

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

**In the matter of an Appeal in terms of Section  
331 (1) of the Code of Criminal Procedure Act  
No 15 of 1979.**

Democratic Socialist Republic of Sri Lanka

**COMPLAINANT**

**CA/157-158/2003**

Krishnasami Ramachandran

**H/C Kandy 498/2000**

**ACCUSED**

And,

Krishnasami Ramachandran

**ACCUSED-APPELLANT**

Vs,

Attorney General

Attorney General's Department

Colombo 12.

**RESPONDENT**

**Before: Vijith K. Malalgoda PC J (P/CA) &**

**S. Devika De L. Tennakoon J**

**Counsel: Dr. Ranjith Fernando for the Accused-Appellant**

Wasantha Nawaratne Bandara PC Additional Solicitor General for the State

Argued on: 18.11.2015, 17.12.2015

Written Submissions on: 31.03.2016, 10.05.2016

**Decided on: 01.03.2017**

## **Order**

### **Vijith K. Malalgoda PC J**

Four accused along with the accused-appellant to the present appeal Krishnasami Ramachandran were indicted before the High Court of Kandy with regard to an explosion and attack took place on 25.01.1998 at the most venerable, Temple of Tooth relic Kandy. The indictment served on the accused contained 149 counts under the Emergency Regulation for,

1. Causing mischief to the Temple of Tooth relic by exploding an explosive device and in the said process,
2. Causing the death of 15 persons and
3. Causing injuries to several people whose names appeared in the indictment, who were in and around the Temple of Tooth relic at the time the incident took place.

As revealed before this court, the trial against the 1<sup>st</sup> accused to the indictment Subramaniam Ravindran had proceeded in absentia and the trial against the other three accused namely Muthulingam Sivarajah (2<sup>nd</sup> accused) Muthusamy Pillai Dharmalingam (3<sup>rd</sup> accused) and Krishnasami Ramachandran (4<sup>th</sup> accused) proceeded before the High Court Judge upon them pleading not guilty to the indictment against them.

At the conclusion of the said trial, the Learned High Court Judge had acquitted the second accused above named on all counts against him. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused on the indictment were found guilty on the counts against them, and the 3<sup>rd</sup> and 4<sup>th</sup> accused preferred an appeal against the said

convictions and sentence imposed against them but the 1<sup>st</sup> accused who was tried in absentia had not preferred an appeal against the conviction and sentence imposed on him.

However when the appeal preferred by the 3<sup>rd</sup> and the 4<sup>th</sup> accused to the original indictment was pending, the 3<sup>rd</sup> accused namely Muthusami Pillai Dharmalingam had passed away and therefore the present appeal before this court is restricted to the appeal preferred by the 4<sup>th</sup> accused to the indictment namely Krishnasamy Ramachandran.

As further revealed before this court, out of 149 counts in the indictment, counts 1, 5, 51 to 65 and 130 to 149 were against the accused-appellant Ramachandran. Out of the said charges, the 1<sup>st</sup> charge is one of conspiracy to commit mischief at Temple of Tooth relic using an explosive device and the 5<sup>th</sup> charge is for aiding and abetting to commit the above act of mischief, charges 51 to 65 refers to 15 counts of aiding and abetting to cause the death of 15 named persons and counts 130 to 149 refers to aiding and abetting to cause hurt to 21 named persons.

Even though the prosecution relied upon the confessionary statement made by the accused-appellant to an Assistant Superintendent of Police as evidence against the accused-appellant under the provisions of the Emergency Regulation, the Learned Trial Judge had declined to admit the confessionary statement as evidence in this case, after an inquiry and therefore the entire prosecution case against the accused –appellant is based on circumstantial evidence led at the trial.

The argument before us proceeded based on the single ground of appeal raised by the Learned Counsel for the accused-appellant to the effect that;

Learned Trial Judge erred by concluding guilt of the 4<sup>th</sup> accused on the basis that his conduct established the criminal element of participation in a conspiracy and or aiding and abetting of offences charged.

In this regard the main argument raised by the Learned Counsel for the accused-appellant was that there wasn't adequate evidence placed before the High Court to establish, that the accused-appellant had conspired along with the other accused and in furtherance of the said conspiracy, the accused-appellant had intentionally aided and abetted others unknown to the prosecution to commit the crimes of causing mischief to the Temple of Tooth relic with an explosive device, and causing grievous injuries and causing death of the persons mentioned in the indictment.

