

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

**CA 117/2010**

**HC Negombo No: 60/2003**

Maheepala Mudalige Chandan Rimson Paaris  
No: 71 B,  
E/Dummaladeniya,  
Wennappuwa.

Loku Kata Godage Don Chaminda Jayanath  
No: 03,  
N/Dummaladeniya,  
Wennappuwa.

Paththini Kuttige Srath Nonis  
No: 28,  
Galayaya Janapadaya,  
W/Nainamadama,  
Nainamadama.

Warnakulasooriya Jude Nelson Fernando  
No: 75/01,  
Ichchankaduwa,  
Kandakuliya,  
Thalpitiya.

**Petitioners**

**Vs.**

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

**Respondent**

C.A. Appeal No. 117/2010 - H.C. Negombo No. 60/2003.

Before : **Rohini Marasinghe, J.**  
**Deepali Wijesundera, J.**

Counsel : Dr. Ranjith Fernando with Samanthi Rajapaksa  
for the 2<sup>nd</sup> and 3<sup>rd</sup> Accused-appellant.

Indika Mallawaarchchi for the 4<sup>th</sup> Accused-  
Appellant

HariPriya Jayasundera SSC for the de Silva SC  
for the A.G.

Argued &  
Decided on : 17.01.2013

**Rohini Marasinghe, J.**

All four accused-appellants are present in court produced by the prison authorities.

Heard submissions of the Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused-appellants. Counsel inform court that only evidence against the said appellants were identification evidence. Counsel for the appellants make submissions that these appellants were shown to the witnesses by the police on several times, prior to the identification parade. The Counsel submit that the police by doing so had acted illegally.

The State agrees that, only evidence against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellants was the identification evidence, which the State also

admit as flawed. Therefore, it is unsafe to convict these appellants on this evidence. Therefore Court allows the appeal of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused-appellants. The 2<sup>nd</sup> accused-appellant namely Locukatagodage Don Chaminda Jayanath, 3<sup>rd</sup> accused-appellant namely Paththini Kuttige Sarath Nonis and 4<sup>th</sup> accused-appellants namely Warnakulasuriya Jood Nelson Fernando are acquitted and discharged from the charges.

The appeal against the 1<sup>st</sup> accused-appellant is postponed for further date as the Counsel is not present before Court.

The Commissioner of Prison is informed that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused-appellants have been acquitted and discharged from the charges.

Appeal against the 1<sup>st</sup> accused-appellant is fixed for argument on 28/02/2013.

**JUDGE OF THE COURT OF APPEAL**

**Depali Wijesundera, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL.**

/mds