Court to Witness:

451. Q. From which direction did the car come?

A. It came along the lake road and stopped near the boutique. It turned on to the main road and stopped in front of the boutique. It is not possible for the car to come to the boutique without getting on to the tarred road.

10

Cross-examination continued

452. Q. Who came first to the boutique? Did the deceased come first or did the second accused come first?

A. The second accused came first.

453. Q. Did you say this at the Magisterial inquiry? (Top page 5, 5 lines from the top, My Lord): "He came along the wewa road" that is the deceased?

A. Yes.

20

454. Q. "The deceased came to Wilson's boutique and lit a cigarette"?

A. Having halted the car, he came to the boutique and lit a cigarette.

455. Q. "Then the second accused came to the post of this boutique"? A. The second accused having come earlier, lit a beedi and he was inside the boutique smoking it. He was leaning against a pillar. (Witness demonstrates). He was smoking the beedi leaning against a post.

30

456. Q. You are stating now for the first time that the second accused came and lit a beedi? A. No. The second accused came earlier. Thereafter, the driver of the car came and bought a cigarette.

457. Q. Your position at the Magisterial inquiry..

Crown Counsel: May I know, My Lord, whether that passage is being marked?

40

Mr. Chandrapal: I will mark it, My Lord.

In the
Supreme Court

Cross-examination continued.

Prosecution
Evidence

458. Q. Did you say this at the Magisterial inquiry? "The deceased came to Wilson's boutique and lit a cigarette"?
A. I did not say so.

No.4

Court to witness:

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

459. Q. The deceased came and lit a cigarette?
A. He came in the car and then having come to the boutique, he lit a cigarette.

10

Cross-examination continued.

460. Q. Then the second accused came to the post of the boutique? A. Yes.

Court to witness:

461. Q. Did you say this: "After the deceased came and lit a cigarette, the second accused came to the post of the boutique"?
A. Yes.

20

Cross-examination continued.

462. Q. I mark that passage 1D2, My Lord. And thereafter, according to you, the second accused embraced the deceased?

Court: Is that correct, Mr. Chandrapal?

Cross-examination continued.

463. Q. Thereafter what happened? A. Then the second accused and the deceased spoke to each other.

30

464. Q. You have told His Lordship what that conversation between the deceased and the second accused was? A. Yes.

465. Q. At that stage, the first and third accused came to Wilson's boutique?
A. Yes.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

466. Q. In describing the stabbing, by the second accused, you have told His Lordship that the second accused, embraced the deceased, held him round and stabbed?

Crown Counsel: That is not the evidence of this witness, My Lord. He said that he held his hand out and stabbed. He did not say, he embraced him.

Court to Witness:

10

467. Q. What did the second accused do immediately before the stabbing?
A. When the deceased stepped out, the second accused stretched out his left hand in front of him.

Cross-examination continued.

468. Q. Then what did he do with his hand?
A. He stretched out his hand and prevented the deceased from going, and stabbed with the other hand. (Witness uses the word "rakka").

20

Court to witness: Get down from the box and demonstrate on the peon how the accused was stabbed. Imagine that you are the second accused.

Witness: When the deceased was about to go out, the two persons in front said "Stab". Then the second accused raised his shirt pulled out a knife, put his left hand out and prevented the deceased from going. He then stabbed the deceased on the back with the knife in his right hand (witness demonstrates).

30

Cross-examination continued

469. Q. This is the first time that you are saying that the second accused prevented him from going, and then stabbed?

Court: The other day also he said that, only at that time it was interpreted wrongly as "embraced".

40

Cross-examination continued

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

470. Q. At the magisterial inquiry you did not say that the second accused put out his hand in front and then stabbed the deceased?

Court to witness:

10

471. Q. You did not mention at the magisterial inquiry about the left hand being put in front of the deceased? A. I demonstrated the way in which he was stabbed. The left hand was put in front to prevent him from going forward and he was stabbed from behind.

Cross-examination continued

472) Q. I suggest it to you that you did not
473) demonstrate at the magisterial inquiry the manner in which the deceased was stabbed? A. I demonstrated.

20

474. Q. If you did so, it would have been recorded?

Court: Mr. Chandrapal, we know how those notes are made. I have come across cases where the son was referred to as the husband, and various things like that.

Cross-examination continued.

475. Q. Did the deceased run to the compound of Wilson's boutique and get on to the Maha Oya road?

30

Court: So many questions, Mr. Chandrapal. Why do you not put one question at a time?

Cross-examination continued.

476. Q. Did the deceased run to Wilson's boutique compound? A. He was stabbed in the boutique. Then he came out to go to his car but because the first and third accused were there, he could not go. The first and third accused had weapons in their hands. The first accused then cut the deceased with the sword and the deceased turned.

40

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

477. Q. Then the second accused stabbed him again? A. Yes.

478. Q. Did you say this at the Magisterial inquiry (Top page 5 towards the middle, My Lord). "The first accused cut the deceased with a sword on the head"?

Court: You are reading part of a sentence, Mr. Chandrapal. Even the earlier part will be relevant in the context. You must not read out of context. 10

Cross-examination continued

479. Q. Did the deceased come out of the boutique? A. Yes.

480. Q. And was walking away? A. Yes.

481. Q. Then the first and third accused rushed towards him? A. Having received the stab injury, he went forwards out of the boutique. Then he was confronted by the first and third accused. He turned and the first accused cut him with the sword. He then went to the Wewa road. All three accused went after him, attacking him with the weapons. 20

482: (Court: Q. You have already admitted that you said in the lower court that 'then the deceased got out of the boutique'. A. Yes.

483. Q. "And was walking away"? A. Yes. 30

484. Q. "When the first and third accused rushed towards him"? A. Yes).

Cross-examination continued

485. Q. And did you further say "Then the deceased tried to avoid them"? A. Yes.

486. Q. "And turned back to go along the wewapara"? A. Yes.

487. Q. "Then the first accused cut the deceased on his head"? A. Yes.

In the
Supreme Court

488. Q. "Then the third accused stabbed the deceased with a pointed weapon"?
A. Yes.

Prosecution
Evidence

No.4

Mr. Chandrapal: I will mark it 1D3.

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

10 489. Q. And did you further say "And he was chased by the three accused"? A. One was cutting and the other two were stabbing and the deceased was running.

490. Q. At a certain stage, after the deceased fell down, the first accused kicked the deceased and the deceased rolled down? A. Yes.

20 491. Q. Did you say at the magisterial inquiry this "Then the second and third accused hit the deceased and the deceased rolled to a side"?
A. What I said was that all the three attacked the deceased and the deceased fell down. Then the third accused said "This fellow is not dead. Cut him on the neck". Then he was cut and stabbed.

30 492. (Court: Q. Who cut? A. When the third accused said "cut him on the neck the first accused cut him. Then he was kicked and he rolled on to another position.

492a. Q. Who kicked? A. The third accused.

Cross-examination continued.

493. Q. Then your position in evidence-in-chief was that the first accused kicked the deceased? A. I said that the first accused and the third accused kicked.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for
Appellant)
(continued)

Defence Counsel: I will mark that passage 1D4.
That is, "Then the third accused
kicked. Then the deceased rolled to
a side".

494. Q. You have also said that the "third
accused came chasing me"?

Court: The evidence, as recorded, is the third
accused chased him.

Cross-examination continued

495. Q. You then got into a bus and went to
Amparai? A. Yes. 10

496. Q. As you could not attend to your work
at Amparai you went to Gonagalla to
inform Marasinghe? A. Yes, having
informed him I went away.

497. (Court: Q. You could not attend to your work
at Amparai? A. Yes).

Cross-examination continued.

498. Q. Did you go and inform Marasinghe?
A. Yes. 20

499. Q. After that you went away? A. At Gonagalla
I got into a bus and went to Amparai.

500. Q. Your position on the last day was that
you never returned to the scene after
that? A. I did not return thereafter.

501. Q. And your position was that relatives
took the deceased to Amparai hospital
and you merely went with him? A. I did
not go with him. I went alone.

502. Q. Where did you go alone? A. I went to
my land at Amparai and from there I went
to Amparai hospital. 30

503. Q. From where? A. From my land I went to
Amparai hospital.

504. Q. Did you say this at the magisterial
inquiry "I went away and brought a
vehicle to take him to hospital"? A. No.

505. Q. "I then took the deceased in a car and took him to Amparai hospital"?

A. No, I did not say. Marked 1D5.

506. Q. "And I took him to hospital and watched the treatment given"? A. I did not say.

507. Q. "After sometime he spoke"?

A. As soon as I went to the hospital compound the police came and took me to the place of incident.

10 508. Q. So your evidence that the police took you to the scene of incident is not true? A. I was taken in a jeep.

509. Q. I suggest to you that at the time the police came you were there at that time? A. No.

510. Q. I suggest to you witness that you were not an eye-witness to this incident?

A. I was nearby when the incident took place. I was inside the boutique seated.

20 511. Q. Are you aware of the incident that took place on 5.8.65? A. I do not know,

512. Q. I suggest to you witness that you are implicating the first accused at the instigation of Wilson, Marasinghe and his relations? A. No.

513. Q. I suggest to you witness that after the incident you had gone to Marasinghe's boutique and concocted this story?

30 A. No.

514. Q. I suggest to you witness that this incident took place at the Carpentry shed of the first accused? A. No. This happened inside the boutique of Wilson.

515. Q. I suggest to you that the deceased had gone to the carpentry shed of the first accused, armed with a sword? A. No.

40 516. Q. And that the deceased had gone to the Carpentry shed of the first accused in search of the other accused.

In the
Supreme Court

Prosecution
Evidence

No. 4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

Cross-
examination
(for
Appellant)
(continued)

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

Cross-
examination
(for
Appellant)
(continued)

Cross-
examination
(for 2nd and
3rd accused)

Court: According to you this man was not there;
so how can he speak about that?

Cross-examination continued.

517. Q. And then the deceased tried to cut the
first accused with a sword? A. No.

518. (Court: Q. Were you present at or near the
first accused's carpentry shed
on this day? A. No).

Cross-examined by Mr. Kamalanathan:

519. Q. Your position here is that you 10
were quite new to this village of
Bakiella at the time of this incident?
A. I had come there newly.

520. Q. And with regard to the second and third
accused you have told His Lordship that
you did not know them prior to the
incident.

Court: I do not know. There are two questions
in that. Further, that is not 20
correct, at least in respect of one of
the two accused.

Cross-examination continued.

521. Q. Prior to the date of the incident did
you know the second accused? A. No.

522. Q. Prior to the date of the incident
did you know the third accused?
A. I did not know the third accused but
his parents' house is closeby, near
the temple.

523. (Court: Q. At Bakiella? A. Yes). 30

Cross-examination continued.

524. Q. According to you, you were an eye-
witness to this entire incident?
A. Yes.

525. Q. After the whole incident was over, you told us that you got into a bus and went to Amparai? A. I got into the bus at Gonagolla. I went walking up to Gonagolla and told Marasinghe of this and then the bus from Amparai had arrived and then I got into it.

In the
Supreme Court

Prosecution
Evidence

No.4

10 526. Q. Your position now is you walked from Bakiella to Gonagolla? A. There was no bus and there are no private vehicles there and there are vehicles of the Gal Oya Board but no passengers are taken in that and therefore I walked.

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

527. Q. You went and told Marasinghe that his brother had been cut? A. People at Bakiella refer to the deceased as Marasinghe's malli and therefore I went and told him like that.

20 528. Q. And your position is that after you told Marasinghe "Marasinghe's malli had been cut" you saw the police there and they had come there to take Marasinghe away?

529. (Court: Q. Did you see the police there?
A. Amparai police had arrived there.

30 530. Q. That is before you went? A. After having given the information to Marasinghe I saw the Police arriving there in a jeep and getting into the boutique of Marasinghe).

Cross-examination continued.

531. Q. Did you tell the police there, at that time "I have seen this brutal murder"?
A. I told a police constable in that party that Marasinghe's brother had been cut and stabbed and put down, and that I came to inform about that.

40 532. Q. That is all you told the police constable? A. The police party who were there, were in a state of excitement and they asked me why I had come and I told them that I had come to inform of this incident to Marasinghe.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

533. Q. You told a police officer, if I understood you correctly, that Marasinghe's malli had been cut and stabbed"? A. Yes.

534. Q. That is all you told the police?
A. Having said that I found that the police were in a state of excitement and I went away.

535. (Court: Q. You went to Amparai and came back? A. I was on my way to hospital. I went into the compound of the hospital. Then Marasinghe was brought by the police to Amparai. Then I was standing on the steps when the Uhana police came in search of me. 10

536. Q. As you leave Gonagolla you would admit that you will have to pass Uhana police before you came to Amparai? A. Yes. 20

537. (Court: Q. You did not go to Uhana police and mention this? A. No.)

Cross-examination continued.

538. Q. Is it your position; I want to get it cleared, that you did not take the deceased to hospital from Bakiella?
A. No.

539. Q. You say, your position is, you saw Marasinghe being brought to Amparai?
A. When I was going to the hospital I found Marasinghe and the police there. 30

540. Q. And at that stage did you make any statement to the police at the hospital? A. No.

541. (Court: Q. Uhana police came there, you said? A. Yes. Uhana police came and searched for me and asked for me and I had gone to the hospital and then they came there and took me to the scene). 40

Cross-examination continued

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

542. Q. Can you tell us who was it at the hospital; Inspector or Police Constable or Sergeant? A. There was an inspector of police and some constables.

543. Q. Did the Inspector question you at the hospital? A. I was not questioned at the hospital.

10

544. Q. Did you tell the police at the Amparai hospital "I saw this, these were the assailants"? A. I was taken from there and I was not questioned. I was not questioned anything at the Amparai hospital. They asked for my name and took me.

545. (Court: Q. Sub-Inspector Herath took you?
A. Yes.

20

546. Q. It will therefore not be correct to say that when the Inspector arrived at the scene that day you, Podi Singho and Wilson were present at the scene?

To Court:

547. Q. Were you there? A. I was not there.

548. Q. And it is suggested by the defence that you were there with Wilson and Podi Singho?
A. When I was taken there by the police only the boutique keeper Wilson was there.

30

Cross-examination by Mr. Kamalanathan continued

549. Q. At the stage when the Uhana police came to the Amparai hospital had the deceased been brought already to the hospital?
A. Yes.

550. Q. Can you tell us who were the persons who brought the deceased to the Amparai hospital

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

To Court:

551. Q. Were you there? A. I was not there when the deceased was brought.

Cross-examination by Mr. Kamalanathan continued.

552. Q. When you gave evidence here, your evidence in chief last Friday, that some of the deceased's relations took him to the hospital, I accompanied the deceased in the car, that will not be correct?

10

Court: If he did not go back to the scene how can he have accompanied?

Mr. Kamalanathan: That is the position he took up at one stage, but later on he was further probed and his position was that he accompanied the deceased in the car.

To Court:

553. Q. On the last occasion you have said that you also accompanied the deceased in a car when he was taken to Amparai hospital, is that correct? A. No, I came alone.

20

Cross-examination by Mr. Kamalanathan continued.

554. Q. Your position is that you did not say that even in His Lordship's court ?

Court: In effect it is that, so it is a matter for comment.

Cross-examination by Mr. Kamalanathan continued.

555. Q. After this alleged incident took place you said you went to Gonagolla? A. Yes.

30

556. Q. I take it, near the scene of the incident there are a number of boutiques and houses? A. There are four or five boutiques on this side and on the other side there are houses in the colonies, and on the other side there is the temple.

557. Q. Normally when an incident like this takes place there must have been a crowd that had gathered? A. Yes.

In the
Supreme Court

558. Q. Did you speak to anybody in the crowd before you set out to Gonagolla? A. No.

Prosecution
Evidence

No.4

559. Q. You have told us today that you walked up to Gonagolla a distance of 2½ miles? A. Yes.

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

10

560. Q. Your position to day is that you walked this 2½ miles to Marasinghe's boutique after this incident? A. Yes.

Cross-
examination
(for 2nd and
3rd accused)
(continued)

561. Q. When you told His Lordship and the gentlemen of the jury in your evidence in chief that you got into another vehicle and went to Gonagolla and informed his brother Marasinghe, that will not be correct? A. There were no vehicles at that time.

20

562. Q. I will also put another part of your evidence in connection with your going away to Amparai. On Friday your evidence in chief was that you got into a bus, went away. In this bus I went to Amparai. That will also be not correct?

To Court:

30

563. Q. On Friday did you say this (he wants to know) that you got into a bus and went to Amparai?
A. There were no buses at that time for me to go. There was the Kegalle bus halted, I got into that bus and saved my life. After this incident was over I got out of the bus and walked.

Cross-examination by Mr. Kamalanathan continued.

40

564. Q. What you are trying to tell us is that you got into a bus for the purpose of saving your life? A. Yes. That bus leaves this place in the evening. That is the Kegalla-Amparai bus. That bus leaves at about 1.30 or 2 p.m.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.

Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

To Court:

565. Q. Which Kegalle is this, Kandy road Kegalle? A. Kandy road Kegalle. Otherwise I would have been cut and killed.

Cross-examination by Mr.Kamalanathan continued.

566. Q. You did not stop with that. Your evidence here was that when that bus went away I got into another vehicle and went to Gonagolla and informed his brother? A. I did not say that. 10

567. Q. Where was your statement recorded by the police? A. At the scene of the incident.

568. Q. Was Podi Singho also there when your statement was recorded? A. No.

569. Q. You do not know who Podi Singho is? A. No.

570. Q. I am suggesting to you that the deceased was taken to Gonnagolla in a lorry? A. I do not know how he was taken. 20

Court to witness:

571. Q. Was he taken to Gonnagolla? A. I do not know how he was taken.

572. Q. Has one to pass Gonnagolla to go to Amparai? A. Yes.

Cross-examination continued

573. Q. You do not know in what he was taken to Gonnagolla? A. That is so. 30

574. Q. Do you not know whether he was taken by a car from Gonnagolla to the Amparai hospital? A. I do not know. Whether it was in a car, lorry or some other means.

575. Q. When you go to Amparai from Bakiella, both on the journey upwards and downwards, you have to pass the Uhana police station. That is the only road?
A. Yes.

In the
Supreme Court

Prosecution
Evidence

Court to witness:

576. Q. Bakiella is in what police area?
A. Earlier it was in the Wellaveli police area, now it is in the Uhana police area.

No.4
Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

577. Q. In August last year, it was in the Uhana police area? A. Yes.

Cross-examination continued.

578. Q. When you met Marasinghe at the hospital, did you speak to him there?
A. I did not get an opportunity to speak to him. Marasinghe was taken into the hospital by the police when I was coming there.

579. Q. I take it that you went to the Amparai hospital because you were concerned about the condition of this injured person, is that not so? A. Yes. That is so.

580. Q. Surely, it must have struck even you, having seen this incident that this is a matter which you should promptly complain about to the police?
A. Yes. I told one of the police officers who came to Marasinghe's boutique in Gonnagolla. He told me he would see about it and asked me to go away.

Court to witness:

581. Q. The police officer to whom you complained told you that? A. Yes.

Cross-examination continued.

582. Q. That was on the date of the incident, I take it? A. Yes.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

Court to witness:

583. Q. Uhana is between Gonnagolla and
Amparai? A. Yes. It is 7 miles
from Gonnagolla to Amparai.

584. Q. To Uhana? A. From Amparai to Uhana
is 7 miles, and from Amparai to
Bakiella it is 15 miles.

585. Q. From Bakiella you go to Gonnagolla,
pass Uhana and then go to Amparai,
is it? A. From Bakiella you go to
Gonnagolla, then to Uhana and then to
Amparai, in that order.

10

Cross-examination continued

586. Q. You told His Lordship that on the day
of this incident, you set off from your
home at about 9.45 a.m. A. I do not
have a clock in my house, but that is
the normal time I leave home.

587. Q. You walked this distance to Bakiella?
A. Yes.

20

587a.Q. At Bakiella there is a bus that plies
to Amparai according to certain
scheduled times? A. Yes.

Court to witness:

588. Q. Do the buses keep to the schedule?
A. I wanted to take the 10 o'clock bus
but I was late.

589. Q. Do buses come to time, is my question?
A. They sometimes come late or are even
early. If there were a breakdown of
a bus, then it would be late.

30

Cross-examination continued.

590. Q. By the time you came to Bakiella, the
bus which you wanted to catch, had
according to you, left? A. Yes.

591. Q. And you also know that those buses ply
at intervals of a hour or 1½ hours?
A. After the 10 o'clock bus there is a
bus to the hospital at about 11.30 a.m.
or 12 noon or 12.30 p.m. I cannot say
definitely when.

40

592. Q. You say that this Uhana road is a tarred road? A. Yes.

In the Supreme Court

593. Q. And from the Uhana side as you proceed across the bridge the road is not tarred?

Prosecution Evidence

Court to Mr. Kamalanathan:

No.4

594. Q. That is portion of the road on the Maha Oya side?

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966

Mr. Kamalanathan: Yes, My Lord.

Cross-examination
(for 2nd and 3rd accused)
(continued)

10

Court to witness:

595. Q. Along the Maha Oya road which was tarred? A. Yes. It is the Maha Oya road which proceeds from Uhana. From Amparai to Maha Oya, there are 32 miles.

596. Q. All the 32 miles are tarred? A. No. Only up to the 27th mile post. Up to Magalawatana.

20

597. Q. Do you have buses that ply on the road from the bridge towards Maha Oya? A. No.

Cross-examination continued.

598. Q. I take it that it is in the direction of Maha Oya that you have to proceed towards Wellaweli? A. No. At the junction at Bakiella along the bund up to a distance of 10 miles one can go to Wellaweli.

30

599. Q. Is that Nawagiri Aru. Is that the road. A. It is the road which goes through Colony No. 36 and 38 and straightaway to Wellaweli.

Court to witness:

600. Q. This incident took place at Bakiella? A. Yes.

601. Q. And near a junction? A. Yes.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

602. Q. And Wilson's boutique is near the junction? A. Yes.
603. Q. On which side is the Nawagiri Aru Bund? A. On the side of Wilson's boutique.
604. Q. On the other side is the Bakiella bund and which goes to Wellaweli. It is in the opposite direction? A. Yes.
- 605.
606. Q. This bund, is it a footpath or a motorable road? A. It is a motorable road. 10
607. Q. Is it tarred? A. No it is not tarred. The lorries of the Co-operative Unions go along the bund with goods for the Unions.

Cross-examination continued.

608. Q. Would it be correct to say that at the stage that you set off from Bakiella to Gonnagolla that the car was stopped opposite the carpentry shed in which the first accused works? 20

Court to Mr. Kamalanathan: That is what he has said. It was pushed and left there. That is his evidence. The second accused sat in the driver's seat and the other two and another pushed it from near Wilson's boutique to this spot.

Cross-examination continued. 30

609. Q. When you first saw the car coming, it was coming along the Nawagiri Aru bund? A. Yes. After having come on to the tarred road, the car came on to the compound of the boutique and halted.

Court to witness:

610. Q. It went to the junction, turned came and stopped in front of Wilson's boutique? A. Yes. 40

611. Q. That is because the bund is too high and the car cannot be driven straight-away from the bund to Wilson's premises? A. Yes.

In the
Supreme Court

Prosecution
Evidence

Cross-examination continued

612. Q. The point at which the deceased stopped the car is a point which you could see from Wilson's boutique?

No.4
Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

10

Court to Mr. Kamalanathan: It was stopped in the compound of the boutique. It was stopped in front.

Cross-examination continued

613. Q. When you went into Wilson's boutique, at that stage you did not see the first and third accused?
A. I did not see anybody. It was after I sat inside the boutique that the second accused came.

20

614. Q. When the second accused came into the boutique, at that stage did you know who the second accused was? A. No. We do not take any notice when somebody enters a boutique.

615. Q. You did not know his name nor his occupation? A. I knew nothing about him.

30

616. Q. When the third accused appeared at the scene with the first accused, at that stage you did not know the name of the third accused nor his occupation?
A. No. I knew the names after the incident. People mentioned their names.

617. Q. Your position is that at the stage that you set off to go to Gonnagolla from Bakiella, you knew that Marasinghe's malli had been cut?
A. The people who had gathered there said that he was Marasinghe's younger brother.

40

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

618. Q. Even that you knew from what you heard from the people there? A. Yes.

619. Q. And Marasinghe being a person known to you, you thought that you will run up and tell him? A. Yes.

620. Q. At the stage you got to Marasinghe's boutique, you did not know the name of the second accused? A. No.

621. Q. When you got to Marasinghe's boutique, at that stage you did not know the name of the third accused? A. That is so. 10

622. Q. Have you seen the second accused prior to this incident? A. No.

623. Q. You have told His Lordship that at a certain stage, you came back to the scene with the Inspector in a jeep? A. Yes.

624. Q. And that your statement was recorded at the scene? A. Yes.

625. Q. That was immediately after you were brought back to the scene by the police? A. When I arrived with the police, I took from the boutique keeper the deceased's driving licence, insurance certificate and money and handed them to the police. 20

626. Q. The boutique keeper is Wilson? A. Yes. Prior to my arrival, the police had come, and they had

Court to witness:

30

627. Q. You do not know what happened in your absence. You must speak of only what you know. Did you learn that the police had come to Wilson's boutique earlier? A. No.

628. Q. Then from whom did you come to know? A. The police mentioned it to me when I was coming with them.

Cross-examination continued

629. Q. It was Inspector Herath who took you to the scene? A. Yes. I was taken in a jeep.

630. Q. By Inspector Herath? A. And Inspector Herath told you that they had come to Wilson's boutique earlier? A. No.

Court to witness:

10 631. Q. Then who told you? A. One of the constables told me.

Court to Mr. Kamalanathan: The constable is not a witness and what he told you becomes hearsay. That is why I did not want you to pursue that matter, but you carry on in spite of that.

Cross-examination continued.

20 632. Q. After going to the scene, statements were recorded. First yours and then Wilson's?

Crown Counsel: I object, My Lord. How can the witness know what statements were recorded unless it was done in his presence.

Court to witness:

633. Q. Was your statement recorded? A. Yes.

634. Q. Before that was anybody else's statement recorded in your presence? A. No.

30 635. Q. Was Wilson's statement recorded when you were near about his boutique? A. I was not there at that stage. After my statement was recorded, I was sent to one side.

Cross-examination continued.

636. Q. In that statement that you made to the and police, did you mention any names of
637. the assailant or assailants? A. No. I did not know the names at that time.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Cross-
examination
(for 2nd and
3rd accused)
(continued)

Re-
examination

638. Q. I am suggesting it to you that your evidence that you saw the second and third accused participate in that attack on the deceased is not true?
A. I do not speak untruths. I am saying what I saw with my own eyes.

639. You are giving this evidence at the instigation of Marasinghe and Wilson?
A. No. Not at anybody's instigation. I am saying what I saw actually happened.

10

Re-examined:

640. Q. I am questioning you as to what you knew before you left the scene of this incident on foot, about the name of the deceased and the names of the accused? A. Yes.

641. Q. At this time you said you were a resident of Bakiella? A. Yes.

642. Q. How long had you been at Bakiella at the time of this incident?
A. Not more than four months.

20

643. Q. And in the course of those four months had you come to this Wilson's boutique?
A. Yes.

644. Q. On about how many occasions?
A. On about 10 or 15 occasions.

645. Q. On those occasions were you aware of the occupation of the first accused: close to this Wilson's boutique was the first accused engaged in any occupation? A. I knew that he was having a carpentry shed.

30

To Court:

646. Q. Before this incident you had known that he was carrying on a carpentry shed? A. Yes.

Re-examination continued.

647. Q. And he was known as Baas? A. Yes.

648. Q. How far from Wilson's boutique is this first accused's carpentry shed?
A. About 175 to 200 ft.

649. Q. Later you said after this incident that that car was pushed? A. Yes.

650. Q. In relation to that carpentry shed where was that car stopped after it was pushed? A. It was stopped eventually in front of the 1st accused's carpentry shed.

10

651. Q. It is correct that the first accused's carpentry shed is on this main road, some distance away, that is the main Hama Oya-Uhana road? A. Yes.

652. Q. And in the direction of Uhana from the junction? A. Yes.

653. Q. And at the time that you knew that the first accused was running a carpentry shed did you know that he also had an assistant? A. I did not know.

20

654. Q. Did you know whether he was working in that carpentry shed alone or with the assistance of anybody else, any one or more people? A. I have seen only the Baas.

To Court:

655. Q. Have you seen him working in that shed, the first accused? A. Yes. I have seen him working.

30

Re-examination continued.

656. Q. On such occasions have you seen other people also working in the carpentry shed? A. There are four or five others who are constantly there.

657. Q. What sort of carpentry work was the first accused doing? A. He was making furniture.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Re-
examination
(continued)

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Re-
examination
(continued)

658. Q. He was manufacturing furniture then?
A. Yes.

659. Q. You said you knew the house occupied by
the 3rd accused's parents prior to this
incident? A. Yes.

To Court:

660. Q. Where was the 3rd accused living?
A. In house No. 26.

661. Q. Who else was living in No. 26?
A. There is a brother of his, a school master. 10

662. Q. In what number did his parents live?
A. They were also there.

Re-examination continued.

663. Q. Is it correct that the third accused and
his parents were all living in house
No. 26. A. Yes.

664. Q. And you knew that house? A. Yes.

665. Q. And how far from Wilson's boutique was
the third accused's house No. 26, is it 20
on the bund road or main Maha Oya road?
A. In the direction of Maha Oya road.

To Court:

666. Q. You see this junction? A. Yes.

667. Q. If you take one direction you go to
Uhana? A. Yes.

668. Q. In the opposite direction you go to
Maha Oya? A. Yes.

669. Q. In respect of that junction was it on
the Uhana road or on the Maha Oya road? 30
A. On the road to Maha Oya.

670. Q. And you say, as you go along Maha
Oya road it is on that road? A. Yes.

Re-examination continued

671. Q. On the main road? A. Yes.

To Court:

672. Q. How far from that junction?
A. Two to three hundred feet.

673. Q. Can you show? A. Witness points out
a distance of about 100 yards.

Re-examination continued

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Re-
examination
(continued)

10

674. Q. You knew that fact also where the
third accused was living, of the
number of the house? A. Yes.

675. Q. Therefore, when you came to make the
statement to the police which was
recorded by Sub Inspector Herath at the
scene did you tell him all that you
knew with regard to first of all the
description of the first accused?
A. Yes.

20

676. Q. For you to describe the first accused
did you tell him all that you knew
about the first accused?
A. Yes, I knew only by the name of
Wadu Baas.

677. Q. And did you mention that? A. Yes.

678. Q. Did you refer to the second accused
in that statement that you made?
A. Yes.

30

679. Q. What did you say? A. People around
the place said that he is the Golaya
of the Baas, and I mentioned that.

680. Q. You mentioned the second accused
as being the Golaya of the Baas?
A. Yes.

681. Q. That is what you told the police?
A. Others mentioned him as the Golaya
of the Baas and I mentioned him in my
statement to Herath as the Golaya of
the Baas.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Re-
examination
(continued)

682. Q. By the time you made the statement you knew that? A. Yes.
683. Q. Did you mention the third accused in your statement to Inspector Herath? A. I did not know his name but I described him.
684. Q. How did you describe him? A. I said the young man of house No. 26, and when I was questioned what his name was I told him that his name was Dissanayake. 10
685. Q. Had you also come to know the name of the third accused at the time you came to make your statement? A. Yes.
686. Q. Before the date of this incident was the first accused angry with you? A. No.
687. Q. Were you angry with the first accused? A. No.
688. Q. Before the incident was the second accused angry with you? A. No.
689. Q. Were you angry with the second accused? 20
A. No.
690. Q. Before the incident was the third accused angry with you? A. No.
691. Q. You with the third accused? A. No.
692. Q. So you say you were not angry with anyone of the three accused in this case nor they with you? A. No. I had no associations with them.
693. Q. You have already told us, I take it, as to the place where you were in this boutique and you pointed out to the police as the place where you were at the time you saw this whole incident? A. Yes. 30
694. Q. And did you point out the place where the deceased fell to the police? A. Yes.
695. Q. Did you see anything on the ground at that time which you pointed out? A. Yes.

696. Q. What was there on the ground at that spot which you pointed out?
A. Blood stains.

697. Q. Where was that spot where he fell?
A. By the side of the bund road.

698. Q. On the direction of the Navagiriaru bund road? A. Yes.

699. Q. You said you remember mentioning the deceased's Insurance Certificate?
A. Yes.

10

700. Q. Where did you first see this?
A. Inside the boutique.

701. Q. How did they come to be inside the boutique? A. The deceased had some money with him.

702. Q. When he came to the boutique?
A. Yes.

20

703. Q. And you have already told us in evidence that he proffered a Rs.5/- note to buy a cigarette? A. Yes.

704. Q. And he was told that there was no change? A. Yes.

705. Q. What happened then to this money after he bought the cigarette? A. He kept his money and the purse on the table and lighted the cigarette. Having lighted the cigarette he turned and looked.

30

706. Q. What happened to the money and his possessions? A. Wilson took all those.

To Court:

707. Q. At what stage did Wilson take it?
A. When he was cut and driven forward Wilson took charge of those.

708. Q. Where were they at the time Wilson took charge of these? A. They were on the table.

To Foreman: Nil.

In the
Supreme Court

Prosecution
Evidence

No.4

Y.B.M.R.
Yapa Bandara
25th and 28th
February 1966
Re-
examination
(continued)

In the
Supreme Court

NO. 5

W.A. MANSOOR P.C. 1008

Prosecution
Evidence

WARASA AHAMED SHAIK MANSOOR P.C. 1008 - Affirmed,
35 years of the Yatiyantota Police.

