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

In the matter of an Appeal under An in terms of Section 320 of the Code of Criminal Procedure Act No. 15 of 1979.

CA/HCC/94-99/2022

HC Matara No : 133/2010

Democratic Socialist Republic of Sri Lanka

Complainant

V.

1. Abeyrathna Weerasekara Patabandige Lal Chandra alias Yuggaya Lal
2. Madduma Patabandige Sumith Priyantha
3. Nishantha Ekanayaka alias Deiydara Ekanayake
4. Narathota Hewage Thamil Ajith Kumar
5. Saundrahennadige Chaminda alias Hiki Hiki Chaminda
6. Mahasarakukkarage Karunasena
7. Abeyrathna Weerasekara Patabandige Sumith
8. Abeyrathna Weerasekara Patabandige Gamini alias Bulto Gamini
9. Abeysiriwardena Magampattu Mahavidane Namal
10. Abeyrathna Weerasekara Patabandige Premadasa alias Kumara Putha
11. Mahasarukkarage Sampath

12. Abeyrathna Weerasekara Patabandige Roshan Dilruksha
13. Abeyrathna Weerasekara Patabandige Nishantha alias Chamil
14. Hewakolambage Upul
15. Abeysiriwardena magampattu Mahawidana Muhandiramge Saman Pradeep

Accused

And Now between

1. Madduma Patabandige Sumith Priyantha
2. Naranthota Hewage Thamil Ajith Kumara (4th Accused0
3. Saundrahennadige Chaminda alias Hiki Hiki Chaminda (5th Accused)
4. Abeysiriwardena Magampattu Mahawidanage Namal (9th Accused)
5. Abeyrathna Weerasekara Patabandige Roshan Dilruksha (12h Accused)
6. Abeyrathna Weerasekara Patabandige Nishantha alias Chamil Lakshan (13th Accused)

Accused-appellant

Vs.

The Attorney General of the Democratic Socialist Republic of Sri Lanka

Complainant-Respondent

Before : **B. Sasi Mahendran, J.**
Amal Ranaraja, J

Counsel: Amila Palliyage with Sandeepani Wijesooriya, Savani Udugampola, Lakitha Wakista Arachchi and Subaj De Silva for the 2nd Accused- 1st Appellant

Anuja Premaratna, PC with Ramith Dunusinghe, Vivendra Ratnayake and Natasha de Alwis for the 4th Accused- 2nd Appellant

Shavindra Fernando,PC with Nipun Samarathunga, Nimesha Wanaguru for the 3rd Accused-Appellant

Sarath Jayamanne, PC with Vineshka Mendis, Prashan Wickramaratne, Sajeewa Meegahawaththa, Dakshin Abeykoon and Dinidu Rathnayaka for the 12th Accused Appellant

Darshana Kuruppu with Tharushi Gamage, Sahan Weerasinghe and Anjana Adhikramge for the 6th Accused-Appellant

Anura Meddegoda, PC with Nadeesha Kannagara, Ashani Kankanage, Prabodhini Nissanka for the 4th Accused-Appellant

Rohantha Abeysuriya, SASG, PC for the Respondent

Written Submissions:
On

17.07.2023 (by the 9th Accused Appellant)
25.11.2022 (by the 3rd Accused Appellant)
25.1.2022 (by the 13th Accused Appellant)
28.11.20222 (by the 12th Accused Appellant)
02.12.2022 (by the 4th Accused Appellant)
20.01.2023 (by the 2nd Accused Appellant)

21.12.2023 (by the Respondent)

