

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

In the matter of an Appeal under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka and in terms of section 14 of the Judicature Act, read with Section 331 of the Code of Criminal Procedure Act No 15 of 1979 against the imposed convictions and sentence of the learned High Court Judge in Case No. 7707/2014.

**Court of Appeal CA Case No :  
CA/HCC/142/23**

HC of Colombo Case No.  
7707/2014

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

**Vs.**

Nadarajah Raveendran  
No. 121/28/1/B, Salamulla Delgahawatte.  
Kolonnawa

**ACCUSED**

**AND NOW BETWEEN**

Nadaraja Raveendran  
(Presently at Welikada prison)

**ACCUSED-APPELLANT**

**Vs.**

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

**RESPONDANT.**

**Before:** Hon Justice B. SasiMahendran, J.  
Hon Justice Amal Ranaraja, J.

**Counsel :** Shavindra Fernando, PC, with Rikaz Rifford and Rishnie  
Fernandopulle for the Accused-Appellant.  
Suharshi Herath, DSG for the Respondent.

**Written :** 21.01.2025 (by the Accused – Appellant)

**Submission** 30.12.2024 (by the Complainant - Respondent)

**On**

**Argued On:** 28.04.2026

**Judgment On:** 27.05.2026

### **JUDGEMENT**

**B. Sasi Mahendran, J.**

The Accused Appellant (hereinafter referred to as 'the Appellant') was indicted before the High Court of Colombo for Possession and Trafficking 2.39 g of Heroin under Section 54 (a) (d) and Section 54 (a) (b) of the Poisons, Opium and Dangerous Drugs Ordinance, No. 13 of 1984, as amended.

Upon conclusion of the trial, the Learned High Court Judge, by judgment dated 22.05.2023, found the Appellant guilty of both charges and imposed the death sentence.

During the argument stage, the main contention brought to the attention of Court was that a discrepancy existed between the evidence of PW 01 and PW 02 regarding the manner in which the vehicle was stopped at Wali Para. It was further contended that the prosecution had failed to properly mark the recovered substance as a production during the trial, thereby creating a defect in the prosecution's case.

Before I analyse the evidence placed before the Learned High Court Judge, I am mindful of the observation made by His Lordship Yasntha Kodagoda PC, J, in the case of *Jayakodi Arachchige Anura Chaminda Appuhamy and others v. AG.* SC/TAB 05/2023, decided on 09.06.2025 which is related to the drug-related offences,

*“It is necessary for this Court to observe that, in a case of this nature, where it is alleged that heroin was found in the possession of the Accused, as regards the said substance (commonly referred to as the ‘productions’), what is necessary for the prosecution to establish are the following:*

- i. That the productions referred to in the prosecution's case were in fact recovered from the possession of the Accused.*
- ii. That without unnecessary delay, the productions recovered from the suspects were properly sealed and given unique markings.*
- iii. That without unnecessary delay, such sealed and marked productions were forwarded to the Government Analyst in the manner provided by law.*
- iv. That what the Government Analyst received were the sealed and marked productions recovered from the suspects. That what the Government Analyst analyzed and reported on were the productions that were recovered from the suspects.*

- v. *That the Government Analysts Report arises out of the quantitative and qualitative scientific analysis of the productions recovered from the possession of the Accused.”*

**The facts and circumstances of this case are as follows.**

PW 01, IP Mahendra Munasinghe, who is the main officer, conducted the raid stated that on 06.02.2014, at approximately 10.25 a.m., he left for routine duties together with seven police officers in a white van bearing registration number 58-0093, which did not display any indication that it belonged to the police. According to the witness, he was the only officer dressed in Police No. 2 uniform, while the remaining officers were in civilian attire. PW 01 further stated that they proceeded to conduct a raid in the Brandiyawatta area within the Wellampitiya Police Division, targeting an area known for the prevalence and circulation of heroin in Colombo.