No.5

Examination

W.A. Mansoor
P.C.1008

1st March
1966

Examination

1009. Q. On the 8th August 1965 were you
attached to the Amparai Police Station?
A. Yes.

1010. Q. On the 8th August 1965 did you proceed
to Bakiella, the scene of this
alleged incident, for the purpose of
preparing the sketches? A. Yes.

10

1011. Q. Did you make the sketches in this
case? A. Yes.

1012. Q. Have you received training in the
preparation of sketches? A. Yes.

1013. Q. Are you a qualified Plan Drawer?
A. Yes.

1014. Q. Was the sketch prepared to the scale of
40 ft to 1 inch? A. Yes.

20

1015. Q. Do you produce ten copies of your sketch
marked SK 1 to SK 10? A. Yes.

1016. Q. When you went to Bakiella, the scene
of the offence, was the witness Yapa
Bandara also present at that time among
other witnesses? A. Yes.

1017. Q. Was the spot marked 'A' on your sketch,
the place where car No. EY 3670 was
halted by the side of the road? A. Yes.

1018. Q. Was there a car when you went there?
A. Yes.

30

1019. Q. Was the spot marked 'D' on your sketch
pointed out to you by Witness Yapa
Bandara as the place where he was in
Wilson's boutique at the time he saw
this alleged incident? A. Yes.

1020. Q. Were the spots marked 'E' 'F' and 'G' on your sketch pointed out to you by the witness, Yapa Bandara, as the place where the deceased fell and where there were stains of blood?
A. Yes.

In the
Supreme Court

Prosecution
Evidence

No.5

W.A. Mansoor
P.C.1008

1st March
1966
Examination
(continued)

1021. Q. Were the blood stains there even on the 8th? A. Yes.

10
1022. Q. The spot marked 'H' on your sketch is the cut mark on the tarred surface of the road pointed out to you by witness Yapa Bandara as the place which one of the accused had cut the road with a sword? A. Yes.

1023. Q. Did you see the cut mark?
A. Yes. S.I. Herath also pointed out the cut mark to me.

1024. Q. The parallel wavy lines represent a channel? A. Yes.

20
1025. Q. Is there a bridge over this channel which is shown by the two thick vertical parallel lines on your sketch?
A. Yes. The lines are marked 15/3.

1026. Q. Is 15/3 the number of the culvert?
A. Yes.

1027. Q. What is the distance from 'D' to 'E' on your sketch? A. 144 ft.

Court:

30
1028. Q. Points 'D' to 'E' is it? A. Let me have the footruler please. (His Lordship satisfied himself on the accuracy of the distance given by the witness).

1029. Q. What is the distance from E to F of your sketch? A. 21 feet.

1030. Q. What is the distance from 'F' to 'G'? A. 8 feet.

In the
Supreme Court

Prosecution
Evidence

No.5

W.A. Mansoor
P.C.1008

1st March
1966

Examination
(continued)

1031. Q. Were the spots 'E' 'F' and 'G' which you have marked, on the side of the Nawagiri Aru bund road in the direction of the channel? A. Yes.

1032. Q. They are on a lower elevation than the bund road? A. Yes.

1033. Q. Is there a grass verge sloping down to the channel? A. Yes.

1034. Q. What is the distance from 'A' to 'D' of your sketch? In a straight line?
A. 134 feet. 10

1035. Q. Can a person standing at point 'D' have good visibility from 'D' to 'A'?
A. Yes.

1036. Q. There is nothing to obstruct the view?
A. No., nothing. The front portion of the boutique is a half wall of cadjan.

1037. Q. You have shown the boutique as a three-sided rectangle inside which Wilson's boutique is marked as pointed out by witness Yapa Bandara? A. Yes. 20

1038. Q. Can you see the Maha Oya/Uhana Road from the front of the boutique? A. Yes.

1039. Q. The front compound of the boutique is the space marked 'D'? A. Yes.

1040. Q. What is the distance from 'D' to 'H' in your sketch? A. 94 feet.

Court:

1041. Q. That is in a straight line? As the crow flies? A. Yes. 30

Examination continued.

1042. Q. What is the width of the Maha Oya/Uhana road over that bridge? A. 28 feet.
From the edge of one culvert to edge of the other culvert.

1043. Q. Is there a grass verge on either side?
A. No. Not on the bridge.

1044. Q. That is the entire surface is tarred?
A. Yes.

In the
Supreme Court

1045. Q. This point 'H' can be clearly seen from 'D'. That is, if anything is happening at 'H' it can be clearly seen from 'D'?
A. Yes.

Prosecution
Evidence

No.5

1046. Q. Nothing to obstruct the view?
A. Nothing.

W.A. Mansoor
P.C.1008

10
1047. Q. What is the height of the side walls of the culvert? A. About 1½ feet from the surface.

1st March
1966
Examination
(continued)

1048. Q. It is a 1½ ft. high concrete skirting, is it? A. Yes.

Cross-examination by Mr. Chandrapal: Nil.

No
Cross-examination
for Appellant

Cross-examination by Mr. Kamalanathan:

Cross-examination
for 2nd and 3rd
Accused.

1049. Q. Did you go along with S.I. Herath to the scene or did you go there independently? A. I went independently, on receipt of a message.

20 Court:

1050. Q. At what time did you go there?
A. At 3.00 p.m. on 8.8.65.

Cross-examination by Mr. Kamalanathan continued.

1051. Q. Was Wilson also there? A. Yes.

1052. Q. Who else was there besides Wilson?
A. S.I. Herath, witnesses R.M. Podi Singho, I.B.G. Wilson and Y.B. Ranasinghe.

Court:

30 1053. Q. That is Yapa Bandara Ranasinghe, is it? A. Yes.

Cross-examination by Mr. Kamalanathan continued.

1054. Q. Did Wilson also point out any spots?

In the
Supreme Court

Prosecution
Evidence

No.5

W.A. Mansoor
P.C.1008

1st March
1966

Cross-
examination
for 2nd and
3rd Accused
(continued)

Court: Is anybody calling Wilson? If the prosecution is calling him, I will allow the question, otherwise you will have to call him.

Crown Counsel: I have not called Wilson, nor will I be calling him, My Lord. He is here.

Court: Mr. Kamalanathan, Wilson is available and you can call him if you want to.

Mr. Kamalanathan: I will not be calling Wilson, My Lord. I have no further questions to ask this witness, My Lord.

10

Re-examination: Nil.

Foreman: Nil.

Crown Counsel: I move, My Lord, that the Statutory Statement of the three accused be read in evidence.

Clerk of Assize reads same.

Crown Counsel: I close the case for the prosecution my Lord, leading in evidence P1, P2, P3A, P3B, P3C, P4, P5, P6, P7, P8 the sketch SK 1 to SK 10, and the Statutory Statements made by the three accused.

20

RAJAPAKSE PATHIRANALAGE DON JAYASENA, Affirmed,
33 years, cultivator and carpenter, residing
at Bakiella.

Examination

1056. Q. You are the first accused in this
case? A. Yes.

10 1057. Q. You own a carpentry shed at Bakiella?
A. Yes.

1058. Q. How far is this shed from Wilson's
boutique? A. About 150 to 200 feet.

Court: There was some evidence just now
about distances. The car and things
like that.

Crown Counsel: The correct distance is
134 feet.

20 Court: These people are not very certain
about distances.

Examination continued.

1059. Q. You remember the 5th August 1965?
A. Yes.

1060. Q. On that day did you go to the Uhana
police? A. Yes.

1061. Q. Why did you go there? A. To make an
entry.

30 1062. Q. Why was it necessary to make an entry?
A. There had been a fight and I stopped
that fight.

1063. Q. Where did that fight take place?
A. Inside Wilson's boutique.

1064. Q. Who had had a fight? A. The deceased's
elder brother, Marasinghe, the person
working under me, that is my 'Golaya',
and another associate who lives close
by.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Examination
(continued)

1065. Q. You settled that fight?
A. Yes. Dissanayake and I went there and prevented the fight.
1066. Q. In respect of that incident, you made a complaint to the police? A. Yes.
1067. Q. Who is Dissanayake? A. He is a person who resides in that colony.

Court:

1068. Q. Is he here?
A. He is the third accused. 10
1069. Q. Who is your golaya? A. He is the second accused.

Examination continued.

1070. Q. In that complaint did you mention that the deceased had threatened to set fire to your carpentry shed and to kill you by shooting you? A. Yes.
1071. Q. Tell His Lordship briefly what happened at the boutique on that day? The 5th August 1965? A. Marasinghe fought with my golaya. Then Dissanayake and I separated them. We took Marasinghe and put him in a bus. 20
1072. Q. Who took Marasinghe and put him in a bus? A. I did so.
1073. Q. What happened thereafter?
A. When the bus had gone a little distance it stopped and Marasinghe got down from it. He got hold of two aerated water bottles from Wilson's boutique and went in search of the second and third accused. 30
1074. Q. Where did he go in search of them?
A. He came in the direction of my carpentry shed.
1075. Q. Did he find them? A. I asked them not to come out of the shed and hid them.

1076. Q. What happened thereafter? A. The deceased also returned from Gonnagolla.
1077. Q. What did he do? A. He threatened me.
1078. Q. How did he threaten you? A. He said 'You are the person who held my brother while he was being assaulted. I will, therefore, take my revenge from you'.
1079. Q. What else happened? A. I told him that we are all living here and that we should not quarrel among ourselves.
1080. Q. He then said: "That is a different matter, but you must be shot and your shed set fire to".
1081. Q. What happened after that? A. I almost worshipped him. A car was brought and they went away in the direction of Maha Oya.

Court:

1082. Q. Whose car was it? A. The deceased's car.
1083. Q. That is the car No. EY 3670 is it?
A. Yes.

Examination continued.

1084. Q. After the two of them went away, what did you do? A. I went with the second and third accused to the police station and made a complaint.
1085. Q. Why did you go to the police station? A. Because they had said that they would set fire to my carpentry shed and also shoot me.
1086. Q. You came back to the shed after making your complaint? A. Yes.
1087. Q. You were living in a state of fear?

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Examination
(continued)

10

20

30

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Examination
(continued)

Court:

1088. No. No. You cannot ask such a question. Who is giving evidence? You or he?

Examination continued.

1089. Q. The second and third accused also made a complaint at the police station? A. Yes.

1090. Q. To your knowledge did the police conduct any inquiry in respect of the complaint made by you on the 5th August 1965? A. No. 10

1091. Q. You continued to work in the carpentry shed thereafter? A. Yes.

1092. Q. You remember the 7th August 1965? A. Yes.

1093. Q. On that day you were working in your carpentry shed? A. Yes.

Court: Please do not lead.

Mr. Chandrapal: Very well, My Lord. 20

Examination continued.

1094. Q. Did anybody come to the shed that day in the morning? A. Yes.

1095. Q. Who was that person? A. The second accused. That is, he came for work.

1096. Q. Both of you were working in the shed in the morning? A. Yes.

1097. Q. Did anybody else come there? A. Yes.

Court:

1098. Q. Who was that? A. The deceased. 30

Examination continued.

1099. Q. At the time the deceased came, was the second accused there?

Court:

1100. Q. What time did he come? A. 9.30 a.m.

Yes, Mr. Chandrapal, you can put that question now.

Examination continued.

1101. Q. At the time the deceased came, was the second accused there? A. No.

1102. Q. Where had he gone A. About 10 minutes earlier, he had gone out saying that he was going to the lavatory.

1103. Q. In that area, where does one normally go to answer a call of nature?
A. One has to go about $\frac{1}{2}$ mile away into the jungle.

1104. Q. Did the deceased come to the carpentry shed? A. Yes.

1105. Q. How did the deceased come?
A. He came in a car and stopped the car by the side of the road.

1106. Q. In relation to your carpentry shed, where was this car halted? A. In front of my shed.

1107. Q. Can you tell His Lordship what happened thereafter? A. At the time he was coming to the carpentry shed, I was drilling a piece of wood. When I saw him coming, I got down from the work bench. He came up to me and said 'Give me the people whom you hid the other day'. If you do not do that, you can have this", and he dealt me a blow with a sword.

1108. Q. Then what did he do? A. I had a mallet in my hand. I held the mallet up and warded the blow off.

1109. Q. When you held the mallet, what happened to the blow with the sword? A. When I held up the mallet, the sword struck the mallet and got embedded in it. Then I turned and stabbed him with a weapon that I had in my hand.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Examination
(continued)

10

20

30

40

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Examination
(continued)

Court:

1110. Q. What was that weapon? A. It was a chisel I had made at the smithy.

Examination continued.

1111. Q. Then what happened? A. He fell down.

1112. Q. What did you do? A. I trampled his hand and took the sword. When I took the sword, he ran.

1113. Q. Then what happened? A. Having removed the mallet which had got embedded in the sword. I threw it away. I chased after the deceased and then I saw him putting his hand to his waist. I feared that he had a pistol with him. Then while he was running, I chased after him and cut him. 10

Court:

1114. Q. Now is this correct? The sword had got embedded in the mallet? A. Yes.

1115. Q. Then you stabbed him with the chisel? A. Yes. 20

1116. Q. Then you got hold of the sword? A. Yes.

1117. Q. And you struck him with the sword? A. Yes.

1118. Q. While the mallet was still stuck on to the sword? A. No.

1119. Q. But I thought that that was what you said. You said it happened in that order? 30

Crown Counsel: My Lord, I think what he said was that he threw away the mallet and chased after the deceased. For the original blow the sword had got embedded in the mallet. Thereafter, he stabbed with the chisel and later removed the mallet from the sword.

Court: I see.

Examination continued.In the
Supreme CourtDefence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966Examination
(continued)

- 10 1120. Q. Then what happened? A. I cut him with the sword. Then I struck him again, and he raised both his hands. The second blow also struck him. He then kicked me. But I did not fall. Neither did the sword fall. He then started running. I thought that he would get into Wilson's boutique and shoot me from inside. I thought that he would enter Wilson's boutique. I chased after him and cut him two or three times. He did not go to the boutique but went in the direction of the Nawagiri Aru bund. He ran a short distance and fell down. I turned and came towards the junction. Then I ran in the direction of the forest. In the direction of the Maha Oya.
- 20 1121. Q. Where did you run? A. In the direction of Maha Oya. While running in the direction of Maha Oya, I hit the road with the sword and when the sword got bent, I threw it into the forest.
1122. Q. Then what did you do? A. I ran in the direction of Maha Oya along the road.
1123. Q. Did you run into the jungle? A. Yes.
- 30 1124. Q. What happened there? A. When I had gone about 1 mile into the forest, I heard the second accused and the third accused, Dissanayake, calling me: "Baasunna". I also heard 'ooh' shouts. I recognised their voices and stopped. After I stopped, my golaya asked me what had happened. I told him everything that had happened, and he asked me as to what should be done about this.
- 40 1125. Q. What did you tell him. A. I told him that I must be taken to a police station.
1126. Q. Then what happened? A. He asked me to go to the Uhana police station. Therefore, I set off along the jungle path, and went some little distance.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Examination
(continued)

1127. Q. Where did you ultimately go?
A. We went to the Wellaweli police station.

1128. Q. Did the others accompany you to the Wellaweli police? A. Yes.

1129. Q. What happened at the Wellaweli police? A. It was about 12.30 a.m. when we called at the police.

1130. Q. Then what happened? A. The police officer on duty asked me to wait for sometime. 10

1131. Q. And you waited for some time? A. Yes.

Court:

1132. Q. What was that police officer doing?
A. He was sleeping. We also slept outside.

Examination continued.

1133. Q. That is on the verandah of the police station? A. Yes.

1134. Q. Then what happened? A. At 4.30 a.m. the police officer called for us. 20

1135. Q. Was that the same officer who had been sleeping at the time you arrived there? A. Yes.

1136. Q. Then what did you do?
A. We got up and went up to where the police officer was.

1137. Q. He asked us as to what had happened?
A. We described the incident. 30

Court:

1138. Q. Who described the incident?
A. I.

Examination continued.

1139. Q. And you made a statement to the police? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Examination
(continued)

1140. Q. When you made your statement to the police where was the second and third accused? A. They were at a distance from the place where I was.
1141. Q. After your statement was recorded the other two accused's statement were recorded? A. Yes.
1142. Q. You were thereafter detained at the police station? A. Yes.
- 10 1143. Q. Then the Inspector of Police of Uhana police station came and took charge of you? A. Yes.
1144. Q. Why did you not go to the Uhana police? A. No investigations were made in regard to the complaint I made on the 5th and a doubt was created in our mind. I thought Marasinghe was good with the Uhana police and therefore the Uhana police did not make any investigations into my complaint and therefore I had doubt about the Uhana police.
- 20 1145. Q. After you were taken charge of by the Uhana police your statement was recorded by the Uhana police? A. Yes.
1146. Q. Where was your statement recorded by the Uhana police? A. Inside the Uhana police station.
- 30 1147. Q. You have never been charged in any Court? A. No.
1148. Q. Do you live in your carpentry shed? A. On certain days when I have lot of work other people also work there. Then I get those people to sleep there and I go to my mother's house.
1149. Q. Who are the others who live in your mother's house? A. There are two small brothers of mine.
- 40 1150. Q. Are they dependant on you? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Examination
(continued)

Cross-
examination
(for 2nd and
3rd Accused)

1151. Q. Generally how many assistants do you have to assist you in your profession?
A. When I have lot of work I get three or four people to assist me.