Argued On : 19.02.2025, 20.02.2025,20.02.2025, 24.02.2025 and 05.03.2025

Judgment On: 27.03.2025

JUDGMENT

B. Sasi Mahendran, J.

The 2nd, 4th, 5th, 9th, 12th, and 13th Accused-Appellants (hereinafter referred to as 'the Accused') and the 1st and 10th Accused who were found guilty and dead along with the 3rd, 6th (dead), 7th, 8th, 14th, and 15th Accused who were acquitted after trial and 11th Accused (who is dead) had been indicted before the High Court of Matara on thirteen counts *inter alia*, committing the murder of five persons namely, Lasantha Thenabadu, M.M. Jagath Chaminda Kumara, Ranjith Hendavitharana, P. Supun Chandra Kumara and Nihal Abeydeera and attempted murder of one M.M. Ruwan Sumith Kumara whilst being members of an unlawful assembly with the common object to cause hurt to the aforesaid deceased on or about 14.11.2000 offences punishable under Sections 140, 146 read together with 296 read with 300 and Section 32 of the Penal Code as amended.

During the trial, the following witnesses gave evidence on behalf of the Prosecution.

1. PW1 – Harry Jayalath Hendavitharana
2. PW2 – M.Y.M. Pradeep Ruwan Kumara
3. PW14 – Dr. K.I. Padmatileke (AJMO Matara)
4. PW15 – K.V.D.B. Jagath Gunawardena, Inspector of Police
5. PW16 – M.G. Dharmadasa, Sub Inspector of Police

6. PW19 – Dr. S.M. Subasinghe
7. N.R. Kodagoda – Officiating Registrar

When the trial commenced, PW3 and PW6 were abroad and several witnesses were called to establish that the said two witnesses could not be called in evidence.

The 9th and 12th Accused gave evidence under oath and the 2nd, 4th, 5th, and 13th Accused made dock statements. At the conclusion of the trial, the Learned High Court Judge found the 2nd, 4th, 5th, 9th, 12th, and 13th Accused guilty of 1st to 7th counts leveled against them and imposed the following sentences;

i. Fine of Rs. 10,000 (each) for the first charge
ii. Two years' rigorous imprisonment and additional fine of Rs. 10,000 (each) and an additional imprisonment of 6 months in default
iii. Compensation of Rs. 250,000 to be paid to PW2 by the Accused in equal portions and an additional term of 6 months imprisonment in default.
iv. Death penalty

Further, the 3rd, 7th, 8th, 14th and 15th Accused were acquitted. It should be noted that there is no indication with regard to whether the 11th Accused was convicted or acquitted.

Being aggrieved by the said conviction, the Accused appealed to this Court.

Following are the grounds of appeal as pleaded by the Accused.

1. The Prosecution has failed to prove its case beyond reasonable doubt.

2. The Learned High Court Judge has failed to consider the improbability and infirmities of narration of the incident by the eye witnesses.
3. The Learned High Court Judge has erred in deciding that the van alleged to have been used by the Accused to travel to the scene was owned by the 2nd Accused.
4. The Prosecution has failed to establish the formation of an unlawful assembly and the Learned High Court Judge has erred in deciding that the Accused were properly identified by the witnesses.
5. The Learned High Court Judge has disregarded the credibility of the prosecution witnesses and has erred in failing to consider the contradictions adequately of the evidence given by the prosecution witnesses.
6. The Learned High Court Judge has erred in law permitting the adoption of the non-summary dispositions of PW3 and PW6 notwithstanding the non-compliance with provisions contained in Section 33 of the Evidence Ordinance.
7. The Learned High Court Judge has failed to properly evaluate the dock statements of the Accused.
8. The Learned High Court Judge misdirected himself in law and in fact in convicting the Accused having acquitted the co-Accused on the same weight of evidence elicited by the prosecution violating the dicta of indivisibility of credibility of witnesses.

The main argument put forward by the Accused was that the Prosecution had failed to prove that all the Accused shared a common object when the alleged offences were committed.

Before delving into the legal questions, it is pertinent to consider the facts which were revealed at the trial.

According to PW1, on the day in question, he along with the other witnesses and the deceased were traveling in van No. 57-5845 which was driven by one of the deceased namely Lasantha Thenabadu to appear for a case in the Magistrate Court of Matara where he was a suspect of the murder of 1st Accused's brother.