Since the sole ground of appeal raised on behalf of the accused-appellant was based on the evidence placed against the accused-appellant, I would now proceed to analyze the evidence led before the Trial Judge mainly against the accused-appellant (4<sup>th</sup> accused in the High Court Trial)

As revealed before this court the alleged explosion took place in the early hours of 25<sup>th</sup> January 1998. At the time the said explosion took place, the lorry involved in the explosion which was driven by the suicide cadre was completely damaged beyond identification. The government analyst was summoned to the scene of crime and his assistance was sought to gather evidence.

As revealed from the evidence of the investigating officers, a tyre of the lorry in question found among the debris at the scene of crime had played a vital role in tracing to its previous owners. The investigators have found the marking 5BY372 on a refilled tyre found among the debris at the scene of crime. The said number led to the fact that the tyre had been refilled by the Associated Motor Ways Company and sold to Isuru Tyre Center Kurunegala. According to the receipt books maintained at Isuru Tyre Center, the said rebuilt tyre was sold to one Sumith Pathirana to be used in the lorry bearing No 43-1396 on 14.08.1998.

In this regard the prosecution had relied on the evidence of Reginold Samaranayake at Isuru Tyre Centre and Raja Sumith Pathirana of Wariyapola who is the previous owner of vehicle No 43-1396.

The said witnesses Samaranayake and Pathirana had identified the tyre at the High Court Trial.

As revealed from the evidence of witness Raja Sumith Pathirana, he had purchased the said lorry bearing No 43-1396 to use in his business of selling vegetables through a vehicle broker, one Ariyaratne. Later he decided to exchange the vehicle to a bigger lorry and managed to exchange the lorry with his broker and returned the lorry bearing No 43-1396 to the said broker.

According to the evidence of witness Ariyaratne he kept the lorry at a vehicle sale belonging to one Priyantha Gunawardena and with the help of Priyantha he found a buyer to purchase the said lorry. When the sale took place on 06.12.1997 he too was present at the vehicle sale and the vehicle was sold to Subramaniam Ravindran whose photograph was identified when he was giving evidence at the High Court Trial.

Since the lorry was an open truck, the buyer wanted a full body to be fitted to the lorry since he was said to have engaged in tobacco business and he had managed to arrange a full body fitted to the lorry for Rs. 20,000/-

Witness had met Subramaniam (1<sup>st</sup> accused) once again few days prior to the explosion (most probably on 14<sup>th</sup> December ) near Central Finance and they went to Central Finance to transfer the finance facility which was in the name of one Ratnasiri to the 1<sup>st</sup> accused after filling up some documents.

In all these instances 1<sup>st</sup> accused had identified himself as a businessman from Trincomalee and was married to a government servant from Trincomalee to whom the witness too had spoken, when they went to transfer the finance facility.

As revealed from the evidence of witness Ariyaratne, the new buyer of the lorry bearing No. 43-1396 had managed to get a used full body fitted to it within few days for Rs. 20,000/- where as a good full body would cost at least Rs. 200,000/-. The above evidence does not reveal any involvement of the 4<sup>th</sup> accused to purchase of the lorry bearing No 43-1396.

The next important evidence comes through the evidence of Karupayya and Segar two employees of Hindu Cultural Center Kandy.

According to the evidence of Karupayya the care taker of the Hindu Cultural Center Kandy, the 1<sup>st</sup> and the 3<sup>rd</sup> accused to the indictment namely Ravindran and Dharmalingam had stayed at Hindu Cultural Center along with lorry bearing No. 43-1396 since 12<sup>th</sup> January 1997 to 16<sup>th</sup> January 1997 and again from 23<sup>rd</sup> January 1997 until 25<sup>th</sup> January morning with the same lorry bearing No. 43-1396. As observed by this court the above stay at Hindu Cultural Center was confirmed through the receipt books maintained at Hindu Cultural Center for the above period. According to the said receipts, in addition to the above two suspects, the 4<sup>th</sup> accused to the indictment Ramachandran too had stayed at the Hindu Cultural Centre with the 1<sup>st</sup> and the 3<sup>rd</sup> accused on 16<sup>th</sup> night.