Cross-examined by Mr. Kamalanathan:

1152. Q. Did the second accused participate in this attack on the deceased?
A. I did not see them.

1153. Q. Did the third accused participate?
A. I did not see. 10

1154. Q. Did you, the second and third accused go to Wilson's boutique, all together on the day of the incident? A. No. We have never been to that boutique together. We go alone but never went together.

1155. Q. Did you on the day of the incident, that morning see the second accused inside Wilson's boutique? A. I cannot remember. No. I did not see. 20

1156. Q. Did you on the day of the incident tell the second accused to stab the deceased at Wilson's boutique?
A. I did not even see him.

1157. Q. Did you go to Wilson's boutique on that day along with the third accused?
A. No.

1158. Q. You have told us that when you were in the carpentry shed the deceased came there in a car? A. Yes.

1159. Q. Whose car was that? A. His own car. 30

1160. Q. You deny witness that on the day of the incident you along with the second and third accused planned to attack the deceased? A. I did not do so.

1161. Q. You told us that the deceased came into your carpentry shed? A. Yes.

1162. Q. He came armed with a sword. A. Yes.

1163. Q. At a certain stage you said he fell down? A. Yes.

Court:

1164. Q. Where was that? A. He fell inside my shed.

Cross-examination continued.

10 1165. Q. At the stage he fell down have you inflicted any injury on him?
A. I had stabbed him with the chisel which I had in my hand, when he was falling. I am unable to say whether he was injured.

1166. Q. But you had stabbed him? A. Yes.

1167. Q. You know that as the deceased aimed a blow with the sword you warded that blow with a mallet? A. Yes.

1168. Q. And this mallet got stuck on the sword? A. Yes.

20 1169. Q. And at that stage what did you do?
A. As soon as the sword got stuck on the mallet I stabbed him.

1170. Q. Where did you stab him? A. That blow may have struck him, on the back of his right chest.

Court:

1171. Q. Are you sure that it struck him? A. Yes, I am sure.

Cross-examination continued.

30 1172. Q. After that what happened? A. At that very instant he fell down.

1173. Q. And you have told us that it was at that stage you wrenched the sword? A. Yes.

Court:

1174. Q. When you wrenched the sword what did you do with the chisel? A. At the very instant the chisel fell down.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for 2nd and
3rd Accused)
(continued)

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for 2nd and
3rd Accused)
(continued)

1175. Q. Do I understand you to say that you inflicted only one injury with the chisel? A. I cannot say.

1176. Q. You told us that you stabbed once with the chisel and then it dropped? A. As I turned I went and stabbed him.

Cross-examination continued.

1177. Q. That was in the shed? A. Inside my carpentry shed.

1178. Q. After the deceased got on to the road you said you cut him? A. I dealt the first blow near the carpentry shed; that is between Wilson Mudalali's boutique and my shed. 10

1179. Q. With what weapon? A. With a sword.

Court:

1180. Q. So that you cut him when he was going away and you were behind him? A. Yes.

1181. Q. Are you a right hander or a left hander? A. I am ambidextrous but I had my sword on my right hand. 20

Cross-examination continued.

1182. Q. Did you inflict any injuries on his head? A. The blow that I dealt on him when he was running alighted on his head.

1183. Q. Have you seen the witness Yapa Bandara of Bakiella? A. At times I have seen him at the boutique.

1184. Q. Which boutique? A. In Wilson Mudalali's boutique and at Marasinghe's boutique at Gonagalla. 30

1185. Q. You have seen him both at Wilson's boutique and at Marasinghe's boutique? A. Yes.

1186. Q. Have you seen Marasinghe at Wilson's boutique? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for 2nd and
3rd Accused)
(continued)

1187. Q. How often have you seen him there?
A. More than 20 or 30 times I have
seen.

1188. Q. Have you seen on any occasion Yapa
Bandara, Marasinghe and Wilson, all
together in Wilson's boutique?
A. I have seen.

1189. Q. What have you seen them doing there?
A. I have seen them taking arrack.

10 1190. Q. At Wilson's boutique? A. Yes.

1191. Q. Is arrack sold in Wilson's boutique?
A. Yes, in both these boutiques there
is arrack.

1192. Q. Which is the other boutique?
A. In Marasinghe's boutique at Gonagolla.

1193. Q. How does Marasinghe come to Bakiella
1194. generally? A. He comes by car and at
times he comes by bus. Very often he
comes in his brother's car.

20 1195. Q. How long prior to the date of the
incident did you take your residence
at Bakiella? A. About 8 years ago.

1196. Q. You know the second accused is referred
to as Golaya? A. Yes.

1197. Q. Is he a permanent employee of yours?
A. No.

1198. Q. Are the assistants that you referred
to, who work in your shed permanent
employees? A. No.

30 1199. Q. When do you engage them? A. When I
have more work, or lot of work I get
their assistance.

1200. Q. And I take it whenever you engage
them you pay them for that day? A. I
pay them at piece rate.

1201. Q. Apart from the second accused who
works in the carpentry shed who else
work there? A. Tikiri Banda from
Colony No. 34 and Piyasena from
Colony No. 34.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for 2nd and
3rd Accused)
(continued)

Cross-
examination
(for
Prosecution)

1202. Q. Now the colony is divided into a number of units? A. Yes.
1203. Q. And in each colony there are a number of houses? A. Yes.
1204. Q. And those houses are marked in numerilogical order? A. In one colony there are 150 houses.

Cross-examined by Crown Counsel:

1205. Q. From which village did you come to live at Bakiella; the native of what village are you? A. I was born in Ratnapura district. 10
1206. Q. Which part of the country are you from? A. I am from Subragamuwa province.
1207. Q. You said you came prior to this incident to Bakiella? A. Yes.
1208. Q. How long prior to this incident was the second accused working for you in this carpentry shed? A. About 8 months he had been in my service when this incident took place. 20
1209. Q. Did he also come from your village or from some other village? A. He came to work with me saying that he was from Uhana.
1210. Q. The third accused on the date of the incident, you said was living in house No. 26? A. Yes.
1211. Q. And how far from your shed is the house No. 26? A. About 250 to 300 yards away. 30
1212. Q. And how long prior to the incident had you known the third accused? A. About 5 months after my coming to the colony I came to know all these people.
1213. Q. I am asking you about the third accused?

Court:

1214. Q. You say you came to know him about 5 months after your coming to the colony? A. Yes.

In the
Supreme Court

Defence
Evidence

Cross-examination continued.

No.6

1215. Q. So you knew the third accused quite well? A. Yes.

R.P.D. Jayasena
(Appellant)
1st March 1966

1216. Q. And he has come often to your carpentry shed? A. Yes. He comes now and then.

Cross-
examination
(for
Prosecution)

10

Court:

1217. Q. How long are you running this carpentry shed? A. Four years.

Cross-examination continued

1218. Q. Besides Wilson's boutique at that junction is your carpentry shed the only carpentry shed at that junction?
A. In the colony there are several carpentry sheds but at the Bakiella junction mine is the only carpentry shed.

20

1219. Q. You are a person who is known as Baas Unna of this carpentry shed?
A. Yes.

1220. Q. And you say you employed three to four assistants there? A. Yes, at times.

1221. Q. What is the nature of the carpentry work you do? A. I make chairs, tables and all household articles.

30

1222. Q. And how much do you pay to the second accused when he works under you as golaya? A. For a chair he is paid six rupees.

1223. Q. Six rupees for his labour? A. Yes.

1224. Q. And how much does he earn for a month?
A. There are certain months in which he earns 200 or even 300 rupees.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1225. Q. And how much is the profit for you in this carpentry shed? A. I have an income of about 200 rupees per month.

Court:

1226. Q. This Yapa Bandara is a stranger to this area? A. Yes.

1227. Q. He came about four months prior to the incident? A. I do not know when he came. 10

1228. Q. You have seen him for a long time? A. Two to two months prior to the incident I had seen him.

Cross-examination continued.

1229. Q. Now take your mind to the date when you went and made a complaint to the Uhana police? A. Yes.

1230. Q. Would it be correct that the first person to make a complaint at the Uhana police station was your Golaya the second accused? A. Yes. 20

1231. Q. Did you tell him to make a complaint? A. Yes.

1232. Q. And were you present when he made that complaint? A. I was outside, at the police station.

1233. Q. After his complaint you made your complaint? A. Yes.

1234. Q. And after your complaint the third accused made his complaint? A. Yes. 30

1235. Q. Did you tell the third accused also to make a complaint? A. Yes.

1236. Q. In your complaint you have said that
1237. on the 12th "when you were at the boutique of unit 34 junction Marasinghe and carpenter Piyadasa assaulted each other"? You said that in your complaint? A. I did not say that at that time I was at the boutique. I said, 'when I was in the shed'. 40

- | | | |
|----|--|--|
| | 1238. Q. So you admit that you told the police officer that on the 5th when you were at the boutique of unit No. 34 junction you saw this accused?
A. I did not say near the boutique. I said that I was inside the carpentry shed, and the fight took place there. | In the
Supreme Court
<hr/> Defence
Evidence
<hr/> No.6 |
| | 1239. Q. Where did the fight take place?
A. Inside Wilson Mudalali's boutique. | R.P.D.Jayasena
(Appellant)
1st March 1966 |
| 10 | 1240. Q. You saw that? A. I heard my goyala shout out and I ran. | Cross-
examination
(for
Prosecution)
(continued) |
| | 1241. Q. And what did you see then? A. I saw the second accused fighting with Marasinghe. | |
| | 1242. Court: Q. What were they doing?
A. I saw Marasinghe dealing a blow on the second accused. | |
| 20 | 1243. Q. Did the second accused retaliate?
A. I did not see him returning the blow. | |
| | 1244. Q. With what did you see Marasinghe dealing the second accused a blow? A. I saw him dealing a blow with his hand. | |
| | 1245. Q. One blow? A. I saw only one blow. | |
| | 1246. Q. And where did that alight? A. I saw this man striking. | |
| | (To Court:- | |
| 30 | 1247. Q. You did not see the second accused striking Marasinghe?
A. No.) | |

Cross-examination continued.

1248. Q. You say you saw Marasinghe deal one blow with his hand on the second accused?
A. Yes.
1249. Q. Which region of the second accused's body was the blow aimed at. A. I think it may have alighted either on the neck or on the head.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1250. Q. What did you see? A. I did not see distinctly where it alighted.

1251. Q. You did not even see where it alighted? A. I did not.

1252. Q. Then what did you do when you saw that? A. Shouting to the second accused I held Marasinghe.

1253. Q. It would not be correct to say that you saw Piyadasa and Marasinghe assault each other?....

10

1254. Q. Look at the Sinhalese words used: "I saw Marasinghe and carpenter Piyadasa assault each other"? A. I did not see them fighting excessively.

1255. Q. But you told the police that? A. Even if one blow was dealt I would have said that they assaulted each other.

(To Court:-

20

1256. Q. The other man also must deal a blow to say GAHA GATHA?....)

Cross-examination continued

1257. Q. Otherwise you must say that Marasinghe struck? A. According to the shouting I thought that they had earlier fought.

(To Court:-

1258. Q. Who is the one who raised cries? A. Piyadasa.

1259. Q. Did Marasinghe raise cries? A. No.

30

1260. Q. So, if he had been beaten he must have raised cries?.....)

Cross-examination continued.

1261. Q. What did the second accused cry out? A. He said, Baas Unnahe, I am being assaulted.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1262. Q. Baas Unnahe refers to you? A. Yes.

1263. Q. You say then you went and held
Marasinghe? A. Yes.

1264. Q. And the third accused also helped
you to do that? A. Yes, he also
assisted me and resisted him.

1265. Q. There were a number of people at the
junction at that time? A. Yes.

10

1266. Q. And you say you brought Marasinghe
and put him into a bus? A. Yes.

1267. Q. That is, you were trying to make
peace? A. Yes.

1268. Q. There was a bus at that time?
A. Yes.

1269. Q. And did the bus set out also?
A. Yes.

1270. Q. And you say after the bus went some
short distance Marasinghe got out and
came back? A. Yes.

20

1271. Q. And you say that after he returned he
got two aerated water bottles from
Wilson's boutique? A. Yes.

(To Court:-

1272. Q. But when you went up first on hearing
the second accused's cry that he was
being assaulted you did not see any
aerated water bottles? A. At that time
he did not have any thing in his hands.

30

1273. Q. Or did you see them lying fallen?
A. No.)

Cross-examination continued.

1274. Q. For the first time you saw any bottles
was when Marasinghe came down from
the bus? A. It was after returning
from the bus that he took the bottles.

In the
Supreme Court
Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966
Cross-
examination
(for
Prosecution)
(continued)

(To Court:-

1275. Q. And that was in the absence of the second accused? A. Yes).

Cross-examination continued.

1276. Q. Then you say Marasinghe spoke to you? A. Yes.

1277. Q. And he said that you had hidden these people? A. Yes.

1278. Q. Who are the people, that is only the second accused? A. And the third accused. 10

1279. Q. Third accused was also not there when Marasinghe came from the bus? A. No.

(To Court:-

1280. Q. Why was it that the third accused was hidden, he did not take part in a fight? A. I did not hide, I asked my man to go away.

1281. Q. That is the second accused? A. Yes. 20

1282. Q. And what did the third accused do? A. He also had gone along with him.

1283. Q. You did not see him going? A. He went inside the boutique which was closeby.

1284. Q. Their going away into hiding, did you see them both going away? A. Yes).

Cross-examination continued.

1285. Q. In your statement to the police did you say that he said you have hidden the people? A. Yes. 30

1286. Q. Did you tell the police that he told you that he was going to fast in the shed, Marasinghe? A. Yes.

1287. Q. Did Marasinghe tell you that? A. Yes.
 1288. Q. You know what fasting is? A. Yes.
 1289. Q. Did Marasinghe actually tell you that?
 A. Yes.

In the
 Supreme Court

Defence
 Evidence

No.6

(To Court:-

R.P.D.Jayasena
 (Appellant)
 1st March 1966

Cross-
 examination
 (for
 Prosecution)
 (continued)

1290. Q. Did he also say that he was going
 to fast unto death? A. He said, I
 would fast in your shed until the men
 are surrendered.
 10 1291. Q. You did not tell him, you better
 fast here, it is very nice to see
 you fast? A. I did not say so.
 1292. Q. He did not say that he was going to
 be violent, but that he was only going
 to fast? A. That is so).

Cross-examination continued.

1293. Q. Did he sit down also in a position to
 fast? A. As soon as he said this his
 younger brother arrived from Gonagolla.
 20 1294. Q. That is the deceased? A. Yes.
 1295. Q. He came in his car? A. Yes.
 1296. Q. He came long after this incident was
 over? A. Yes. It was immediately after
 this incident that the bus went off.
 1297. Q. You said Marasinghe said he was going to
 fast in your shed? A. Yes.
 1298. Q. And it was after Marasinghe said that the
 deceased arrived? A. Yes.
 30 1299. Q. And what did the deceased say when he
 came there? A. The deceased came there
 and asked his brother, brother what has
 happened to you.
 1300. Q. Had anything happened to Marasinghe at
 that time? A. No.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1301. Q. He had no injuries? A. No.
1302. Q. Where was Marasinghe at that time?
A. He was in front of my shed.
1303. Q. What did Marasinghe say then?
A. A number of lads shed saliva at me - SEVALA DAMMA.
1304. Q. Then what did the deceased say when Marasinghe said that? A. The deceased said, are there people who could do such things here? We are the old people in the colony, when we came to the colony these people who are now in the colony were little children, who is the fellow who annoyed you. 10
1305. Q. What did Marasinghe say? A. Then he said it was the Golaya of this Baas, and he mentioned Dissanayake of house No. 26 also.
1306. Q. That is the third accused? A. Yes.
1307. Q. When Marasinghe said that what did the deceased say? A. He questioned, where are those fellows. 20
1308. Q. Then? A. Then Marasinghe said in reply to that, Baas has hidden them. Then he got hold of my hand and said, give those people. I said, those people are of no use now, no trouble has been caused to you, we are all people living here, therefore, you had better return to the boutique with your elder brother. Then Marasinghe got hold of me by my hand and said, can't be let off like that, can you fight China footing with me or do you want to box. He questioned me. Then I told, brother Marasinghe, none of those things are of any use to me. Even if I go to Gonagolla it is from your boutique that I have a cup of tea, therefore, please go with your brother in your car. Then the younger brother said, it is not so brother, we must take revenge from this fellow. 30
40

1309. Q. Revenge from you? A. Yes.

1310. Q. Then? A. Having said so he asked for a box of matches from a woman in an adjoining boutique. She said there were no boxes of matches available. Then he said, somebody give me a box of matches to set fire to this fellow's shed. Then I went up to him and said, Driver Unnahe, it is not a great thing to destroy what belongs to a poor, innocent man like me, up to date no harm has been caused to you by us, therefore, please go away with your elder brother. Although I said so he started using obscene words and he got ready as if to hit me. He did not hit me. I began to beg and I obtained the assistance of others as well, got him to get into that car and thereafter they went in the direction of Maha Oya.