According to him, a van coming from the opposite direction blocked their van. Subsequently, 3 people including the 1st Accused who is deceased now and two unknown persons got down from that van and started shooting. According to him, the 9th Accused namely Namal came in a different vehicle and got down. When we analyse this evidence, we note that in the examination in chief, he had not mentioned the 2nd Accused but he was referring that the van belonged to the 2nd Accused. But, later in re-examination, he has mentioned the 2nd Accused's name. Further, we note that he has not referred to any other Accused except these names. We also observe that the 2nd Accused was known to him. But he did not mention his name during the examination in chief.

According to PW2, he was seated in the front row of the van between the deceased namely Lasantha Thenabadu and Ranjith Hendavitharana. He further stated that the 4th Accused got down from the van and first shot Ranijth, then Lasantha, and then him. With the gunshot, he became unconscious and when he regained consciousness, he saw that some others in the van were also shot. It should be noted that when he was admitted to the hospital, he told the Judicial Medical Officer that some unknown people had come and shot them.

PW3, whose evidence was led under Section 33 of the Evidence Ordinance, has stated in the non-summary inquiry that, she was seated in the 3rd row of the van and saw the 1st Accused approached the van and started shooting towards the van. She stated that she also saw the 9th Accused namely Namal in the scene. Thereafter, she has seen some other unknown people with them. She further stated that she also saw the 5th, 10th, 12th, and 13th Accused at the crime scene. We note that she had not stated in her evidence that the person who was seated behind her was dead.

However, PW6 tells a different story who was a bystander. According to her, a van stopped near 'Deepa Niwasa' and the 1st Accused got down from the vehicle and threatened to kill her. Thereafter, she hid herself near the *wadiya* with a child and saw the incident from there. According to her, the 1st Accused had a gun and saw 3rd, 4th, 5th, 9th, 10th, 12th, and 13th Accused were also armed and they were shooting at the van. Further, according to her, the 14th Accused drove the vehicle in which all the Accused came. She observed that there were about 30 people and among them, she identified only 15 people. We are mindful that the Police had only recovered two types of cartridges from the scene.

According to PW15, when he arrived at the crime scene, he recovered 19 T-56 shell casings and a red 12-boro shell. If PW6's evidence is to be believed that all fired at the van, the Police should have collected more and different cartridges from the place of the crime.

Now we analyse each piece of evidence separately, to see whether they are consistent.

PW1 has stated in the examination in chief that he saw the 1st Accused and two others. In cross-examination, he stated that he saw the 9th Accused carrying a gun. He further stated that the van belonged to the 2nd Accused. At the re-examination, he mentioned the 2nd Accused's name. We are mindful that all the people involved in this case were living in the same area and there was a case pending. The question then is why PW1 has not identified the two people who come with the 1st Accused. We hold that he is not consistent with his evidence. According to him, only 3 people came and shot.

In contrast to him, PW2 who was seated in the front row of the van has stated that the 4th Accused got down and shot the passengers in the van. He firmly stated that he only saw the 4th Accused shooting during the whole time. But, when giving evidence to the Judicial Medical Officer, he stated that an unknown person came and shot.

We note that later PW2 had changed the story saying that he identified the 4th Accused. We note that PW2 is not a credible witness as he had not mentioned the 4th Accused in the first instance. The delay in mentioning the 4th Accused is tainted with the opportunity for fabrication.

According to PW3, she had identified that there were a few people shooting but identified only the 1st Accused with a weapon and the 9th Accused. She thereafter stated that she also saw the 5th 10th, 12th, and 13th Accused after the shooting from the back. At the cross-examination, she admitted that less than 5 people came and shot. However, we observe that she did not mention in evidence that the person

who was seated behind her was dead. The question is whether she was actually inside the van. There is a doubt created from her evidence.