The witness stated that while proceeding towards the Brandiyawatta Tibet Temple, they turned onto a side road and observed a three-wheeler parked on the left side of the road, with a person leaning against the rear of the vehicle near the Tibet grounds.

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ප්‍ර : එම අතුරු මාර්ගය කෙළවර වන්නේ කොයි ප්‍රදේශයෙන්ද?

උ : බුන්ඩියාවත්ත ප්‍රදේශයට තමයි ඒ පාර යන්න තියෙන්නේ..

ප්‍ර : තමුත් ගමන් කරන විට වාහනය කොයි අත පැත්තේද ඔය ත්‍රිවිල් එක නතර කර තිබෙනවා දුටුවේ ?

උ : වම් අත පැත්තේ.

He further stated that he first noticed the three-wheeler from a distance of approximately 40 metres.

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ප්‍ර : දැන් කොපමණ දුරකින්ද තමුන්ට ඔය ත්‍රිවිල් එකක් වම් අත පැත්තේ නවත්තලා තිබෙනවා සහ ත්‍රිරෝද රථයට හේත්තු වෙලා පුද්ගලයෙකු සිටිනවා නිරීක්ෂණය කලේ ?  
උ : සාමාන්‍යයෙන් මීටර් 30ක් 40ක් දුරකදී මම නිරීක්ෂණය කලා.

According to PW 01, upon seeing the van, the appellant moved towards the Brandiyawatta area in a suspicious manner.

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ප්‍ර : දැන් එතකොට එම ත්‍රිරෝද රථය වෙත විශේෂයෙන් මහත්මයාගේ අවධානයට යොමු වෙන්න හේතුව මොකක්ද ?

උ : ස්වාමීණි ත්‍රිරෝද රථයට පසුපසට හේත්තු වෙලා පුද්ගලයෙක් හිටියා. ඔහු එක් වරම යන්න ගියා.

ප්‍ර : කොහොටද යන්න ගියේ ?

උ : ඉදිරියට යන්න ගියා.

ප්‍ර : අතුරු පාර දිගේ ඉදිරියට ගියාද?

උ : ඉදිරියට යන්න ගියා.

ප්‍ර : දැන් මේ මහත්මයාලාගේ වාහනයේ පොලිසි රථයක් කියලා හඳුනා ගැනීමේ ලකුණක් තිබුණා ද ?

උ : නැහැ ස්වාමීණි.

The witness further stated that he was seated in the front seat of the van wearing the police uniform. The witness stated that as soon as the suspect turned onto the side road, the witness ordered the van driver to turn onto the side road and stop the van next to him. The witness further stated that after the van had been turned about halfway onto the sandy road, he got out of the van, went to the front of it, and apprehended the appellant. Thereafter, the witness conducted a search of the appellant at the scene.

According to PW 01, the Appellant was dressed in a white sarong and a blue shirt with two upper pockets. During the search conducted at the scene, a tied pink cellophane bag was found inside the left upper pocket of the Appellant's shirt. Upon inspection, the bag was found to contain a brown substance, which was identified as heroin. Accordingly, the appellant was arrested at approximately 11.05 a.m., and the parcel containing the substance was taken into police custody.

The witness further stated that although the appellant's address was disclosed at the time of arrest, no search was conducted at the said address, as the witness considered such a search to be pointless. Thereafter, the Appellant was taken in the police van to the Dadigama Pawn Shop located on Baseline Road. PW 01, together with the appellant, PW 02, and PW 03, entered the premises, where the recovered substance was weighed. According to the witness, the production was found to weigh 20 grams and 65 milligrams. The productions were thereafter sealed accordingly. Subsequently, they arrived at the Colombo Crime Division at approximately 12.15 p.m., and the productions were marked and recorded under PR No. 145/2014. At approximately 4.30 p.m., the productions were handed over to PW 08, PS 27675 Ramya Kumara, who was on reserve duty at the time. Subsequently, PW 03 recorded a statement in relation to the incident.