During this period, on the request of the 3<sup>rd</sup> accused Dharmalingam, he instructed his employee Segar to look for a garage to attend some repair of the lorry and according to the evidence of Segar, the lorry was taken by him to replace the leaf spring to a garage in Mulgampola along with 1<sup>st</sup> and 3<sup>rd</sup> accused. During this journey witness Segar had to drive the lorry since the accused were not familiar with the roads in Kandy.

According to these two witnesses, 4<sup>th</sup> accused Ramachandran too had visited the Hindu Cultural Center by 14<sup>th</sup> and since then he too was also present with the other two at Hindu Cultural Center on several occasions and according to the records of Hindu Cultural Center 4<sup>th</sup> accused Ramachandran had stayed with the other two on 16<sup>th</sup> night and 17<sup>th</sup> morning all three had left Hindu Cultural Center in the lorry.

In this regard this court is mindful of the fact that the 4<sup>th</sup> accused is a resident from Kandy and he has no reason to stay at Hindu Cultural Center unless he had some special reason to be with the other two during that night.

In addition to the evidence of the above two witnesses, the evidence of retired PS Wijerathne was also relied upon by the prosecution to establish the connection between 4<sup>th</sup> accused Ramachandran and the other two and the lorry in question.

According to the evidence of the said witness Wijerathne, he was attached to a road check point at Gatambe Junction on 16<sup>th</sup> evening and the movement of lorry bearing No 43-1396 was recorded at the register maintained at the said check point by him and according to the said record. Lorry bearing No. 43-1396 had entered to Kandy town from the direction of Peradeniya at 7.30 pm driven by 4<sup>th</sup> accused Ramachandran who had the Driving License No. 488605.

However as discussed above the said lorry was thereafter parked at Hindu Cultural Center until the following morning.

After 17<sup>th</sup> morning neither the lorry nor the three accused were seen by anybody in Kandy and the next recorded evidence commences on 22<sup>nd</sup> January from the books maintained at a police check point at Udayapura in the Eastern Province. According to the evidence of Police Constable R. Jayasekara, on 22.01.1998 the lorry bearing No 43-1396 had passed the above check point and proceeded towards Ampara driven by one Ravindran (1<sup>st</sup> accused) who possessed the Driving License No. 103043 with two other passengers. There had been some tobacco in the lorry.

This lorry was once again detected three kilometers away at Malwatta STF Camp at 3.30 pm but at that time the vehicle was driven by Ramachandran. (4<sup>th</sup> accused) According to the evidence of R.P.C Madduma Bandara three stacks of Tobacco was seen inside the lorry.

Police Constable Upali Ananda had checked the lorry bearing No 43-1396 at Bibila, Karandegala Police Check Point on 22.01.1998 at 9.25 pm. According to this witness the driver at that time had been the 4<sup>th</sup> accused Ramachandran. He too had noted that the lorry carried 3 stacks of Tobacco as its cargo.

As further revealed from the evidence of a three-wheeler driver Anura Bandara and a Mechanic Premathilake, both are from Bibila, the lorry bearing No. 43-1396 was attended to at Bibila by witness Premathilake, since it had developed an engine problem at Bibila. It is witness Anura Bandara who had helped the inmates of the lorry by taking them to Premathilake and witness Anura Bandara had a dock identification of 4<sup>th</sup> accused Ramachandran as one person who travelled in the lorry and witness Premathilake had made dock identification with regard to 3<sup>rd</sup> accused Dharmalingam and 4<sup>th</sup> accused Ramachandran, which was not challenged during the High Court Trial.

Due to the said mishap, there was a delay in their journey and the lorry bearing No 43-1396 was checked twice on 23.01.1998 once at Hasalaka Check Point by Police Constable Wijerathne and again at Weasebala Junction by Police Constable Kumarasinghe. On both these occasions the lorry was driven by 4<sup>th</sup> accused Ramachandran. At Werasebala Junction, details of the driver had been fully recorded as follows, "D.L. No. 488605 Address. No 200, Sarath Kade, Udaperadeniya."

However on both these occasions the time, vehicle passed the Check Point had not been recorded by the said witnesses.

As revealed from the evidence led at the High Court Trial, the lorry bearing 43-1396 had finally entered the Kandy Town from Thennekumbura Check Point on 23<sup>rd</sup> January at 17.30 hours driven by 4<sup>th</sup> accused Ramachandran. This position was confirmed by Police Constable Gamini Ranaviraja who was attached to the said Check Point.