When we consider PW6, she stated that the 1st, 3rd, 4th, 5th, 9th, 10th 12th, and 13th Accused got down from the van and started to fire at the van. Further, she stated that the 14th Accused drove the van in which the said Accused came. She also stated that there were around 15 people in the van. During the cross-examination, she stated that there were around 30 people at the scene. This contradicts the evidence given by PW1, PW2 and PW3. If we were to believe the PW6's story, that the 1st, 3rd, 4th, 5th, 9th, 10th 12th, and 13th Accused were armed, there should be more cartridges from different weapons found at the crime scene. Therefore, it is noticed that if the story of PW6 is to be believed, the evidence of PW1, PW2, and PW3 become contradictory. Their evidence is inconsistent with the number of people involved. This contradiction goes to the root of the case and it is sufficient to create a reasonable doubt in the prosecution's case.

We are mindful that the prosecution has only indicted 15 accused and not mentioned about unknown people. Although PW6 identified only several Accused, she mentioned that more people were around the place of the incident. We are also mindful that, the Learned High Court Judge had acquitted the 3rd, 7th, 8th, 14th, and 15th Accused.

When we consider all three witnesses namely PW1, PW2, and PW3 who were inside the van, especially PW1 and PW2, they materially contradict each other *inter se*. PW2 was in the front seat, according to him, he had seen only the 4th Accused firing at the van. On the other hand, PW1 and PW3 who were at the back

of the van had seen the 1st Accused and two others. These material contradictions in their witnesses make their evidence highly unreliable. Further, in evaluating the testimonies of these witnesses as a whole, it is clear that they are inconsistent *per se*. The end result would be that no court could rely on this evidence to convict the Accused. When we consider the judgment, unfortunately, the Learned Trial Judge had not given his consideration to any of these contradictions. We hold that the Learned Trial Judge has failed to consider these vital contradictions which create doubt and erroneously proceeded to treat these witnesses as truthful witnesses. The credibility of the witnesses is shattered by their inconsistency *per se*.

Our Courts have considered the contradictions to be vital. The impact of contradictions is considered in the following judgment.

In State of Uttar Pradesh v. M.K. Anthony, by His Lordship D. A. Desai J, 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."

We are of the view that the above-said witnesses, especially PW1 and PW2 are not consistent in their evidence. Therefore, they are not reliable with the matter at hand. PW3, although she is consistent with PW1 and PW2, there is a doubt that she was inside the van. PW2 was not consistent at all. Further, when we consider the bullets recovered from the scene and the evidence of the other witnesses, there is a doubt created whether PW6 was exaggerating the incident. The evidence of PW6 about the involvement of around 30 people is inconsistent with the facts as the officers have only recovered two types of cartridges. Therefore, I am of the opinion that the Learned Trial Judge should have considered these contradictions before reaching the conclusion that the Accused had committed the offence. We are mindful that a criminal case has to be proved beyond reasonable doubt.

When we consider the entire evidence of all 4 witnesses, considering the inconsistency and the exaggeration, it shows that they have deliberately attempted to bring the persons who were not on the scene. The Court can come to the conclusion, that affects the credibility and the testimonial trustworthiness of the witnesses. Therefore, in the circumstances, the finding of the Learned Judge is wrong.

Now, we consider whether the prosecution had proved that there was an unlawful assembly. The following scholarly authorities and judicial decisions lay out the elements of an unlawful assembly.

Dr. Sir Hari Singh Gour's Penal Code of India, 11th Edition, Volume 4, at page 1296;

8. Mere presence in assembly not sufficient.

"All persons who convene or who take part in the proceedings of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without taking any part in the proceedings are not guilty of that offence, even though those persons possess the power of stopping the assembly and fail to exercise it. Mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Sec. 142, I.P.C. It would appear that the place of occurrence is surrounded on all sides by the houses of appellants. If members of the family of the appellants and other residents of the village assembled, all such persons could not be condemned ipso facto as being members of that unlawful assembly. It would be necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or been committing some overt act in prosecution of the common object of the unlawful assembly. Where the evidence as recorded is in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, like guns, spears, pharsas, axes, lathis, etc. this kind of omnibus evidence has to be very closely scrutinized in order to eliminate all chances of false or mistaken implication. Simply because certain members are present in a crowd at the time of a riot by the certain members of their community, it cannot be said that they also, who used no violence, were guilty of the riot."