During cross-examination, PW 01 stated that after the police vehicle turned onto the sandy road, the appellant got out of the van and walked approximately five feet along the sandy road. The witness further stated that the vehicle was not driven further along the sandy road after turning. According to the witness, the vehicle had only proceeded about four or five feet onto the sandy road when the appellant was seen on the side of the road.

PW 02, PS Harasge Heene Premaratne Bandara, testified that on 06.02.2014, at approximately 10.15 a.m., PW 01 called him for routine duties. According to the witness, they left the office at around 10.30 a.m. together with six other officers in a van and proceeded towards the Brandiyawatta area in Wellampitiya. Corroborating the evidence of PW 01, the witness stated when they turned to Brandiawatta Road near the gate, they observed Appellant leaning against a three-wheeler parked approximately 40 metres along the Brandiawatta Road.

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උ : මූන්ඩියාවත්ත පාරට හරවලා ටික දුරක් යනකොට ගේට්ටුව ගාව නතරකරලා තිබ්බා වම් පැත්තේ ත්‍රිවිල් රථයක්. ඒ ත්‍රිවිල් රථයේ මුහුණ යොදලා තිබුණේ අපි ආව පැත්තට නෙවෙයි අනිත් පැත්තට. ඉන් පිටිපැස්සේ හේත්තු වෙලා හිටිය පුද්ගලයෙක් තමයි අපි නිරීක්ෂණය කලේ.

ප්‍ර : එය තමුන් නිරීක්ෂණය කලේ වාහනයක් ත්‍රිරෝද රථයක් අතර කොපමණ දුරින් තියෙන කොටද ?

උ : මීටර් 30 ක් 40 ක් පමණ දුරක් තිබුණා.

ප්‍ර : තමුන් වාහනයේ කෙහේද ඒ වෙලාවේ හිටියේ ?

උ : වන්දන මහත්තයා ඉදිරි අසුනේ හිටියා. ඊට පස්සේ අසුනේ තමයි අපි හිටියේ.

ප්‍ර : තමුන්ට ඒ වාහනයේ ඉදිරිය පැහැදිලිව නිරීක්ෂණය වුනාද ?

උ : රියදුරුට සහ පොලිස් පරීක්ෂක වන්දන මහත්මයාට අතරින් හොඳට ඉදිරිය අපිට නිරීක්ෂණය වුණා.

Upon noticing the van, the appellant allegedly began to move forward.

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ප්‍ර : ඔය පිටිපස්සේ හේත්තු වෙලා හිටිය පුද්ගලයා ඒ වෙලාවේ මොකද කලේ ?

උ : මොන හේතුවක් නිසාද කියන්න දන්නේ නැහැ. නමුත් අපි මීටර් 40ක් විතර පුද්ගලයාව නිරීක්ෂණය කරනකොට එක් වරම ඔහු ත්‍රිවිල් රථයේ හේත්තු වෙලා හිටිය එකෙන් අයින් වෙලා ඉදිරිපස පැත්තෙන් යන්න ගියා.

away from the vehicle and turned into a side road known as Wali Para. The witness stated that when they attempted to stop the Appellant, he was unable to turn the vehicle completely onto the sandy road and therefore turned the vehicle to the left and stopped it halfway onto the road. The witness further stated that the Appellant was observed on the driver’s side of the vehicle after the vehicle had

been turned. According to the witness, PW 1 was the first officer to get out of the vehicle, and after getting down, he went to the front of the vehicle and apprehended the Appellant.