From the above evidence it was revealed that the vehicle in question which started its journey beyond Ampara on 22<sup>nd</sup> January had reached Kandy on 23<sup>rd</sup> evening with only three stacks of Tobacco with three passengers including 1<sup>st</sup> accused Ravindran, 3<sup>rd</sup> accused Darmalingam and 4<sup>th</sup> accused Ramachandran. Except at Udayapura Check Point, in the entire trip between Ampara to Kandy the lorry was driven by the 4<sup>th</sup> accused.



However as revealed from the evidence above, except for the three stacks of Tobacco nothing suspicious was detected in the lorry at any such Check Point or even at Bibila when the vehicle was attended by a mechanic to replace a broken Fan Belt.

The fact that the same vehicle which arrived Kandy on 23<sup>rd</sup> evening was used in the suicide attack on the early hours of the 25<sup>th</sup> January, confirms that, the said vehicle was used to transport the explosives concealed in the said vehicle. This fact is further confirmed by the long route taken by the suspects to reach Kandy avoiding a shorter route via Maha-Oya, where the vehicles coming from the Eastern Province were subjected to a thorough search. The three stacks of Tobacco which were observed at several check points were inside the lorry when the blast took place, and this fact is confirmed by the investigators in their evidence.

As revealed from the evidence of Karupayya and Segar the 1<sup>st</sup> and the 3<sup>rd</sup> accused have once again checked in at the Hindu Cultural Center on 23<sup>rd</sup> evening with their lorry bearing No 43-1396 and the lorry was parked at the Hindu Cultural Center until 25<sup>th</sup> morning. The lorry had not gone out from Hindu Cultural Centre between 23<sup>rd</sup> until 25<sup>th</sup> morning and the three stacks of Tobacco were also inside the lorry during this period. If the 1<sup>st</sup> and the 3<sup>rd</sup> accused were interested in selling the tobacco they had ample opportunity to sell them on 24<sup>th</sup> January, with the assistance of the 4<sup>th</sup> accused if the 4<sup>th</sup> accused was employed by them as the driver to transport Tobacco to Kandy. As observed by us, the three accused who were involved in transporting Tobacco had not taken any interest in disposing them until the 25<sup>th</sup> morning. The vehicle which left Hindu Cultural Center on the 25<sup>th</sup> morning never returned to Hindu Cultural Center. The fact that the lorry was parked at Hindu Cultural Center, in a secured place will further confirm that the explosion took place on the 25<sup>th</sup> morning was a result of the explosives carried in the lorry bearing No 43-1396.

Even though the accused-appellant decided to remain silent at the High Court Trial, it was argued on behalf of him that the material referred to above, will only indicates his innocent conduct as a hired

driver but the said material is insufficient to establish his guilt in participating in a conspiracy and aiding and abetting to commit criminal offences as referred to in the Indictment.

As revealed before this court, all 4 accused indicted before the High Court were facing a charge of conspiracy to the effect that between 1<sup>st</sup> December 1997 and 25<sup>th</sup> January 1998 that they along with others unknown to the prosecution conspired to cause mischief to the Temple of Tooth relic by exploding an explosive device.

In the case of *Kehar Singh V. State of Delhi 1998 Cr. LR (SC) 538; AIR 1988 SC 1883* it was decided that, "in regard of Criminal Conspiracy there must be a *prima facie* evidence affording a reasonable ground for a court to believe that two or more persons are members of conspiracy.

In the said circumstances, the fact that the 2<sup>nd</sup> accused to the indictment was acquitted after trial was not a ground for the others to be acquitted for the charge of conspiracy, if there was sufficient material to establish the criminal liability of the other three accused.

It is also important to note at this stage that there was no eye witnesses evidence, or any other circumstantial material to establish that the conspirators prosecuted before the High Court were physically present when the alleged attack took place on 25<sup>th</sup> morning in front of Dalada Maligawa. In this regard this court is mindful of the decision in *State of Tamil Nadu V. Nalini 1999 Cr LJ 3124 (SC); AIR 1999 SC 2640* to the effect that, where the evidence showing that accused was in thick of conspiracy then his absence from the scene of crime is of no consequence and as such his conviction for various offences need not to be interfered with.

As observed earlier, the prosecution in the case in hand was entirely depend on circumstantial evidence placed before the court and when considering the said material this court will also have to be mindful of the principles that should be applied when analyzing the circumstantial evidence.