1311. Q. Before the deceased left your carpentry shed did he threaten to shoot you?
A. He said that he would set fire to my shed, he would shoot me.

1312. Q. With what did he say he would shoot you? A. He did not mention the instrument.

1313. Q. And then you say after they set out you went and made this complaint at the Uhana police? A. Yes.

1314. Q. And the person against whom you were complaining when you went and made this statement was this deceased?
A. I made the complaint at the Uhana police against the deceased.

1315. Q. Your complaint was directed at the threats which the deceased uttered at you? A. Yes.

1316. Q. And this complaint you made on the 5th August? A. Yes.

1317. Q. Then you returned back to your carpentry shed? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1344. Q. He threatened to destroy it by setting fire to it? A. Yes.

1345. Q. And he threatened to destroy you by shooting you? A. Yes.

1346. Q. And you say the police took no interest in that complaint? A. No.

1347. Q. And the deceased was going about his normal business? A. Yes.

(To Court:

1348. Q. And this man was a newcomer to this colony where you had been for eight years? A. Yes) 10

Cross-examination continued.

1349. Q. So, people in the colony who are longer in residence consider themselves important in the colony as people who had come long ago? A. I did not have such things in my mind.

(To Court:

1350. Q. You are known as Baas Unnahe? A. Yes). 20

Cross-examination continued.

1351. Q. And a person looked up to? A. There are other carpenters also in that area.

1352. Q. I am not asking you about other carpenters? A. There is no special respect paid to me.

1353. Q. But as a carpenter people in that Bakiella junction look up to you as Baas Unnahe, they don't despise you? A. As a carpenter I am being respected. 30

1354. Q. So that when according to you the deceased threatened you on the 5th of August the deceased said so in loud tones, came openly to your shed and threatened you? A. Yes.

Q. And there were a number of people at the junction? A. Yes.

1309. Q. Revenge from you? A. Yes.

1310. Q. Then? A. Having said so he asked for a box of matches from a woman in an adjoining boutique. She said there were no boxes of matches available. Then he said, somebody give me a box of matches to set fire to this fellow's shed. Then I went up to him and said, Driver Unnahe, it is not a great thing to destroy what belongs to a poor, innocent man like me, up to date no harm has been caused to you by us, therefore, please go away with your elder brother. Although I said so he started using obscene words and he got ready as if to hit me. He did not hit me. I began to beg and I obtained the assistance of others as well, got him to get into that car and thereafter they went in the direction of Maha Oya.

1311. Q. Before the deceased left your carpentry shed did he threaten to shoot you?
A. He said that he would set fire to my shed, he would shoot me.

1312. Q. With what did he say he would shoot you? A. He did not mention the instrument.

1313. Q. And then you say after they set out you went and made this complaint at the Uhana police? A. Yes.

1314. Q. And the person against whom you were complaining when you went and made this statement was this deceased?
A. I made the complaint at the Uhana police against the deceased.

1315. Q. Your complaint was directed at the threats which the deceased uttered at you? A. Yes.

1316. Q. And this complaint you made on the 5th August? A. Yes.

1317. Q. Then you returned back to your carpentry shed? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1318. Q. And on the 5th did you work at your carpentry shed? A. Yes.
1319. Q. And did the second accused also assist you working in your shed as a Golaya? A. Yes.
1320. Q. On the following day, that is on the 6th also did you work in your carpentry shed? A. Yes.
1321. Q. Did the second accused also assist you? A. On the 6th the second accused did not work with me. 10
1322. Q. On the 7th also you worked at your carpentry shed? A. Yes.
1323. Q. The second accused worked with you on the 7th? A. Yes.
1324. Q. That morning until the time of this incident you had not seen any police officer come to make any inquiries regarding the complaint you had made at the Uhana police? A. No. 20
1323. Q. No police officer came to your carpentry shed? A. No.
1326. Q. The deceased was in the meantime driving his car all over that area as normal, you saw? A. Yes.
1327. Q. He takes his car on private hire? A. Yes.
1328. Q. And on the 7th morning did you see the deceased come to Wilson's boutique? A. I saw him coming only to my shed. 30
1329. Q. You did not see the deceased go to Wilson's boutique? A. I did not see.
1330. Q. At the time you first saw the deceased was the second accused in your carpentry shed?....

- | | | |
|----|---|--|
| | 1331. Q. I think you already said he left a few minutes earlier. At the time the deceased came who was in the carpentry shed? A. Only myself. | In the
Supreme Court
<hr/> |
| | 1332. Q. Is there no lavatory close to your carpentry shed? A. No. | Defence
Evidence
<hr/> |
| | 1333. Q. When the police had not made inquiries about your complaint and you saw the deceased were you angry that no action had been taken on your complaint? A. No. | No.6
R.P.D.Jayasena
(Appellant)
1st March 1966 |
| 10 | 1334. Q. Were you naturally angry that the man had threatened to shoot you and no action had been taken against him? A. No. | Cross-
examination
(for
Prosecution)
(continued) |
| | 1335. Q. You were not angry? A. No. | |
| | 1336. Q. Not angry with the deceased? A. No. | |
| | 1337. Q. Even though he had threatened you? A. I finished it then and there. | |
| 20 | 1338. Q. You were quite friendly with the deceased? A. I was not friendly either. I did not speak to him. | |
| | 1339. Q. Besides this incident which occurred on the 5th of August, that is two days before this incident, were you angry or friendly with the deceased? A. I was friendly. | |
| 30 | 1340. Q. So that the only incident according to you which the deceased had done to cause any displeasure was the threat which was uttered on the 5th? A. That is all. | |
| | 1341. Q. That was a serious threat? A. It appeared to be a serious threat, that is why I went to the police station. | |
| | 1342. Q. That was a threat to destroy your whole life's worth in Bakiella? A. Yes. | |
| 40 | 1343. Q. That is, your carpentry shed was your livelihood? A. Yes. | |

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1344. Q. He threatened to destroy it by setting fire to it? A. Yes.
1345. Q. And he threatened to destroy you by shooting you? A. Yes.
1346. Q. And you say the police took no interest in that complaint? A. No.
1347. Q. And the deceased was going about his normal business? A. Yes.

(To Court:

1348. Q. And this man was a newcomer to this colony where you had been for eight years? A. Yes)

10

Cross-examination continued.

1349. Q. So, people in the colony who are longer in residence consider themselves important in the colony as people who had come long ago? A. I did not have such things in my mind.

(To Court:

1350. Q. You are known as Baas Unnahe? A. Yes).

20

Cross-examination continued.

1351. Q. And a person looked up to?
A. There are other carpenters also in that area.
1352. Q. I am not asking you about other carpenters? A. There is no special respect paid to me.
1353. Q. But as a carpenter people in that Bakiella junction look up to you as Baas Unnahe, they don't despise you?
A. As a carpenter I am being respected.
1354. Q. So that when according to you the deceased threatened you on the 5th of August the deceased said so in loud tones, came openly to your shed and threatened you? A. Yes.

30

- Q. And there were a number of people at the junction? A. Yes.

In the
Supreme Court

Defence
Evidence
No:6
R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1355. Q. He, in fact, asked for a box of matches from a neighbouring boutique?
A. Yes.
1357. Q. I take it, when you saw the deceased on the 7th you must have been very displeased as this man had not been taken into custody by the police?
A. I was not annoyed because of the fact that he had not been taken to custody by the police.
1358. Q. Then what were you annoyed about?
A. I began to wonder for what reason he was coming to the shed.
1359. Q. Certainly by that time you were not friendly with the deceased?
A. I was neither friendly nor angry.
1360. Q. You could certainly not have been friendly with the man who threatened to kill you? A. There was no friendship.
1361. Q. And you took that threat seriously enough to go to the police station and complain? A. Yes.
1362. Q. When he came to your carpentry shed, according to you, on the morning of this incident, I take it, you looked on him as an enemy coming now?
A. That is so, I thought so at that moment.
1363. Q. According to you when you saw the deceased coming from his car did you see the deceased having any weapon in his hand? A. Until he raised the weapon to hit me I did not observe it.
1364. Q. According to you the deceased raised a long weapon which you described as a sword? A. Yes, witness demonstrates. (and now measured)
1365. Q. You pointed out the length of your arm which is 2 feet 4 inches? A. Yes.

10

20

30

40

In the
Supreme Court

Defence
Evidence

No. 6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1366. Q. The deceased brought a 2' 4" sword
to your carpentry shed that day?
A. Yes.

1367. Q. At the time the deceased was wearing
a shirt and a sarong? A. Yes.

(To Court:

1368. Q. And he was a younger man than you?
A. I am unable to say it).

Cross-examination continued.

1369. Q. The deceased was wearing this shirt
P1 and this sarong P2? A. Yes. 10

1370. Q. You say you did not see this sword when
he came from the car? A. No.

1371. Q. Have you ever seen the deceased
carrying a sword about in his car before
his death? A. I have not seen a sword
in that car.

(To Court:

1372. Q. What you say is that the man brought
a weapon like a sword and that he fell
a victim to his own sword? A. Yes). 20

Cross-examination continued.

1373. Q. You have never seen the deceased carrying
a sword before this date? A. I have
not seen him take a sword with him.

1374. Q. You did not know whose sword it was
that the deceased brought that day?
A. I did not know.

1375. Q. You don't own a sword? A. No, I have
a licensed gun. 30

1376. Q. But you have no sword? A. No.

1377. Q. You have only your carpentry tools
in your carpentry shed? A. Yes.

(To Court:

1378. Q. And you were drilling a piece of wood?
A. Yes).

In the
Supreme Court

Defence
Evidence

Cross-examination continued

No.6

1379. Q. With what were you drilling the piece of wood? A. I had a chisel which I had got made in a smithy.

R.P.D.Jayasena
(Appellant)
1st March 1966

1380. Q. You were not drilling a hole then?
A. I was not using a drill for the purpose of making the hole.

Cross-
examination
(for
Prosecution)
(continued)

1381. Q. You were chipping some holes with the chisel? A. Yes.

1382. Q. With the chisel and the mallet? A. Yes.

1383. Q. So the deceased came up to you when you were so engaged? A. Yes.

1384. Q. And both your hands were engaged in this job? A. I got off from the carpentry bench when I saw him coming.

1385. Q. Why? A. Because I did not know for what he was coming.

1386. Q. At that stage did you see the sword in his hand? A. He came holding a cigarette in one hand and smoking it. I did not look attentively to notice whether he had anything in his other hand, when he came.

1387. Q. When he came close up to you did you think that there was going to be any danger, this man who had threatened to kill you? A. He had said earlier that he would kill me. I did not think that he was coming to kill me at that time.

1388. Q. The deceased asked you to give him two people now? A. Yes.

1389. Q. That is referring to the 2nd and 3rd accused? A. Yes.

10

20

30

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

(To Court:

1390. Q.On the 5th also when Marasinghe came and the deceased came the second accused was not there? A. By that time both of them had gone.

1391. Q.And on this occasion also the second accused who was your Golaya had suddenly got away ten minutes earlier to answer a call of nature, on the 7th?
A. Yes. 10

1392. Q.It was an accident, a coincidence that he was not there on two occasions?
A. Normally he goes to answer a call of nature at about 9 or 9.30).

Cross-examination continued.

1393. Q.All that the deceased came up to your carpentry shed and asked you to give was those two people, referring to the second and third accused? A. He did not use the word 'please'. He said, you devil give me the two people you hid the other day. 20

1394. Q.If not, here is this for you and aimed the sword at you? A. As he aimed the sword at me I held my mallet.

1395. Q.You were still having the chisel and the mallet in your hands? A. Yes.

1396. Q.When he asked you to give those two people did you say anything to the deceased as to where the second and third accused were? A. I did not have time to say anything. As soon as he asked me he dealt me a blow. 30

1397. Q.When the deceased asked you for these two people you were not given an opportunity even to tell him where they were? A. So saying he aimed the blow.

1398. Q.It did not alight?
A. That blow struck the mallet. 40

(To Court:

1399. Q. You did not sustain any injuries in the course of this incident on the 7th? A. No.)

Cross-examination continued.

1400. Q. Not a single scratch? A. While I was running small injuries were caused to my feet.

10

1401. Q. Not at the hands of the deceased? A. I was saved from that.

(To Court:

1402. Q. Altogether how many blows with the deceased's sword did you strike on the deceased? A. About four or five blows he may have received from my hands.

1403. Q. With his own sword? A. Yes.

20

1404. Q. You did not take the mallet to the police station at Vellavaly? A. The mallet and the chisel both fell.

1405. Q. You did not take either the mallet or the chisel to the police station? A. No.

1406. Q. Nor did you take the sword to the police station? A. No.

30

1407. Q. Where did you leave the chisel? A. I did not keep it anywhere. It dropped from my hand in the carpentry shed.

1408. Q. Mallet also fell there? A. The mallet got stuck to the sword. I pulled out the mallet and threw it aside.

1409. Q. If the sword cut a wooden mallet it would have got bent? A. I did not notice.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1410. Q. Is it likely that it would have got bent? A. At times it could be.

1411. Q. In order to support your story that it alighted on the mallet, would it have been better if you had taken the sword to the police?
A. A doubt was created in my mind if I have in my hand a bad weapon as to what would happen.

1412. Q. What would happen? A. If the enemies came behind me I would not know what would happen. 10

1413. Q. You ran to the jungle you said?
A. As I was not sure as to what would happen if I keep this bad weapon in my hand I broke it and threw it away and ran.

1414. Q. You broke it? A. What I mean by breaking it is, when I struck it on the ground it bent. 20

1415. Q. That is why you struck on the road?
A. Yes.

1416. Q. How far away from the spot where you struck the road did you throw this?
A. Up to about the edge of that table, about 10 feet).

Cross-examination continued.

1417. Q. By the side of the road you threw it as you ran along? A. Yes.

(To Court:

30

1418. Q. There must have been people around looking? A. Yes.

1419. Q. People would have seen this being thrown? A. They may have seen.

1420. Q. Surely, do they close their eyes. You didn't throw it into the jungle you threw it on to open space?
A. There was grass and mimosa).

Cross-examination by Crown Counsel continuedIn the
Supreme CourtDefence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966Cross-
examination
(for
Prosecution)
(continued)

1421. Q. When the deceased came on the 7th August to your carpentry shed and said "Give me those two men or else" and aimed a blow at you with the sword, did you at that stage, raise any cries?
A. No. I did not raise any cries.

1422. Q. Did you raise cries at any stage? When you realised that he was going to attack you with a sword?
A. When I warded off the blow with the mallet, I said: "What I can do about that".

1423. Q. That is about producing these two men? A. Yes.

1424. Q. In fact, you could not produce them at that time? A. Yes.

1425. Q. The second accused was in the lavatory?
A. Yes.

1426. Q. Where was the third accused?
A. I did not see him at all.

1427. Q. There was nothing you could have done about producing them? A. Yes.

1428. Q. The deceased was attacking you because you could not produce the second and third accused? A. Yes.

1429. Q. Did you realise that you were an unarmed man, except for your chisel and the mallet? A. Yes. I would have been killed.

1430. Q. If he had wanted to, the deceased could have slashed you to pieces with the sword? A. He deliberately hit me, but because of the mallet, he did not succeed.

1431. Q. The mallet is made out of a hard piece of wood. It is not a soft piece of wood? Is that right? A. Yes.

1432. Q. It is used as a hammer?

10

20

30

In the
Supreme Court
Defence
Evidence

Court:

1433. Q. Of what wood was this mallet made?
A. Out of Milla wood.

Cross-examination by Crown Counsel continued.

No.6
R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1434. Q. Milla is a hard wood? A. Yes.

1435. Q. It is a very hard wood?
A. Yes.

1436. Q. And used like a hammer? A. Yes.

1437. Q. In spite of that being so, that it
being a very hard wood, when you warded
off the blow of the sword, the sword
got embedded in the mallet? A. It did
not get in very deep. 10

1438. Q. It did not get embedded?
A. The sword got stuck.

1439. Q. And the deceased at once left the
sword off? A. No.

1440. Q. He was still holding the sword?
At the time it was stuck in the mallet
the deceased was still holding the
sword? A. The sword got embedded when
he was holding it. 20

1441. Q. He did not take his hand off? A. He
pulled the sword, but it did not come
unstuck.

1442. Q. You were still holding the mallet?
A. Yes. By its handle.

1443. Q. The deceased could not take the sword
off the mallet? A. Almost at the
same time, I stabbed him. 30

1444. Q. You stabbed him with the chisel?
A. Yes.

1445. Q. You turned round and demonstrated to
His Lordship how your arm was encircling
the deceased? A. While I was turning,
I stabbed him.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1446. Q. You demonstrated to His Lordship and the gentlemen of the jury just now?
A. Yes.