According to PW 02, PW 01 searched the appellant and recovered a light pink parcel from the pocket of the appellant's shirt. Then the production was shown to the witness and subsequently arrested at approximately 11.05 a.m. The parcel was thereafter placed inside a letter cover in the custody of the PW 1. Thereafter, at the Dadigama Pawn Shop, the recovered substance was weighed which was in a cellophane cover and recorded as 20 grams and 65 milligrams. PW 02 further stated that the envelope used to seal the parcel had been taken from the sealing kit carried by the officers. According to the witness, they arrived at the office at around 12.15 p.m., after which the productions were recorded under PR No. 145/2014 and handed over to PW 08.

During cross-examination, counsel for the appellant repeatedly questioned the witness regarding the manner in which the appellant's vehicle had been stopped. In response, the witness stated that the vehicle was stopped while the appellant was crossing the sandy road. The witness further explained that the vehicle had been turned only halfway onto the sandy road, as it was not possible to turn the vehicle completely onto the road.

According to the testimony of PW1 and PW2, I note minor discrepancies regarding the manner in which the vehicle was stopped; however, there is no material contradiction concerning the recovery of the production and the arrest of the appellant.

Upon the conclusion of the prosecution's case, the appellant made a dock statement denying all allegations against him. He stated that the prosecution's version of events, namely that he had been leaning against a three-wheeler on Brandiyawatta Road at the time of arrest, was entirely false. According to the appellant, on the relevant day, he had been sleeping at his residence when, at approximately 6.30 a.m., a group of police officers arrived at his house and arrested him. At that time, his wife had been preparing their child to go to school. The appellant maintained that he did not have any heroin in his possession at the

time of arrest. The appellant further stated that his younger brother and cousin, who were also present at the house, were arrested together with him. According to the appellant, neither of them had any prohibited substances in their possession. However, they too were taken to the police station and were subsequently released.

The appellant's contention that a discrepancy exists between the evidence of PW 01 and PW 02, where PW 01 stated that the vehicle had "entered Welipara," PW 02 stated that it had "crossed Welipara" or proceeded along the by-road. These expressions merely describe the same sequence of events in different terms and do not amount to a material inconsistency.

In considering the learned counsel's submission regarding the discrepancy, I am guided by the following judgments.

*State of Uttar Pradesh v. M.K. Anthony*, reported in Supreme Court Journal 1984 (2) page 498,

*"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation*

*of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and a refined lawyer.”*

**Samaraweera V. The Attorney General** 1990 (1) SLR, 256 at page 260, P.R.P. Perera, J, held that

*“Where however the maxim set out above is applicable it must be borne in mind that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood. Nor does it apply to cases of testimony on the same point between different witnesses. (Vide The Queen v. Julis (1) C. C. A.)”*

I am mindful that the learned High Court Judge who presided over the trial carefully considered all the discrepancies highlighted in the course of proceedings. The Learned Judge had the distinct advantage of observing firsthand the deportment and demeanour of the witnesses.

“වූදින වැලි පාර තුළට ගමන් කළ බව පොලිස් පරීක්ෂකවරයා පවසා ඇත්තේ වූදින විසින් එම පාර දිසාවට අඩි කිහිපයක් ගමන් කිරීම මත පමණක් බව සාක්ෂි වලට අනුව පෙනී යයි. ඒ අනුව වූදින වැලි පාර ඇතුළට යෑමට තැත් කළේද එසේ නැත්නම් එහි පිවිසුම හරහා බ්‍රැන්ඩියා - වන්න- දෙසට - ගමන් කරමින් සිටියේද යන්න නිශ්චිතව පැවසීමට හැක්කේ වූදින ගමන් කරමින් සිටි ආකාරය සහ වැලි පාරට පිවිසුම පිහිටා තිබුණු ආකාරය නිරීක්ෂණය කරන ලද පුද්ගලයෙකුට පමණක් බව පෙනී යයි. මෙවන් අවස්ථාවකදී එකම කරුණ නිරීක්ෂණය කරන පුද්ගලයින් දෙදෙනෙක් විසින් නිගමන දෙකකට පැමිණීමේ හැකියාවක් ඇත. වැලි පාර අසලින් ඉදිරියට යන්නෙකු හෝ වැලි පාරට ඇතුළත් වීමට තැත් කරන්නෙකු අඩි කිහිපයක් එහාට මෙහාට වීම මත එය නිරීක්ෂණය කරන්නන් වැරදි නිගමනයකට පැමිණීමේ සාධාරණ හැකියාවක් ඇත. තවද සාක්ෂිකරුවන් දෙදෙනාම වූදින අත්අඩංගුවට ගත් ආකාරය පිළිබඳව