This passage was considered by His Lordship Weerasuriya J in Samy and Others v. Attorney General, 2007 (2) SLR 216, at page 226, held that;

> "It is well settled law that mere presence of a person in an assembly does not render him a member of an unlawful assembly, unless it is shown that he has said or done something or omitted to do something which would make him a member of such an unlawful assembly or where the case falls under section 139 of the Penal Code. Dr. Gour in Penal Law of India discusses the law in respect of unlawful assembly as follows: (VoLlI page 1296-11th Edition) "All persons who convene or who take part in the proceeding of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without talking any part in the proceedings are not guilty of that offence, even though those persons possess the power of stopping the assembly and fail to exercise it.

I reproduce the following passage dealing with the same issue from Ratanlal and Dhirajlal, *The Law of Crimes*, 9th Edition, Page 321:

> "2. 'Common object'.-The essence of the offence is the common object of the persons forming the assembly. Whether the object is in their minds when they come together, or whether it occurs to them afterwards, is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, that they should all be aware of it and concur in it. It seems also that there must be some present and immediate purpose of carrying into effect the common object; and that a meeting for deliberation only, and to arrange plans for future action is not an unlawful assembly."

Prof. G.L. Peiris in *Offences Under the Penal Code of Sri Lanka* on page 36:

> "There are three basic elements in the definition of an unlawful assembly in our law. These relate to (a) the number persons constituting the assembly; (b) the existence of a common object among the members of the assembly; and (c) the nature of the common object."

The above principle was considered in the following judgments.

In Rex v. Dias, Ceylon Law Record Volume 17, page 16, at page 18, His Lordship Soertsz, J held that:

> "The offence of being a member of an unlawful assembly is an offence that can be laid against each of five or more persons who come together with any of the objects enumerated in the Section of the Penal Code constituting the offence and once there is evidence to show that there were five or more people assembled with the objects referred to, an indictment can be presented against any one of them on the footing that he was a member of an unlawful assembly and that in that capacity he committed the offences he is charged with. Surely, such an accused person cannot take advantage of the fact that his associates were unidentified and contend that as he alone was identified, it cannot be said that he was a member of an unlawful assembly. It is purely a question of fact whether there was an unlawful assembly or not, and again it is purely a question of fact who the units of that unlawful assembly were."

In Police Sergeant Kulatunga v. Mudalihamy, 42 NLR 33, His Lordship Chief Justice Howard held that:

> "Both charges involved the proof of an unlawful assembly. It had, therefore, to be proved by the prosecution that there was an unlawful assembly with

a common object as stated in the charges. So far as each individual accused was concerned it had to be proved that he Was a member of the unlawful assembly which he intentionally joined. Also that he knew of the common object of the assembly."

In Andrayas v. The Queen, 67 NLR, 425 at page 430, His Lordship Justice T. S. Fernando held that:

> "It was, in our opinion, necessary for the trial judge to have given an adequate direction to the jury that mere membership of an unlawful assembly did not render each member of that unlawful assembly criminally liable for an offence committed by some other member thereof. It was not, in our opinion, a correct direction of the jury that mere membership of an unlawful assembly, without more, rendered each member of that unlawful assembly criminally liable for an offence committed by some other thereof. Such liability arose at law only when the existence of a certain other element or elements specified in section 146 of the Penal Code had been established."

In the recent case of Samy and others v. Attorney General (Supra), it was held that;

> "Therefore the vital ingredient of the offence of being a member of an unlawful assembly is the intention to join the assembly with a particular common object. The onus of proving the ingredient lies on the prosecution."