1447. Q. You stepped up smartly, and then turned and stabbed, and kept on stabbing with the chisel with your arm round him in a semi-circular fashion?
A. Yes.

10 1448. Q. When the deceased fell, was there any blood of the deceased on the floor?
A. I did not see to that.

1449. Q. Did you see any bleeding injury on the deceased when he fell on the floor at your feet? A. I did not see to those things. I wanted to get the sword snatched away from him quickly.

20 1450. Q. Never mind what you wanted to do. Did you see a bleeding injury on the deceased? A. When he got up and was going away, I saw blood on the shirt.

1451. Q. You saw blood pouring out? A. Yes.

1452. Q. And you saw this when you had taken the sword off his hands? A. Yes. When I snatched it from him.

1453. Q. You saw the deceased walking in front of you getting out of the carpentry shed? A. Yes.

30 1454. Q. And you saw him walking with blood on his shirt? A. Yes.

1455. Q. You came up from behind and struck him on his head? A. Yes.

1456. Q. Did he fall for that blow? A. No.

1457. Q. Did he shout when you dealt him that blow with the sword? A. He did not shout. He turned and raised his hands.

1458. Q. He raised his hands in which there was nothing? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1459. Q. And you struck him against his hands with the sword? A. The blow struck both his hands.

1460. Q. At the time the deceased raised his hands and you cut him, did he cry out anything? A. I cannot remember. I am not sure.

1461. Q. Then you dealt him another blow and this second blow alighted on his hands? A. Yes. 10

1462. Q. At that stage you saw the deceased still continuing to go forward? A. Yes.

1463. Q. Went in the direction of Wilson's boutique, you said? A. Yes.

1464. Q. And your evidence is that he got on to the bund road? A. Yes.

1465. Q. And you went chasing after him? A. I went about 10 feet and returned.

1466. Q. You went about 10 feet still striking him? A. When he passed me, I dealt him another blow. 20

1467. Q. As he passed what? A. As he passed the compound of Wilson's boutique.

Court:-

1468. Q. Then you have been chasing after him for more than 100 feet? That is from your carpentry shed? A. Yes.

Cross-examination continued.

1469. Q. And your evidence is that the deceased fell down by the bund road? A. Yes. 30

1470. Q. At that stage, did you say that he was severely injured? A. I saw him bleeding.

1471. Q. And he lay fallen? He could not get up? A. I did not notice all that.

1472. Q. You came back holding this sword?
A. Yes.

In the
Supreme Court

1473. Q. And you came to the top of this
bridge? A. Yes.

Defence
Evidence

1474. Q. And for everybody to see, you struck
this sword on the road? A. Yes.

No.6

1475. Q. Did you say anything when you struck
the road with the sword? A. I said
nobody should hold me.

R.P.D. Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

10

Court:

1476. Q. Was this done by you in order to
prevent people from arresting you?
A. My action had two motives.

1477. Q. The first was that no one should
approach you? What as the other?
A. Because I was not sure as to what
would happen if I kept a dangerous
weapon.

20

1478. Q. You could have kept it there and come
away without cutting the road with it?
A. I cut the road to break the sword.

Cross-examination continued.

1479. Q. At that time you said that nobody should
catch you and you struck the road with
the sword?

Court:

1480. Q. When you cut the road, was it to
instil fear into the crowd that had
collected there? A. Yes. Also if
anybody came to catch me.

30

Cross-examination continued.

1481. Q. When you struck the road with the sword,
it did not break? A. The edge got
bent.

1482. Q. That is the cutting edges? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1483. Q. The edge became blunt? A. Yes.

Court:

1484. Q. What you say is that you raised the sword and looked at the edge?
A. I struck the road and looked at the sword. I then saw that the cutting edge had slightly bent.

1485. Q. Was there any blood on the sword at that time? A. I did not notice that.

Examination continued.

10

1486. Q. You really say, according to your story, that this was a weapon brought by the deceased and aimed at you?
A. Yes.

1487. Q. If you did not hold the mallet, the sword would, of course, have cut you?
A. Yes.

1488. Q. It was aimed in the direction of your neck? A. Yes.

1489. Q. You saw the sword come in the direction 20 of your neck? A. Yes.

1490. Q. Did you not realise that it would have been useful to take this sword and give it to the police and tell them that the deceased came with the sword and attempted to cut you? A. I did not think of that at that time.

1491. Q. You dropped the sword at that spot and ran? A. Yes.

Court:

30

1492. Q. It did not strike you to take the mallet and show the cut mark on the mallet to the police? A. I did not know that.

Cross-examination continued.

1493. Q. You started going on the road?
A. I wanted to escape these people and ran away.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1494. Q. Which people? A. I thought that Marasinghe might come.
1495. Q. You did not see Marasinghe at that stage? A. No.
1496. Q. No one chased after you? A. No.
1497. Q. Just in anticipation that somebody might chase after you, you started running? A. Yes. Through fear.
- 10 1498. Q. Did you start running in the direction of the Uhana police? A. No. Towards Maha Oya.
1499. Q. Which is the closest police station to Bakiella? A. The Uhana police station.
1500. Q. How far from the Bakiella junction? To Uhana police? A. About $7\frac{1}{4}$ miles.
1501. Q. But ran in the direction opposite to that in which the police station was? A. Yes.
- 20 1502. Q. On the way, did you go into some jungle? A. At the junction. There I ran into the jungle.

Court:

1503. Q. Whereabouts is that junction?
A. There is a road constructed which leads to the houses in the colony.

Cross-examination continued.

- 30 1504. Q. Did you meet the second and third accused in the jungle? A. When they called my name I stopped.
1505. Q. Did they come running up to you?
A. After I went they had come.
1506. Q. The second and third accused came from behind. They shouted out your name? A. Yes.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1507. Q. As you came running from this scene? A. Yes.

1508. Q. On the night of the 7th, you saw both of them together in the jungle? A. Yes.

1509. Q. On the night of the 7th, the day of this incident, you made a complaint at the police station? A. On the night of the 7th, we went to the Wellaweli police station.

10

Court:

1510. Q. You took a jungle path? A. Yes.

1511. Q. Is there no road leading from Bakiella to the Wellaweli police station? A. In order to get there along the proper road, one has to come to the place where the incident took place and take the ...

1512. Q. And take the Uhana Road? A. No. One has to go along in the opposite direction along the Nawagiri Aru bund.

20

1513. Q. You could have gone along that road? A. There are many houses there.

Cross-examination continued.

1514. Q. You were frightened of the houses? A. The deceased's residence is on that road.

1515. Q. Did you meet any elephants in the jungle? A. I did not meet elephants, but I have said so falsely that I met elephants.

30

1516. Q. To whom did you make this false statement? A. To the police.

1517. Q. You deliberately told the police falsely that you met elephants? A. Yes.

1518. Q. Why did you tell a falsehood to the police, if you did not meet elephants? A. I did that because we do not belong to the Wellaweli police. We belong to the Uhana police.

In the
Supreme Court

Defence
Evidence

No.6

Court:

R.P.D.Jayasena
(Appellant)
1st March 1966

10

1519. Q. Did you try to make out that on your way to the Uhana police you met elephants, and so you went to the Wellaweli police? A. Yes.

Cross-
examination
(for
Prosecution)
(continued)

Cross-examination continued.

1520. Q. You did not really meet any elephants? A. That is so.

Court:

1521 Q. So it is a 'ali boru' to say you met 'ali'? A. (No answer).

Cross-examination continued.

20

1522. Q. According to your evidence, you state you were the person who was solely responsible for this entire attack on the deceased, Konar Herath? A. I am the person who attacked.

1523. Q. You heard the evidence of the doctor which was interpreted to you in His Lordship's Court? A. Yes.

1524/ Q. And at the time of his death, the
6. deceased had as many as twenty external injuries? A. Yes.

30

1527. Q. Of which eighteen were incised injuries caused by a sharp cutting weapon. A. Yes.

Court:

1528. Q. Some cuts and some stabs? A. Yes.

Cross-examination continued:

1529. Q. According to you, you say that you are the person responsible and that you inflicted all those injuries? A. At that time, I was the only person.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1530. Q. It was the only time, the deceased received injuries? A. Yes.
1531. Q. He did not come to your shed with those injuries? A. No.
1532. Q. You did not see the second and third accused anywhere at the time of the Bakiella incident. A. No.
1533. Q. They were nowhere near the place? A. No.
1534. Q. The second accused did not come back from the lavatory? A. No. 10

Court:

1535. Q. It was 10 minutes after the second accused had gone to the jungle to answer a call of nature that the deceased came to your place? A. Yes.
1536. Q. So that by that time he would have finished and would have been on his way back? A. I cannot say that.
1537. Q. How long does it normally take to answer a call of nature at this regular hour? A. He sometimes takes about half an hour. 20
1538. Q. Is that the shortest period within which he has come? A. He has not come before 20 or 25 minutes have gone by.

Cross-examination continued.

1539. Q. Witness, I put it to you that you are trying to save the second and third accused by taking all the blame on yourself? What do you say to that? What is your answer to that? A. I deny. 30
1540. Q. I put it to you witness that you think you are being brave enough to take the whole responsibility for this attack on the deceased when in fact the second and third accused both knew of this attack on the deceased? What do you say to that? A. I deny. 40

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Cross-
examination
(for
Prosecution)
(continued)

1541. Q. I put it to you that the statement which you have made on the 5th August of an incident on that day, was a quarrel between only Marasinghe and the second accused? That that was the cause, the origin of the present incident? A. Yes.

1542. Q. In connection with that the deceased threatened you? A. Yes.

10 1543. Q. I, therefore, put it to you that you were offended in your dignity in the position which you held in your community? A. I deny.

1544. Q. I put it to you that you did not mention the second accused as having stabbed the deceased because he did so at your bidding and because he was your golaya? A. I deny.

20 1545. Q. I put it to you that both the 2nd accused and the third accused joined you in the attack on the deceased, until that man fell defenceless on the ground? A. No. I was only I who attacked the deceased.

Re-examination by Mr. Chandrapal.

Re-examination

1546. Q. Describe the weapon with which you inflicted the first injury on the deceased?

30 Crown Counsel: He has already told us that it was a chisel he had made at the smithy.

Mr. Chandrapal: He has mentioned that, My Lord, but he has not described the weapon.

Crown Counsel: He has mentioned the weapon a number of times.

Court: He said that he got this made at the smithy. Surely you remember that?

40 Mr. Chandrapal: He mentioned that it was made at the smithy but he did not describe the weapon.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Re-
examination
(for
Prosecution)
(continued)

Court: Anyway, how does it arise in cross-examination. No question was put to him by Crown Counsel on that aspect.

Re-examination by Mr. Chandrapal continued

1547. Q. You know where this bridge is?
A. Yes.

1548. Q. That portion is tarred? A. Yes.
It is a tarred road.

1549. Q. What do you find on either side of the bridge? A. There are pipes on either side.

10

1550. Q. Why did you chase after the deceased?
A. In order to save my son life because I thought that he would do some harm.

Court: He has said that in his examination-in-chief. "I thought that there was a weapon in the deceased's waist".

20

Re-examination by Mr. Chandrapal continued.

1551. Q. Did you at any stage return to the carpentry shed after the attack on the deceased? A. No.

1552. Q. You know you went along the jungle path to the Wellaweli police station?
A. Yes.

Crown Counsel: He has said so,
My Lord.

Re-examination continued by Mr. Chandrapal:

30

1553. Q. How many miles is it along the jungle path to the Wellaweli police station? A. About 30 to 35 miles.

Court:

1554. Q. What is the distance to the Wellaweli police station along the road? A. About 7 miles.

- | | | |
|----|--|--|
| | 1555. Q. Along which road is that? A. Along the Wellaweli road. | In the Supreme Court |
| | 1556. Q. From where does that road start? A. From Bakiella. | Defence Evidence |
| | 1557. Q. Is that the road over the bund? A. There is another road from the 14th mile post. One can go along the bund as well. | No.6
R.P.D.Jayasena (Appellant)
1st March 1966 |
| 10 | 1558. Q. The 14 mile road is on the Uhana side of the junction? A. Yes. | Re-examination (for Prosecution) |
| | 1559. Q. So why did you not take that path? A. Because the deceased's friends or anybody like that come along that road. Anybody could come in vehicles along that road. | (continued) |
| | 1560. Q. You took the 35-mile route? A. Yes. | |
| | 1561. Q. At the risk of meeting elephants? A. I did not meet any elephants. | |
| 20 | 1562. Q. That may be so, but in the jungle, you find elephants, bears, leopards and so on? A. Yes. | |

Re-examination continued.

1563. Q. Why did you make this false statement?

Crown Counsel: He has already explained that, My Lord.

Court: We will allow it anyway and see what he says.

Re-examination by Mr. Chandrapal continued.

30 1564. Q. Yes? A. I said that to the Wellaweli police thinking that they will not entertain my complaint because I belong to the Uhana police area, and I did not go to the Uhana police.

Court: That is what he has stated earlier.

In the
Supreme Court

Defence
Evidence

No.6

R.P.D.Jayasena
(Appellant)
1st March 1966

Re-
examination
(for
Prosecution)
(continued)

Examination
by Foreman of
Jury

Witness to Court: I also went to the Wellaweli police because the Uhana police had not taken any action on my earlier complaint.

Foreman:

1565 Q. When you were attacked with the sword by the deceased, with which hand were you holding the mallet? With the right hand or the left hand? A. With the left hand.

10

Court:

1566. Q. By nature, you act with the right hand? Or do you hold with the left hand and hit with the right hand? A. I am ambidextrous.

1567. Q. With what hand do you write? A. With the right hand.

1568. Q. With what hand do you eat your meals? A. When I was an infant, I used my left hand, but after I started going to school, I changed over to the right hand.

20

1569. Q. The right arm is the stronger arm? A. Both my arms are equally strong.

1570. Q. You remember Police Constable 5487 Kulasingham of the Wellaweli police who recorded your statement that day, and who gave evidence here? A. Yes.

1571. Q. And his evidence was interpreted to you in Sinhalese by the Mudaliar? A. Yes.

30

1572. Q. And the constable said that you came to the police station at 4.50 a.m.? A. He recorded my statement at that time.

1573. Q. That may be, but the constable said that the three of you came to the police station at 4.50 a.m.? A. Our statements were recorded at that time.

40

1574. Q. His evidence was that you went there at 4.50 a.m.? A. Yes.

1575. Q. Then why did you not ask your lawyer to question him about your having gone there at 12.30 a.m.? A. I did not understand at that time.

10 1576. Q. But it was interpreted to you? That is why I see that everything is interpreted? You say it did not strike you? Then was he questioned about having told you to wait, and that he recorded your statement at 4.50 a.m.? A. No.

20 1577. Q. Were you not annoyed when the Uhana Police did not make an inquiry into your complaint? A. Nothing could be done by getting annoyed with the police and I did not get annoyed.

1578. Q. And if two days after your complaint, nothing was done by the police? A. No.

1579. Q. So that in your area the second accused is known as golaya? A. Yes.

In the
Supreme Court

No.7

Charge to Jury
2nd and 3rd
March 1966
(continued)

the deceased to the doctor and to Sergeant Chandrasekera. Before I deal with these statements I would like to read to you what the Evidence Ordinance says: Proved: "A fact is said to be proved when after considering the matters before it the court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists". The word 'court' in what I have just read to you means, the seven of you Jurors who are judges of fact. As I told you, you are the judges of every fact, and even if I do not repeat this at every turn you will not fail to remember that you are the sole judges of every fact. 10

There is another section which allows the statement of a deceased person as to the cause of his death to be given in evidence, when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question. In this case you have to decide the cause of this man's death, that is Podi Appuhamy Konara Herath, the cause of the death is in question. Therefore, any statement made by him is admissible in evidence, and it is relevant for the purpose of your decision. The only thing is it has not been subject to cross-examination like anybody else who comes and gives evidence. Cross-examination is a way of testing the truth of a witness. Also it is not given on oath. 20 30

That statement cannot be tested by cross-examination for the reason that the man is dead for obvious reasons. Therefore, subject to that infirmity that evidence is admissible. Benefit of any reasonable doubt must be given to the accused. Now when three persons are charged the case against each person as well as the evidence of each person must be considered separately as though they were in separate compartments. As I told you, it is not the benefit of any fanciful doubt which must be given to the accused but only the benefit of any reasonable doubt. Now the first accused said that he has borne a good character and that he has not been charged or convicted. That is 40

In the
Supreme Court

No.7
Charge to Jury
2nd and 3rd
March 1966
(continued)

10 relevant. Therefore, you will perhaps ask yourselves the question whether a man who had a good character will behave in this way. Well, experience of our Courts is that first offenders are often charged with offences of this type. Sir Francis Soerterz, an eminent and learned Judge of this Court, once said that 90 per cent of the people who are of good character are charged for the first time for this type of offence. You will take that into consideration and it is relevant but it is not conclusive on that matter. That is all I want to tell you.