සමාන ගැලපෙන සාක්ෂි ලබාදී ඇති බැවින්, මෙම කරුණ සැලකිය යුතු නඩුවේ අරඹුව වෙනම දිව යන වෙනසක් නොවන බව තීරණය කරමි.”

Our Courts have consistently held that the credibility of a witness is a question of fact rather than law. The original trial court is in a better position to assess the testimonial trustworthiness of witnesses, having had the opportunity to observe their demeanour and conduct while giving evidence, whereas an appellate court determines such issues primarily on the basis of the evidence appearing on the record.

In my considered view, the discrepancy between the evidence of the two witnesses has not shaken the prosecution’s version that the appellant was found in possession of the production at the time he was searched. I am further of the view that the Learned High Court Judge had correctly arrived at the conclusion that the testimony of both witnesses was trustworthy and credible.

Moreover, I recognize that it would be unsafe to dismiss the testimony or disregard evidence merely because of minor inconsistencies or contradictions, given that both witnesses are human beings rather than machines.

The other ground urged by counsel for the appellant was that the production had not been shown to the witnesses during the trial. Therefore, it is pertinent to examine the evidence placed before the Learned High Court Judge in that regard.

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මෙහිදී මුලින් අදාළ කොටස් 02 නිරීක්ෂණය කිරීමේදී සටහන් කළ යුතුව තිබූ යමක් සටහන් කිරීම අතපසු වූ බැවින් මේ අවස්ථාවේදී සටහන් කර තැබීම සුදුසු බව තීරණය කරමි. අදාළ සෙලෝපේන් බැග් කොටස් දෙකම බැලූ බැල්මට එක හා සමාන පාටින් යුතු එකම සනකමින් යුත් කොටස් බව සටහන් කර තබමි.)

ප්‍ර : නැවතත් සාක්ෂිකරු පැ. 2 සෙලෝපේන් කැබලි දෙක පෙන්වා සිටි  
සාක්ෂිකරු බලන්න මෙම සෙලෝපේන් කැබලි දෙකේම තමා යොදන ලද සලකුණු දෙකට අමතරව තවත් යොදන ලද සලකුණු 02 ක් තිබෙනවා.

උ : එහෙමයි.

ප්‍ර : (නැවතත් සාක්ෂිකරුට නඩු භාණ්ඩයක් පෙන්වා සිටී.)

බලන්න සාක්ෂිකරු මෙය තමුන්ට හඳුනා ගන්න පුළුවන්ද?

උ : එහෙමයි. මා මුලින් දැනුම් දුන් ආකාරයට හෙරෝයින් වර්ණය තවමත් ඒ ආකාරයටම තිබෙනවා.

එමඟින් හඳුනා ගන්නවා.

ප්‍ර : ඒ තමුන් අත් අඩංගුවට ගත් හෙරෝයින් ප්‍රමාණයට සමාන ප්‍රමාණයක් තිබෙනවාද?

උ : එහෙමයි. මේ බරට සමාන ප්‍රමාණයක් තිබෙනවා.

(එම සෙලෝපේන් බෑගය පැ. 4 ලෙස සලකුණු කර ඉදිරිපත් කර සිටිනවා.)

( පැ. 4 අන්තර්ගත නඩු භාණ්ඩයේ තිබෙන සලකුණක් ද පැ 3 යන සෙලෝපේන් කවරයේ තිබෙන සලකුණු 02ක්ද අධිකරණයේ අවධානයට යොමුකර සිටිනවා.)