In light of the above authorities, the Prosecution should establish that the 2nd, 4th, 5th, 9th, 12th, and 13th Accused who were being convicted, were members of the unlawful assembly and that they shared a common object to commit the murders of the five persons as mentioned in the indictment and continued to remain in the said unlawful assembly. Further, they have to establish that the Accused were not merely present at the scene.

Although I have discredited the evidence of the Prosecution, it is pertinent to mention at this stage which of the evidence placed before the Learned High Court Judge directed him to come to the conclusion that the said Accused persons were members of an unlawful assembly with the common object to murder the said deceased. Our Courts expect that 5 or more persons come together with a common object to commit an offence. Then they should have intentionally joined and when joined they should know the common object of the assembly.

According to evidence of PW1 and PW2, they have mentioned only the participation of 1st, 2nd, 4th, and 9th Accused. On the other hand, PW3 says that she saw the 1st and 9th Accused who were firing at the van. She simply mentioned that the 5th, 12th, and 13th Accused were behind the van, but she did not utter a word about their participation. With these three witnesses, the magic number 5, the unlawful assembly of 5 was not established. The reason is that the Prosecution should prove that the members of the said assembly knew what offence they were going to commit. Then only all the members could be punished under the vicarious liability. Apart from these witnesses, PW6 has implicated the 1st, 3rd, 4th, 5th, 9th, 10th, 12th and 13th Accused were at the crime scene and that 14th Accused drove

the van. We note that the Learned High Court Judge has acquitted the 14th Accused on the basis that he only drove the vehicle. According to PW6, there were more than 30 people at the scene and all were firing at the van. Only based on this evidence, I have disbelieved PW6.

Without analysing the evidence, the Learned High Court Judge has formed the opinion that the Accused were members of the unlawful assembly and acquitted the 14th Accused as he was just a driver. But he transported all these Accused who were armed.

I am of the view that there is no iota of evidence to establish that the 2nd, 4th, 5th,9th, 12 and 13th along with the deceased 1st Accused were members of the unlawful assembly with the object to commit the murders indicated in the indictment. We are also mindful that the said indictment did not speak about the persons who were unknown to the Prosecution.

In this context, I reproduce a relevant excerpt on this particular point from the judgment delivered by the Learned High Court Judge.

On Page 1082 of the brief;

> "ඉහත කී ආකාරයට වෙඩි තැබීම සිදුකරන ලද්දේ 01, 04,09, චුදිතයන් බවට සාක්ෂි මත අනාවරණය වී ඇත. කෙසේ වුවද 01,02, 04,05,09,10,12,13 චුදිතයින් නීති විරෝධී රැස්වීමක සාමාජිකින් බව සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කිරීමට ප්‍රමාණවත් ප්‍රභල සාක්ෂි පැමිණිල්ල විසින් මෙහෙයවා ඇති බවට තීරණය කරමි. එකී නීති විරෝධී රැස්වීමේ සාමාජිකයෙකු වශයෙන් ඉහත නම් සඳහන් මරණකරුවන් 05 දෙනාට වෙඩි තැබීම හේතුවෙන් ඔවුන්ගේ මරණය එකී ප්‍රචණ්ඩ ක්‍රියාවේ ප්‍රතිඵලයක් ලෙස සිදු කර ඇති බවටද ඔප්පු කිරීමට ප්‍රමාණවත් ප්‍රභල සාක්ෂි පැමිණිල්ල විසින් මෙහෙයවා ඇත. එකී චුදිතයන් ඉහත කී ආකාරයට නීති