In the case of *Don Sunny V. Attorney General [1998] 2 Sri LR 1* the said principles were identified as follows;

1. When a charge is sought to be proved by circumstantial evidence the proved items of circumstantial evidence when taken together must irresistibly point towards the only inference that the accused committed the offence.

On a consideration of all the evidence the only inference that can be arrived at should be consistent with the guilt of the accused only.

2. If on a consideration of the items of circumstantial evidence if an inference can be drawn which is consistent with the innocence of the accused, then one cannot say that the charges have been proved beyond reasonable doubt.
3. If upon a consideration of the proved items of circumstantial evidence if the only inference that can be drawn is that the accused committed the offence then they can be found guilty.
4. The prosecution must prove that no one else other than the accused had the opportunity of committing the offence, the accused can be found guilty only and only if the proved items of circumstantial evidence is consistent with their guilt and inconsistent with their innocence.

in the said circumstances it is the duty of the prosecution when establishing the charges in the indictment on circumstantial evidence, to place evidence before court, when taken together must irresistibly points that the only inference that could be arrived is that the three accused along with others unknown to the prosecution, between 1<sup>st</sup> December 1997 to 25<sup>th</sup> January 1998 had conspired to cause the mischief to the Temple of Tooth relic by exploding an explosive device and as a result of the said conspiracy an explosive device was exploded at the Temple of Tooth relic on 25<sup>th</sup> January causing mischief to the said Temple of Tooth relic and during the said explosion 15 civilians were killed and several civilians were injured and the said three accused had aided and abetted the said offences.

However with regard to the fact that an explosion took place causing mischief to the Temple of Tooth relic and during the said explosion 15 civilians were killed and several other civilians were injured were well established before the High Court by the evidence of the investigating officers, relatives of the deceased persons, Post Mortem Reports and Medico Legal Reports submitted by Judicial Medical Officer, and the several injured persons but what is important to establish was that the only inference that could be arrived was that the three accused before the High Court with others unknown to the prosecution had conspired to cause the said act of mischief by exploding the explosive device and had abetted the said explosion and to commit offences of murder and causing grievous injuries during the same transaction and that no one else other than the three accused with other unknown to the prosecution would have committed the said offences.

Even though the 4<sup>th</sup> accused was not involved in purchasing the lorry with the other accused namely the 1<sup>st</sup> and the 3<sup>rd</sup> accused, the conduct of the 1<sup>st</sup> and the 3<sup>rd</sup> accused clearly indicates that they were only interested in purchasing a lorry at a lowest price to serve a limited purpose. This fact was clearly established from the evidence of Ariyaratne, when he said that the full body had cost only 20,000/- where as a good full body would cost around 200,000/-.

The purpose as to why the accused looked for a lorry with a full body was revealed from the evidence of the Government Analyst Sarath Gunathilake when he said in his evidence that,

“the explosive device would have been kept at a place closer towards the driving cabin placing it on the same level or at the level of the chassis, and the said device would have been placed at the place where goods are carried located at the corner close to the drivers cabin” (Pages 595, 596)

The above opinion of the Government Analyst was based on the scientific examinations conducted by him but the said position was further confirmed from the evidence of Premathilake who replaced the Fan-belt at Bibila. This witness had not observed anything suspicious in the engine compartment when he attended to the said repair.

In the said circumstances it is clear that the 1<sup>st</sup> and the 3<sup>rd</sup> accused knew very well the purpose for which the said lorry was purchased, when they were making the purchase.

It is after this purchase only the said two accused moved to the Hindu Cultural Centre on 12.01.1998. As observed above the 4<sup>th</sup> accused (the accused-appellant in the present appeal) joined the 1<sup>st</sup> and the 3<sup>rd</sup> on 14/01.

According to the evidence of witnesses Karupayya and Segar, the 1<sup>st</sup> and the 3<sup>rd</sup> accused stayed at Hindu Cultural Center since 12<sup>th</sup> January 1998. During their stay they kept some money with Karupayya for safe custody, the lorry was attended to during this period with the help of Segar but Segar had to drive the vehicle since the said two accused were not familiar with the roads in Kandy. Two days later, on 14<sup>th</sup> the January the 4<sup>th</sup> accused Dharmalingam had visited these two and since then all three were seen together by witnesses.