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ප්‍ර : ඒ සෙලෝපේන් කවරයේ මොනවද තිබුනේ අත් අඩංගුවට ගන්න අවස්ථාවේ තමුන් මොනවා තියෙනවාද නිරීක්ෂණය කලේ ?

උ : හෙරෝයින් තිබෙන බවට.

(සාක්ෂිකරු විසින් පැ.3 කියන නඩු භාණ්ඩය හඳුනා ගනී. නැවතත් සාක්ෂිකරු හට නඩු භාණ්ඩයක් පෙන්වා සිටීමට අවසර පතයි.)

ප්‍ර : බලන්න සාක්ෂිකරු ඔය නඩු භාණ්ඩය තමුන්ට හඳුනා ගන්න පුළුවන්ද කියලා ?

උ : එහෙමයි. එම හෙරෝයින් පාර්සලය සමඟ බහාලන ලද මුද්‍රා තබනු අවස්ථාවේදී සටහන් කළ හඳුනා ගැනීමේ පත්‍රිකාව බවට හඳුනා ගන්නවා. එහි පොලිස් පරීක්ෂක වන්දන මහත්මයාගේ අත්සන, දිනය තියෙනවා. ඒ වගේම සැකකරුගේ වම් මාපට ඇඟිලි සලකුණ අත්සන දිනය තිබෙනවා.

(සාක්ෂිකරු විසින් පැ.5 හඳුනාගනී.)

(පැ.4 ලෙස ලකුණු කර ඇති ද්‍රව්‍ය ප්‍රමාණයක් සාක්ෂිකරුට පෙන්ව සිටීමට අවසර පතයි.  
අවසර දෙමි.)

ප්‍ර : බලන්න සාක්ෂිකරු ඔය පැ.4 කියන ද්‍රව්‍ය ප්‍රමාණය තමුන්ට හඳුනා ගන්න පුළුවන් ද?

උ : එහෙමයි අත් අඩංගුවට ගත්ත අවස්ථාවේ තිබ්බ පැහැයෙන්ම එම හෙරොයින් තිබෙනවා.

(අදාළ හෙරොයින් සාක්ෂිකරු විසින් හඳුනා ගැනීමක් කරනු ලබයි.)

Upon analysis of the evidence placed before the Learned High Court Judge, although the production itself was not separately marked with a distinct number, both witnesses have identified that the substance was placed inside an envelope marked as P3. In particular, PW 02 identified the production as the substance contained within the said envelope, thereby confirming its identity and continuity of custody.

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ප්‍ර : මොනවද කිව්වේ ?

උ : හෙරොයින් කියලා කීවා.

ප්‍ර : තමුන්ට පරීක්ෂා කරන්න දුන්නද ඒ අවස්ථාවේ ?

උ : පරීක්ෂා කරන්න අපිට දුන්නේ නැහැ. මහත්මයා පරීක්ෂා කරපු එක අපිට පෙන්නුවා.

ප්‍ර : ඒ ගැටය ලිහලා තියෙනකොටද තමුන්ලාට පෙන්නුවේ ?

උ : එහෙමයි.

ප්‍ර : දැන් හෙරොයින් බවට ඒ වෙලාවේ අනාවරණය කරගන්නට පසුව ඒ තැනැත්තා අත් අඩංගුවට ගන්නා ද?

උ : අත් අඩංගුවට ගන්නා.

In this instant case, I note that it is observed that the prosecution has established that the Appellant was in exclusive possession of the heroin, which was duly forwarded to the Government Analyst in accordance with proper procedure.

Taking all the aforementioned matters into account, I find no reason to interfere with the judgment of the Learned High Court Judge.

Accordingly, the appeal is dismissed, and the conviction and sentence imposed on the Appellant are affirmed.

The appeal is accordingly dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**