20 Perhaps I told you earlier that when an accused person gives evidence due allowance must be given to the unsatisfactory demeanour, if any, because the man is on trial for a serious charge and he is likely to be nervous but it was submitted that both the first and second accused who gave evidence before you created a good impression. That is a matter for you to decide but in the event of your feeling that their demeanour was not good, as I told you earlier, you must give due allowance for that fact.

30 Now the charge is one of murder. So, crown has taken upon itself to prove certain ingredients or elements. One is that Podiappuhamy Konara Herath died as a result of injuries inflicted by one or more of these accused. Crown's case is that they acted together. They have to prove that Herath died. You have the evidence of the doctors as well as the evidence of the wife of the deceased Gunawathie Menike who say that this man has died and with regard to his death you will have no doubt but the accused should have a common murderous intention.

40 Murderous intention is an intention to inflict death or to kill a person or to inflict such injury as would in the ordinary course of nature be sufficient to result in death. In this case we have the evidence that at least one injury, injury No. 20, which had entered the chest cavity from behind had damaged the liver and was necessarily fatal. That is, no amount of medical or surgical attention would have saved that man. Also there was the evidence of the doctor that

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

he would exclude the possibility of the man dying even if injury No. 20 had not been inflicted.

Now this appears to be a convenient point to stop. Tomorrow I shall address you on what is common murderous intention and the facts of the case, and also the defence that has been put forward.

1 p.m. Adjourned for the day.

9.15 a.m.

March 3, 1966

10

(CHARGE RESUMED)

Now, gentlemen, the chief question that you have to decide first of all is, did Yapa Bandara see this incident? Before that you will consider the statement made by the deceased to Dr. Sabaratnam and shortly thereafter to Police Sergeant Chandrasekera. The condition of the man according to the doctor was very low, condition was very bad. The telephone message P4 states - that is the telephone message sent by Dr. Sabaratnam the District Medical Officer, Amparai, to the Amparai Police - That Konara Herath's condition was very bad. "His condition is very bad, please make arrangements to record his dying deposition immediately".

20

Then the doctor also told you that he was suffering from shock, and I asked him, what is shock? Shock is a state of collapse of the blood circulation. The next question I put to him was, "Q. The state of collapse in the blood circulation, how does it affect the patient's mental qualities?" Answer was, "Lack of blood supplied to the brain also". "Q. Then?" Answer was, "If no treatment is given to combat the blood lost the brain may go into irreversible action in which there will be a change from which he cannot recover". He was asked in cross-examination by Mr. Kamalanathan, "Q. After you gave him saline you said his condition improved and he was in a fit condition to speak?" Answer was, "Yes" "Q. After you gave him saline the patient was in quite a fit condition to answer your questions?... A. Yes." To Court: "Q. What do you mean by

30

40

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd

March 1966

(continued)

in a quite fit condition? A. He was able to answer my questions I put to him". And I put to him, "Q. How do you know that he was quite fit; he had improved?" Answer was, "I can only say he had improved". So, we do not know the exact condition in which the man was, and if due to shock a person's mental qualities are affected, then will he be able to reproduce everything that happened to him in that state? And he told Dr. Sabaratnam this, that Wadu Baas of Unit 34, House No. 15 (the first accused is Wadu Baas or carpenter of Unit No. 34, House No. 15) cut him, and one Piyasena of House No. 26 in Unit 34, and another. And the other was referred to as the man working with the Baas as Golaya, that is, a pupil who learns his work under a Master Carpenter. Then he told me that Wadu Baas cut me with a sword and the other two assaulted with Kala Kirincha. You will remember, most of the injuries, except for those on the hands, are on the back. So, the evidence is that the first accused called upon the second accused to stab him, but here the deceased had said, 'Kala Kirincha', that is, a knuckle duster. And the doctor also told us that in response to his telephone message a Police Officer came to the hospital, that was P.S. Chandrasekera; at the doctor's request P.S. Chandrasekera questioned Herath in his presence. You will remember that the telephone message was at 12.10 p.m. and P.S.Chandrasekera arrived at 12.25 p.m. To him also he said this: He said that one Baas of House No. 15 Unit 34, that is to P.S. Chandrasekera, whose name not known, cut me with a sword and his Golaya, whose name not known to me and one Piyasena stabbed me and assaulted me with Kala Kirincha. There he for the first time refers to the stabbing by these, the Golaya and Piyasena. Piyasena is not the name of the third accused, but he lives in House No. 26. I think, that was referred to earlier to the doctor, and regarding the condition of the man at that time he was asked, "Did you question the injured man, that is the deceased in this case?... A. Yes. Q. That is at the time you went to hospital? A. Yes. Q. Did he speak to you? .. A. He spoke with difficulty. He spoke a few words. Q. Did you question him? .. A. Yes." P.S.Chandrasekera's evidence was also that when he went to the hospital Dr. Sabaratnam was

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

attending on Herath. "Q. Did you wait till the doctor finished his examination on him? A. As the doctor was attending on him I questioned him because doctor asked me to do so". In finding out whether Yapa Bandara saw this incident you may look for circumstances to indicate whether the man saw this incident. Now there are two circumstances on which the crown relies, apart from the evidence of that man. Specially you will look for corroboration of that type or circumstances of that type to find out whether he was an eye witness because of certain unsatisfactory features in the evidence he has given, namely, contradictions 1D1 to 1D6, some contradictions produced and they are before you. Now you remember Sub-Inspector Herath's evidence that he recovered the driving license, the insurance certificate and a sum of Rs.57/- from the boutique of Wilson and that was because of the statement made by Yapa Bandara. How could Yapa Bandara have known that these things were there if he was not present and if Yapa Bandara was not an eye witness; you may examine these articles for yourself and there is not a drop of blood on them and if these articles were on the person of the deceased and you found heavy stains of blood on the shirt and sarong that he was wearing, would you not expect these articles to be stained with blood? Does that give you an indication as to where this incident took place and under what circumstances this incident took place.

(Jury inspects the driving license, insurance certificate and the cash Rs.57/-).

Yapa Bandara says that the deceased came into the boutique and bought a cigarette and tendered a five rupee note. Some people have a way of showing off that they are well to do or rich. Sometimes it is a habit of children and sometimes people find it difficult to get over that childish habit even later in life. So the deceased took them and placed them on the counter and soon after that, this incident took place. That is how the deceased came to be there according to Yapa Bandara. Does that give you an indication of this man's presence there or not? Now there is another thing. If this man had not been present

In the
 Supreme Court

 No.7
 Charge to Jury
 2nd and 3rd
 March 1966
 (continued)

10 there at that time would he have been able to show the cut mark, if he had not seen the cutting on the tarred road over the bridge with the sword saying 'this is the fate that will befall you people also' or words to that effect, to the people who were watching. According to the first accused, he did that for two reasons, namely, he wanted to blunt the edge of the sword and also to see that the people do not interfere with him. Was it intended merely to prevent the people from coming and seizing him or was it to prevent people from coming forward and to give evidence. These are questions you will have to ask. If you think that the opinion I am expressing on these matters do not coincide with your own views do not accept them. I have made it quite clear. If I do not repeat it again do not forget it right through the end of the case.

20

Now, if you are not satisfied beyond reasonable doubt that Yapa Bandara was an eye-witness then, of course, the case for the prosecution would not have been proved beyond reasonable doubt. If on the other hand you are prepared to act on the evidence in spite of the other infirmities in it, then you are entitled to act.

30

There appears to have been some incident on the 5th of August, 1965; the first accused took the other two, he admits, to the Uhana Police Station. They made their statements in this order: The second accused made the first statement at 3 p.m. the first accused made the statement at 3.10 p.m., and the third accused made his statement at 3.20 p.m. It is quite clear that all of them went together. That is the evidence of the Police Officer who recorded their statements too. According to the second accused's statement, that is P5, there was an incident between Marasinghe Mudalali, the deceased's elder brother who has a boutique at the Gonagolla junction, and the second accused; Marasinghe hit him with an empty arrack bottle and he sustained an abrasion; then he pushed him and ran away. And the other two complaints, P6 made by the first accused, and P7 made by the third accused indicate that Marasinghe's younger brother who is the deceased went and threatened

40

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

them. First accused was threatened by the deceased saying that he would shoot him and kill him and also set fire to the carpentry shed. You will find in P6, that is first accused's statement, his address is 34/15, and P7 the address given by the third accused is 34/26. In regard to that incident the deceased is alleged to have gone and threatened to kill the third accused in his absence, that he had gone there with Marasinghe when he uttered these threats. For some reason or other, which is not clear, there is no evidence on that point. Uhana Police to whom these complaints were made were here, but they did not speak as to why they did not make any inquiries into these complaints. Some of these serious complaints unless taken notice of lead to further complications. Now, in some courts serious offences are settled or compounded or they are not taken serious notice of and then what happens is, the complainant feels I have gone to the Police, I have gone to the courts of justice, but no justice has been meted out to me, and then he tries to take the law into his hands. That is the experience of the Higher Courts and that is quite common in this country. This complaint is made at about 3 p.m. No action is taken on that day, no action is taken on the next day. Then, what is the feeling that these three accused would have entertained? Whether Marasinghe Mudalali either through his influence had stopped, but there is no evidence that Marasinghe Mudalali was informed of this or that the deceased himself was aware of these complaints.

10

20

30

Now I told you about common murderous intention. Murderous intention itself is a question of fact, and you are entitled to presume that any sane person who inflicts a fatal injury intends the natural and inevitable consequences of his act. In this case death was an inevitable consequence. Therefore, you may presume murderous intention is a presumption of fact on which you are entitled to act but not obliged to do so.

40

10 In this case it is submitted that some false evidence has been given by Yapa Bandara. It is open to you to say that the falsehoods are of such magnitude as to taint the whole case for the prosecution and you feel it would be unsafe to convict at all. On the other hand it would be equally open for you to say, if you think fit to do so, that the falsehoods are not of such a character as to affect his evidence, the falsehoods are not of a material nature. And it is equally open to you to separate the falsehoods from the truth and found your verdict on the evidence if you accept as the truth.

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

20 In a case known as the Profula Case decided in India in 1931 by a Full Bench it was held that there is no Rule of Law that if the jury thinks that a witness has been discredited on one point they may not give credit to him on another. The Rule of Law is for the jury to see whether they will or will not believe any particular piece of evidence. Contradictions are not substantive evidence. That is, if statements made at the magisterial inquiry or to the police are different from the evidence that is given here, they are not substantive evidence. You are entitled to act only on the evidence given

30 before you. But, if you take these contradictions into consideration in founding your verdict, contradiction could be used for a limited purpose, namely, to see whether a witness is speaking the truth or not. But when a witness gives evidence in this Court and contradicts his own evidence in this Court both are substantive evidence. It is for you to say whether these discrepancies are of a material character or which portion of it is

40 true. You will also consider, if in fact an attack like this took place in the presence of Yapa Bandara, what would have been his state of mind? In that state of mind would it be possible for him to observe every detail? It depends on the circumstance of each case and it depends also on the person himself. You will ask yourselves, is there any reason why Yapa Bandara should give false evidence against these accused. It has been suggested that he has got together with

50 Marasinghe and concocted this evidence. Well, it is a question for you to decide.

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

I will now deal with the contradictions. The first contradiction that was marked is 1D1. It reads "I know the deceased Podiappuhamy Konara Herath. I have known him for 5 or 6 years".

Now Yapa Bandara says that he did not say so and that he had not known him for a long time and that he was comparatively a stranger to this area and that he has come there recently. Are you prepared to believe him on this or is he now trying to show, as the defence says, that he is a disinterested witness by saying, that he did not know him before that. The second contradiction is "The deceased came into Wilson's boutique and lighted a cigarette and then the second accused came up to the post of the boutique". There, what is sought to establish is that the second accused came to the post of the boutique later, but according to Yapa Bandara's evidence in this Court the second accused came there earlier and he was smoking a beedi and was leaning against the post when the deceased came in the car along the wewapara and turned into the Uhana road and halted the car in front of the boutique.

10

20

Now you have seen the sketch. From the front compound the carpentry shed is visible; the front portion of the boutique is only a half wall and it is visible.

Then the next contradiction, 1D3 is, "Then the deceased got out of the boutique and was walking away when the first and third accused rushed towards him". That is at a stage after the stabbing by the second accused had taken place according to him, at the bidding of the first accused. "Then the deceased tried to avoid them and turned back to go along the Wewa Para when the first accused cut the deceased with the sword on his head. Then the third accused stabbed with a pointed weapon". Now you see, the Wewa Para or the tank road or the channel road is on one side of Wilson's boutique. The sketch will show you that instead of going towards the car he turned that way to avoid. That is the impression that the witness tried to make out. Then is there any contradiction actually in this? "Then the second and third accused kicked the

30

40

In the
Supreme Court

No.7

Charge to Jury
2nd and 3rd
March 1966
(continued)

10 deceased and the deceased rolled to a side". Here the kicking is by the first accused and at a certain stage he gave some evidence with regard to kicking by another of the accused. The 5th contradiction was, "I went away and brought a vehicle to take the deceased to hospital. I put the deceased into a car and took him to Amparai hospital". In this court he said he did not take the man in a car, he did not even go from Gonagolla with the deceased either alone or with Marasinghe or with the relatives. 6th, "I took him to hospital and watched the treatment given. After sometime he spoke". That also he denies having said.

20 Contradictions should be of a material character to be taken into consideration. If contradictions in your opinion are material you will take them into consideration. As I told you, you are the sole judges of every fact. But if in your view they are contradictions which are not of a material character you are entitled to reject them and not act on them. As I told you, is it possible to describe everything in detail? Is it possible to reproduce everything that has taken place in a short while? Is it possible for the human eye to take in everything and for the brain to register everything and for the brain to reproduce everything that one actually saw. In this court also he has given some evidence which at one stage indicated that he got into a bus and proceeded to Amparai. Then he told you that he got into a bus that was halted which leaves in the afternoon, and not in the morning to Kegalle, and he went there for safety, and later he walked to Gonagolla, he did not go in another vehicle. Then is it likely that if there had been a threat to the crowd as was indicated by the cut on the road with the sword that this man would have taken shelter in a bus which was standing there? As I told you earlier about the kicking, he has told you that the first and second accused kicked.

40
50 Gunawathie Menike, widow of the deceased says that she and her relatives took the deceased in a lorry to Gonagolla and they went in a car from there, she tried to avoid meeting Marasinghe.

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

Now you see there is only one charge, that is, all these three accused committed murder. That is based on a provision in the Penal Code. "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". That is even if the injury inflicted by anyone of these accused is not a fatal injury, but if they acted in furtherance of a murderous intention, it must be a common murderous intention, then everyone of them would be equally guilty of murder. The essence of the liability is to be found in the existence of a common intention, a common murderous intention animating the accused leading to the doing of a criminal act in furtherance of such murderous intention. To invoke the aid of this provision successfully it must be done with the criminal act complained of or done by one of the accused persons at least in furtherance of the common intention of all. If this is so, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. If they acted with one mind or on a common design, then they had what is known as a common murderous intention if their design was murder. As I told you, the case against each accused should be considered separately and the defence of each accused should also be considered separately. Now you should not confuse similar or same intention with common intention. Now say for example, A desires to kill B he intends to kill B and he comes and lies in wait for him. C also has a similar intention to kill B, but A and C have not shared the common design or common intention. But A shoots B and A desires to Kill B, but C only cuts B but that is not sufficient to cause death. Then they had similar intention. They were not doing the act in furtherance of a common intention, but the same or similar intention was to murder in each case. For common intention they must have a common plan or design. The plan need not be preconceived. If it is proved that what Yapa Bandara says is true, that he saw the deceased coming in his car and turned it and stopped it in front of the boutique, could the deceased have been seen by the

10

20

30

40

50

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

10 first and third accused, and the third accused was in the carpentry shed of the first accused which is an open shed, according to Inspector Herath. Could they have realised that this man was going to stop the car in front of the boutique? The second accused had come to Wilson's boutique to smoke a beedi. The evidence is that at a certain stage when the deceased was not dead the first accused

20 said "he is not dead, cut him". Does that not give you an indication of the common murderous intention? Is it not the conclusion you will inevitably draw, thereby meaning an inference of common intention. The inference of common intention should not be reached unless it is a necessary inference to be deduced from the facts proved. Necessary inference means an inference from which there is no escape in forming the motive. The

30 incidents two days earlier are relevant, because there appears to have been three incidents; one incident took place in Wilson's boutique. Then Marasinghe went to the first accused's carpentry shed and challenged the second and third accused and by that time they were hidden by the first accused. Then the deceased came from Gonagalla and he threatened to set fire to the carpentry shed of the first accused and even to shoot him. Independently of Marasinghe the deceased Herath appears to have gone in search of the third accused and the third accused learnt from his mother that they had threatened to do away with him. These three incidents on that day, do they form the basis or motive for this offence?

40 It is correct to say that there is no burden on an accused person, as submitted by the defence, but in this case the first accused and the second accused who are entitled to give evidence have chosen to give evidence. The first accused told you that the man drove the car up to the carpentry shed and stopped it there and alighted with a sword and demanded that the second accused and third accused should be given over to him, and failing that, with that demand itself he raised the sword and aimed a cut at the first accused. He was working with a mallet and chisel, he held the mallet and the sword alighted on the mallet,

50 and not merely alighted, it cut so deep that

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd
March 1966
(continued)

the sword got embedded. Now you see, when a man holds a mallet in the hand it is movable. When a cut is warded off with the mallet is it likely that the cut would alight only on the mallet in such fortuitous circumstances as to fall on the mallet and not cause further alarm. Then he says, at this stage seeing his chisel which he had, a chisel which he said was made in a smithy - you know gentlemen, you are men of the world, reasonable men who have experience, probably you have seen a chisel, some of you are teachers, I think, others I do not know what your walks of life are - you know in a chisel at the end it is a sort of wedge, and if an injury with a chisel is caused is it likely to leave a characteristic mark? The doctor says that it is likely to leave a characteristic mark because it has a thick portion, four corners and so on a little above that sharp edge. Then are you prepared to accept what he says? 10 20

When the accused sets up a defence he need not prove his defence beyond reasonable doubt. It should be on the balance of evidence. Is it more probably true than not that it is on a balance of evidence or balance of probability? Then is it likely that a man who went armed with a sword got cut with his own sword, whereas the man whom he tried to attack went unscathed? 30

He also says that the second accused had already left about ten minutes or so earlier to the jungle to answer a call of nature and he was not there, the third accused was not there. Then he cannot say how many stabs he gave him, but he gave him more than one stab with the chisel and he fell in the carpentry shed. If he had sustained a serious injury would you not expect to find blood in the carpentry shed? There is evidence that Sub-Inspector Herath visited this shed, he found no signs of any disturbance by the shed, and he was asked whether there was any blood-stains there. Then he got up and Herath tried to put his hand at his waist. The impression that the first accused got he says is that Herath was going to attack 40

In the
 Supreme Court
 No.7
 Charge to Jury
 2nd and 3rd
 March 1966
 (continued)

10 with some other weapon and therefore he continued to attack him with the sword; he had followed him a long distance, according to his evidence, but it is a curious fact that no weapon was found at the spot. No other weapon was found at the spot. First accused says that this man had threatened to shoot him. Therefore, he thought he would shoot him. He thought he was taking a pistol from his waist. If a man had taken a pistol would he have taken a sword also or if he had gone both with the sword and pistol would he have threatened the man with the pistol rather than aim a blow with the sword? Those are questions for your consideration.

20 Then according to the prosecution witness the car was pushed from Wilson's compound to the carpentry shed, to the spot A in the sketch and left it there; the second accused sat at the wheel and directed the car, whereas the first and third accused and somebody else pushed the car. Then he says he went into the jungle, had thrown this sword there, it was thrown very near the bridge where he had cut the road. Then is it likely or not that this would have been recovered by the police or by somebody there and given over to the police? If there was a crowd, the crowd, will they volunteer evidence if they had been threatened with the same fate? The Police did not find a sword. The chisel is not a production.

30 The cut mallet is not a production. So the first accused says that he did not want to go to Uhana because he had to pass Marasinghe's boutique which is in between Bakiella where this incident took place and Uhana police station. But he was prepared to tell a lie to the Police at Vellavaly where he went along with the second and third accused that he met an elephant on his way to Uhana and, therefore, he came to the Vellavaly police station to make the statement.

40 If he is prepared to tell a lie like that, a question would arise, can you accept his evidence or, can you accept his evidence even on the balance of probability? That is what you are called upon to do. According to the first accused he acted in the defence of his own person. A person is entitled to defend himself against an attack by another and if he has reasonable apprehension that if he does not act in that manner he is likely to be killed or

In the
Supreme Court

No.7

Charge to Jury
2nd and 3rd
March 1966
(continued)

grievous hurt is likely to be caused to him, he is even entitled to kill the person who attacks him. He says here that he had reasonable apprehension. The circumstances on which he relies must be proved to your satisfaction on the balance of probability. If he leaves it in a reasonable doubt, then he would not have succeeded in the defence that he raises.

The second accused's evidence is that he was not there and that he went in search of the first accused because he owed him money, about Rs. 150/-. He had heard what had happened and then also because he would be jobless without the first accused. Are these circumstances which would make a reasonable man to go after the first accused at that time. After the first accused had entered the jungle the second and third accused were able to meet him by 'who' shouts and that too within about 1 or 2 miles away. Is that more probably true than not. 10
Now these accused who appeared together at the Uhana police station again appeared on the 5th of August together at the Wellaweli police station according to Police Constable Kulasingham. It was sought to be made out by the first accused that they reached the Wellaweli police station at 12.30 a.m. and the second accused said that they reached there at 12 midnight but the evidence of Police Constable Kulasingham is that they all went there at 4.50 a.m. Police Constable 20
Kulasingham was not asked whether they came there at 12 or 12.30 that night and whether the whole place was locked up when these accused went up and that they were asked to wait there. Is it likely that a constable will entertain a complaint when somebody calls at the police station at 12 or 12.30 in the night to make a complaint or will he not. Anybody who goes there at that time of the night would be going there in dire circumstances and it would have struck the constable and would he have asked them to wait there. These are matters for your 30
consideration. 40

Crown Counsel:

Mr. Crown Counsel, is there anything else on which I should address the jury?

Crown Counsel:

If the evidence led by the defence has created any reasonable doubt on the prosecution evidence the benefit of that doubt must be given to the accused. I do not know whether Your Lordship addressed the jury on that aspect.

Court: Mr. Chandrapal?

Mr. Chandrapal: No, My Lord.

Mr. Kamalanathan: No, My Lord.

In the
Supreme Court

No.7

Charge to Jury

2nd and 3rd

March 1966

(continued)

10 Court to Jury: If the defence evidence is sufficient to throw a reasonable doubt on the evidence for the prosecution, then the defence would have succeeded.

20 Therefore, gentlemen, now you have to consider this question, was there motive for the act complained of? Was Yapa Bandara an eye-witness? Is there any reason for Yapa Bandara to give false evidence against these accused? He says that he saw these three accused acting in the manner that he described. Then has the prosecution established its case beyond reasonable doubt? Has the defence evidence thrown a reasonable doubt on the evidence for the prosecution? Has the first accused on the balance of probability or on the balance of evidence succeeded in saying that he acted in the exercise of the right of private defence of his own person? If what he says is true on the balance of evidence, then

30 he is entitled to an acquittal. But, if you are not satisfied with that, if you think that he has not established the circumstances and leaves you in reasonable doubt with regard to the circumstances, then the defence of acting in the exercise of the right of private defence of his person would fail. Therefore, if that fails, then you will have to ask yourselves whether there was common murderous intention shared by these three accused. The plan need not be hatched earlier,

40 the plan of common murderous intention may even spring at the spur of the moment, it is not necessary that there should be a pre-planned act.

In the
Supreme Court

No.7

Charge to Jury
2nd and 3rd
March 1966
(continued)

So, you will now, gentlemen, retire and consider your verdict. Either the first accused and the other two accused are guilty or not guilty. If on the balance of evidence the first accused and second accused have thrown a reasonable doubt on the evidence for the prosecution or the first accused has established on the balance of evidence circumstances to indicate that he acted in the exercise of private defence, he is entitled to be acquitted, and so will be the second and third accused, but if he has failed, and if you disbelieve the evidence of the first accused and the second accused, then the verdict would be one against all three of murder. You may retire and consider your verdict.

10

133.

NO. 8

NOTICE OF APPEAL

FORM XXXIII

In the Court
of Criminal
Appeal

No.8

Notice of
Appeal

3rd March
1966

IN THE COURT OF CRIMINAL APPEAL

Criminal Appeal No. S.25 1966 with
Application No. 40.

REGINA v.

10

1. Rajapakse Pathirana Don Jayasena
2. Kalavilage Don Piyadasa
3. Yapa Mudiyansele Dissanayake

(Supreme Court 1st Eastern Assizes Circuit 1966

Case No. S.C.17/65 - M.C. Kalmunai 21610
of 19

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO
APPEAL AGAINST CONVICTION OR SENTENCE.

To the Registrar of the Court of Criminal
Appeal.

Name of Appellant: 1. Rajapakse Pathirana
Don Jayasena.

2. Kalavilage Don Piyadasa

20

3. Yapa Mudiyansele
Dissanayake

Offence of which convicted: Murder

Sentence: Death

Date when convicted: 3.3.1966

Date when sentence passed: 3.3.1966

Name of Prison: Bogambara.

30

I the above-named Appellant hereby give
you notice that I desire to appeal to the Court of
Criminal Appeal against my conviction and against my
sentence on the grounds hereinafter set forth on

In the Court
of Criminal
Appeal

No.8

Notice of
Appeal

3rd March
1966

(continued)

page 2 of this notice.

(Signed in Sinhalese) : R.P.D.Jayasena

(Appellant)

Dated this 3rd day of March, 1966.

The Appellant must answer the following questions:-

<u>Question</u>	<u>Answer</u>	
1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal?		10
2. Do you desire the Court of Criminal Appeal to assign you legal aid?		
If your answer to this question is "Yes" then answer the following questions:-	Yes	
(a) What was your occupation and what wages, salary or income were you receiving before your conviction?	Carpenter - Rs.200/- a month	20
(b) Have you any means to enable you to obtain legal aid for yourself?	No	
(c) Is any Proctor now acting for you? If so, give his name and address.	R.Chandrapal, Proctor S.C. & N.P. Main St. Trincomalee.	
3. Do you desire to be present when the Court considers your case?	Yes	30
4. Do you desire to apply for leave to call any witnesses on your appeal?	No	

Grounds of Appeal

In the Court
of Criminal
Appeal

No.8

Notice of
Appeal

3rd March
1966

(continued)

1. The verdict of the Jury is contrary to law and against the weight of evidence.

2. The learned Trial Judge has not adequately directed the Jury both on the questions of law and facts in this case and it is respectfully submitted the failure to do so amounts to a misdirection.

10 3. The learned trial Judge has failed to direct the Jury adequately on the law relating to the right of private defence and has not directed the Jury on the possible alternative verdicts the Jury could have brought if they accepted the evidence of the First accused but took the view he had exceeded the right of private defence. This non-direction amounts to a mis-direction.

20 4. The learned trial Judge's charge directing the Jury that if they did not accept the evidence of the First accused that he acted in self-defence that they should find all the accused guilty of murder is a mis-direction in that the jury was at no stage in the summing up asked to consider that even if the First accused's defence of self-defence was rejected they should consider the question of whether he had exceeded the right of private defence and if so, he should be found guilty of culpable
30 homicide not amounting to murder.

5. It is respectfully submitted the Jury was at no stage directed as to what a finding of culpable homicide is and this non-direction amounts to a mis-direction.

40 6. Since all three accused were charged with murder on the basis of a common intention, the failure of the trial Judge to comment on the right the third accused has by law to choose not to give evidence is a non-direction amounting to a mis-direction.

7. It is respectfully submitted that the learned trial Judge failed to deal adequately

In the Court
of Criminal
Appeal

No.8

Notice of
Appeal

3rd March
1966
(continued)

with the evidence given by the First accused and did not deal at all with the evidence of the Second accused and this failure is a nondirection amounting to a mis-direction.

8. The learned trial Judge failed to deal adequately with the evidence of Dr. Jayaratnam nor did he refer to the fact that the doctor has deposed to only 2 stab injuries which it is submitted contradicts the evidence of Jaffa Bandara and the failure to do so is a mis-direction. 10

9. The defence it is submitted was not squarely and adequately put to the Jury and this failure to do so is amounting to a mis-direction.

10. The learned trial Judge did not refer to the evidence of S.I. Herath that the witness Jaffa Bandara stated to him that he went to the hospital with the injured in a car with the deceased's brother Marasinghe. The defence stressed heavily on this piece of evidence in the light of the position taken up by the defence that Marasinghe and Bandara implicated the accused in a charge of murder. This non-direction is a mis-direction. 20

11. The learned trial judge has not adequately directed the Jury on:-

- i. Burden of proof.
- ii. The law relating to the exercise of the right of private defence. 30
- iii. The right of accused persons.
 - (a) to choose not to give evidence,
 - (b) to elect to give evidence
 - (c) to elect to make a statement from the dock

and this failure is a non-direction, amount to a mis-direction.

12. The learned trial Judge's failure to direct the Jury that the three accused went on their own to the Wellawaly Police Station and have made statements both at Wellawaly Police 40

Station and Uhana Police Station and that the First and Second accused had not at any stage been contradicted by the Crown Counsel with the statements they made to the Police is a serious non-direction amounting to a mis-direction.

In the Court
of Criminal
Appeal

No.8

Notice of
Appeal

3rd March
1966

(continued)

10

13. The failure to direct the Jury adequately on the purpose of marking contradictions and the significance of the contradiction marked and stressed by the defence having regard to the position taken up by the defence is non-direction amounting to a mis-direction.

20

14. The learned trial judge has failed to direct the Jury to consider the failure in the statement made by the deceased to Dr. Sabaratnam to mention the use of knives by the other 2 persons besides the first accused and instead mentioned the weapon used by them as knuckle duster is a non-direction amounting to a mis-direction.

15. The fact that the name of the Third accused was not mentioned either to Dr. Sabaratnam or to Sgt. Chandrasekara has not been put to the Jury and this failure to do so is a non-direction amounting to a mis-direction.

16. The evidence of both Dr. Sabaratnam and Dr. Jayaratnam has not been dealt with adequately by the learned trial judge and this amounts to a mis-direction.

30

17. The learned trial judge it is respectfully submitted mis-directed the Jury in saying that if P3A, B and C were found on the person of the deceased one would expect to find blood on them and it is submitted it was never suggested that those documents were recovered from the person of the injured man by the defence, and this amounts to a mis-direction.

40

18. The trial Judge's direction to the Jury that the only verdict they could bring in was either guilty of murder or not guilty of murder is a mis-direction.

19. The failure by the trial judge even to refer to the alleged pushing of the car EY3670 by the three accused along with one

In the Court
of Criminal
Appeal

No.8

Notice of
Appeal

3rd March
1966
(continued)

other, an item of evidence relied heavily
and dealt with at length by the defence to
show the falsity of the evidence of Jaffa
Bandara, it is submitted is an omission
amounting to a mis-direction.

No.9

Journal
Entry of
Dismissal

13th May
1966

NO. 9

JOURNAL ENTRY OF DISMISSAL

IN THE COURT OF CRIMINAL APPEAL

Before: The Hon. H.N.G.Fernando, Senior Puisne
Justice - President,

10

The Hon. A.W.H. Abeyesundere, Q.C.
Puisne Justice,

The Hon. V. Manicavasagar, Puisne
Justice.

Appeal Nos. 25, 26, 27 of 1966 with
Application Nos. 40, 41, 42 of 1966
S.C. 17/M.C.Kalmunai 21610

First Eastern circuit 1966.

Counsel for Appellant/s: Mr. Advocate G.E.
Chitty Q.C., with Mr. Advocate Coomaraswamy,
Mr. Advocate K. Jeganathan
and Mr. Advocate E.B.
Vannitamby (assigned).

20

Counsel for Crown:

Mr. Advocate V.S.
Pullenayagam Crown
Counsel

Argued on: 12.5.66 and 13.5.66
Decided on: 13.5.66
Order made by the C.C.S.: Appeals dismissed -
Applications refused.

30

(Sgd) Illegible
Deputy Registrar
Court of Criminal Appeal
Date: 13.5.66

139.

NO. 10

In the Privy
Council

ORDER IN COUNCIL
GRANTING SPECIAL LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL

No.10

Order in Council
granting Special
Leave to Appeal

22nd March 1968

L.S.

AT THE COURT AT BUCKINGHAM PALACE

The 22nd day of March, 1968.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President Sir Elwyn Jones

10 Mr. Secretary Stewart Mr. Marsh

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of March 1968 in the words following, viz.:-

20 "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 Rajapakse Pathurange Don Jayasena praying for special leave to appeal in forma pauperis to Your Majesty in Council from an Order of the Supreme Court of Ceylon (Court of Criminal Appeal) dated the 13th May 1966 dismissing his appeal against his conviction by the Supreme Court (Eastern Circuit) on a charge of
30 murder:

"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

In the Privy
Council

No.10

Order in Council
granting Special
Leave to Appeal

22nd March 1968
(continued)

no one appearing at the Bar in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his appeal against the Order of the Supreme Court of Ceylon (Court of Criminal Appeal) dated the 13th May 1966:

10

"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".

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.

20

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.

30

W.G. AGNEW.

IN THE PRIVY COUNCIL

No. 27 of 1968

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

(CRIMINAL JURISDICTION)

B E T W E E N:

RAJAPAKSE PATHIRANAGE DON JAYASENA Appellant

- and -

THE QUEEN Respondent

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

A.L. BRYDEN & WILLIAMS
20, Old Queen Street,
London, S.W.1.

Solicitors and Agents for Appellant

HATCHETT JONES & CO.
90, Fenchurch Street,
London, E.C.3.

Solicitors and Agents for
Respondent