The 4<sup>th</sup> accused Dharmalingam was a resident from Udaperadeniya but he too had stayed the night at Hindu Cultural Center with the other two on 16<sup>th</sup> Night and the following morning all three had left Hindu Cultural Center in the lorry in question. Even on the same evening i.e. on 16<sup>th</sup> evening, the 16<sup>th</sup> movement of this lorry was recorded at Gatambe junction and at that time the lorry was driven by the 4<sup>th</sup> accused.

Since 17<sup>th</sup> morning up to 22<sup>nd</sup> afternoon the movements of the said three accused and the lorry bearing No. 43-1396 was not recorded by anybody but, the lorry left Hindu Cultural Center on 17<sup>th</sup> morning had surfaced only on 22<sup>nd</sup> afternoon 3 miles away from Ampara when the lorry was coming towards Ampara, clearly indicated that the journey commenced on 16<sup>th</sup> morning with 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused had ended up beyond Ampara in the Eastern Province. That is the only inference this court can reach when considering the material before this court. The fact that the 4<sup>th</sup> accused being a resident from Kandy had stayed the night at Hindu Cultural Center too confirms the position that the three accused

planned to leave Kandy early hours of 16<sup>th</sup> and therefore all three stayed together at Hindu Cultural Center during that night.

The 1<sup>st</sup> accused pretended to be a person involved in Tobacco business and the reason why he wanted to have a full body was to Transport Tobacco in the said lorry. If the journey from Kandy to Eastern Province was to bring a load of Tobacco, no purpose would serve by them bringing three stacks of Tobacco from the Eastern Province to Kandy if they were involved in a genuine business enterprise. If the 4<sup>th</sup> accused was only a hired driver, the court cannot understand why he was hired for nearly 6 days and gone to the Eastern Province, just to transport three stacks of Tobacco in the lorry in question.

The next important item of evidence placed before the trial court was the long route taken by the three accused to come to Kandy. As revealed from the evidence it is clear that they have avoided coming through Maha Oya, a much shorter route to come to Kandy and decided to come through Bibila. As revealed at the trial, at Maha Oya all the vehicles travelled from the Eastern Province are subject to a thorough check and only conclusion this court can reach in this regard is that the three accused had purposely avoided Maha Oya check point by coming through a much longer route.

The answer as to why the accused decided to avoid Maha Oya check point, once again comes from the evidence of the Government Analyst Sarath Gunathilake.

According to the findings of the Government Analyst 200kg TNT high explosives had been used to cause the explosion and according to him the area covered by the said explosives would be roughly 6`x27`x42` or the size of four bags of cement.

When considering the said findings of the Government Analyst, it is difficult to conclude that the above quantity of explosives were placed in the lorry without the attention of the driver and therefore the purpose of taking a longer route was to avoid the lorry being detected at Maha Oya with the explosives.

As observed by this court after the prosecution closed its case and when the trial judge explained the three accused who faced the trial, of their rights the 4<sup>th</sup> accused, (the accused-appellants before us) decided to remain silent and his case was closed without leading any evidence.

However as observed above, strong material was placed before the court, with regard to the involvement of the 4<sup>th</sup> accused, including transporting the explosives to Kandy from the eastern province, as to what he was doing on 16<sup>th</sup> night at Hindu Cultural Center with the 1<sup>st</sup> and the 3<sup>rd</sup> accused and his whereabouts between 17<sup>th</sup> to 22<sup>nd</sup> until their movements were recorded in Ampara on 22<sup>nd</sup> January 1998. It was further observed by us that the reason as to why a longer route was selected to come to Kandy instead of coming through Maha Oya with only three stocks of Tobacco and this too could only be explained by the 4<sup>th</sup> accused.

As observed by this court, in addition to the above material, there was additional material against the 1<sup>st</sup> and the 3<sup>rd</sup> accused with regard to their involvement in purchasing the lorry, getting a cheaper body fitted to the lorry and their financial dealings with the staff members of the Hindu Cultural Center.

When considering all these material along with the fact that the lorry involved in the explosion at the Temple of Tooth relic on the early hours of 25<sup>th</sup> January 1998, one day after its arrival from the eastern Province clearly suggest that the three accused who faced the indictment before the High Court were actively taken part in the conspiracy to commit mischief at the Temple of Tooth relic by exploding an explosive device.

When the prosecution had led strong evidence suggestive of the above, the 4<sup>th</sup> accused, the accused-appellant before this court, with the above damning evidence led against him, did not made any attempt to explain the circumstances under which the said events took place.

In this regard this court is mindful of the dictum *of Lord Ellenborough in the case of R Vs. Lord Cochrane and others 1814 Gurney's Report 479* to the effect;

“ No person accused of a crime is bound of offer any explanation of his conduct or of circumstances of suspicion which attach to him; but nevertheless if he refuses to do so, where a strong *prima facie* case has been made out, and when it is in his own power to offer evidence, if such exist, in explanation of such suspicions appearance which would show them to be fallacious and explicable consistently with his innocence, it is a reasonable and justifiable conclusion that he refrains from doing so only from the conviction that the evidence so suppressed or adduced would operate adversely to his interest.”

The above dictum was followed by our courts on several occasions including in the case of *Somarathne Rajapakse and Others V. Attorney General SC Appeal 2/2002 (TAB)* SC minutes 03.02.2004.

In the said case Shiranee Bandaranayake J (as she was then) had observed,

“With all this damning evidence against the applicants with the charges including murder and, rape, the applicants did not offer, any explanation with regard to any of the matters referred to above. Although there cannot be a direction that the accused person must explain each and every circumstance relied on by the prosecution and the fundamental principle being that no person accused of a crime is bound to offer any explanation of his conduct, there are permissible limitations in which it would be necessary for a suspect to explain the circumstances of suspicion which are attached to him. As pointed out in *Queen V. Santin Singho (1962) 65 NLR 445* if a strong case has been made out against the accused, and if he declines to offer an explanation although it is in his power to offer one, it is a reasonable conclusion that the accused is not doing so because the evidence suppressed would operate adversely on him. The dictum of *Lord Ellenborough in R. Vs. Lord Cochrane (Gurney’s Reports 479)* which has been followed by our courts (*R. Vs. Seeder Silva (1940) NLR 337*), *Q Vs. Santin Singho (1962) 65 NLR 445*, *Premathilake Vs. The Republic of Sri Lanka (1972) 75 NLR 506*, *Richard V. The State (1973) 76 NLR 534*, *Illangantillake V. The Republic of Sri Lanka (1984) 2 Sri L.R. 38* described this position in very clear terms.”



The above judicial pronouncement including the finding of the several cases referred to above in the said decision of the Supreme Court reflect the consensus of judicial opinion on the effect of an accused person's failure to offer an explanation in the circumstances referred to above. Similarly in the case in hand the failure by the accused-appellant to give an explanation though not be treated as equivalent to an admission of the case against him but may add considerably to the weight of the latter.

In the said circumstances when the failure by the accused-appellant to give an explanation, considered along with the damning evidence which indicates that there was a conspiracy between the three accused including the accused-appellant to transport high explosives from the Eastern Province to Kandy in order to explode an explosive device at the Temple of Tooth relic, we are of the view that the trial judge has not erred in coming to a finding of guilt against the appellant.

In this regard the Learned Counsel for the accused-appellant whilst relying on the following passage. In the case of *Queen V. Liyanage 67 NLR 193 at 206* to the effect that,

“The question is not whether we can draw the inference of conspiracy, but whether the facts are such that they cannot fairly admit any other inference being drawn from them. One has to be satisfied that there is such an irresistible inference against accused that he did so conspire.”

and had argued that the material available in the case in hand is insufficient to come to such inference, but we cannot agree with the said submission in the light of the damning evidence available in this case and therefore we agree with the Learned High Court Judge when he concluded that the only irresistible inference that can reach is that the 4<sup>th</sup> accused (accused-appellant in the present case) did conspire with the 1<sup>st</sup>, 3<sup>rd</sup> and others unknown to prosecution to commit mischief at the Temple of Tooth relic by exploding an explosive device and also, abetted the said explosion, abetted to cause the death of 15 named people and to cause injuries to several other named persons, by transporting the explosive device from the Eastern Province to Kandy canceled inside the lorry bearing No 43-1396 driven by the accused-appellant.

For the forgoing reasons we see no reason to interfere with the decision of the Learned High Court Judge of Kandy.

In the said circumstances we dismiss this appeal.

Appeal dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**S. Devika De L. Tennakoon J,**

**I agree,**

**JUDGE OF THE COURT OF APPEAL**