විරෝධී රැස්වීමක සාමාජිකයන් වශයෙන් ඉහත කී ආකාරයට සිදු කර ඇත්තේ සංවිධානාත්මකව වාහනවල නැගී මරණකරුවන් ගමන් කරමින් සිටි දෙසට විරුද්ධ දෙසින් පැමිණීමෙන් පසුවය. පැ. සා. 14 අධිකරණ වෛද්‍ය නිලධාරිවරයාගේ පශ්චාත් මරණ පරීක්ෂණ වාර්තාවලට අනුව එක් මරණ කරුවකුට වෙන් වෙන් වශයෙන් තබන ලද වෙඩි ප්‍රහාර විශාල සංඛ්‍යාවක් පිළිබඳව අනාවරණය කොට ඇත. එමෙන්ම පැ.සා. 15 විමර්ශන නිලධාරිවරයා අපරාධ ස්ථානයේ තිබී උන්ඩ විශාල සංඛ්‍යාවක් සොයාගෙන ඇති අතර, එම උණ්ඩ සාක්ෂිකරු හඳුනා ගෙන ඇත. ඒ අනුව නීති විරෝධී රැස්වීමක සාමාජිකයින් වශයෙන් ඉහත නම් කරන ලද 01,02,,04,05,09,10,12,13 චුදිතයින් විසින් අදාළ වෙඩි තැබීම සිදුකර ඇත්තේ ඉහත නම් සඳහන් මරණකරුවන්ගේ මරණය සිදු කිරීමේ චේතනාවෙන් බව ඔප්පු කිරීමට ප්‍රමාණවත් ප්‍රභල සාක්ෂි ද පැමිණිල්ල විසින් මෙහෙයවා ඇත. ඉහත කී ආකාරයට 01,02,04,05,09,0,12,13 චුදිතයින් විසින් නීති විරොධී රැස්වීමක සාමාජිකයින් වශයෙන් පැසා. 02 තුවාලකරුට වෙඩි තැබීම හේතුවෙන් පැ.සා.02ගේ මරණය සිදු කිරීමට තැත්කර ඇති බව සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කිරීමට ප්‍රමාණවත් ප්‍රභල සාක්ෂි පැමිණිල්ල විසින් මෙහෙයවා ඇති බවටද නිගමනය කල හැකි වේ.

ඒ අනුව පැමිණිල්ල විසින් අධිචෝධනා පත්‍රයේ සඳහන් 01,02,03,04,05,06,07 චෝදනාවන් එකී 01,02,04,05,09,10,12,13 චුදිතයින්ට එරෙහිව සාධාරණ සැකයෙන් ඔබ්බට ඔප්පු කිරීමට ප්‍රමාණවත් ප්‍රභල සාක්ෂි මෙහෙයවා ඇති බවට තීරණය කරමි.

ඉහත කී 14 චුදිත දෙවන වැන් රථයේ රියදුරු බවට පමණක් පැමිණිල්ලේ සාක්ෂි මත අනාවරණය වී ඇත. ඊන්ම 03,06,07,08,15 චුදිතයන් අපරාධ ස්ථානයේ සිටි බවට පැමිණිල්ලේ සාක්ෂි මත අනාවරණය වී ඇතත් අපරාධ ස්ථානයක සිටීම පමණක් පොදු පරමාර්ථය ඉෂ්ට කර ගැනීම සඳහා නීති විරෝධී රැස්වීමක සාමාජිකයින් වූ බව තීරණය කිරීමට ප්‍රමාණවත් සාක්ෂි නොවේ. එබැවින් එකී 03,06,07,08,14,15 චුදිතයන්ට එරෙහිවෙඅ පැමිණිල්ල කිසිදු චෝදනාවක් ඔප්පු කිරීමට ප්‍රමාණවත් ප්‍රභල සාක්ෂි මෙහෙයවා නොමැති බවට තීරණය කරමි.”

We hold that the Learned High Court Judge has misdirected himself about the legal principles of unlawful assembly. We are mindful that all the Accused were acquitted of the charges of common intention.

For the said reasons, we set aside the conviction and the sentence against the said Accused imposed on 30.06.2022.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL