

---

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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

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

**COMPLAINANT**

**Court of Appeal Case No:  
CA/HCC/0227/2015  
High Court of Nuwara Eliya  
Case No. HC/26/2010**

1.Pakyanadan Mariyaraslin  
2.Arokyasami Rajendran  
3.Chaminda Sudarshana Liyanage  
4.Mohamed Ameer  
5.Mohamed Izadeen Preena

**ACCUSED**

**And Now Between**

1.Pakyanadan Mariyaraslin  
2.Arokyasami Rajendran  
3.Chaminda Sudarshana Liyanage  
4.Mohamed Ameer

**ACCUSED- APPELLANTS**

**Vs.**

---

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

**COMPLAINANT-RESPONDENT**

**BEFORE** : **Sampath B. Abayakoon, J.**

**P. Kumararatnam, J.**

**COUNSEL** : **Widura Ranawake with M. Warnapura for  
the 1<sup>st</sup> and 2<sup>nd</sup> Appellants.  
Shanaka Ranasinghe, PC with  
N. Mihindukulasuriya for the 3<sup>rd</sup> Appellant.  
Anil Silva, PC for the 4<sup>th</sup> Appellant.  
Harippriya Jayasundara, ASG with  
C. Mahawaduge, SC for the Respondent.**

**ARGUED ON** : **02/08/2022 and 08/08/2022**

**DECIDED ON** : **23/09/2022**

\*\*\*\*\*

---

## **JUDGMENT**

### **P. Kumararatnam, J.**

The above-named Accused-Appellants (hereinafter referred to as the Appellants) with another person (5<sup>th</sup> Accused) were indicted in the High Court of Nuwara Eliya under the following charges:

1. On or about 19<sup>th</sup> of February 1996 at Dayagama and Colombo within the jurisdiction of this court you conspired to cause the death of Krishnasami Somasundaram and in furtherance of the said conspiracy caused the death of Krishnasami Somasundaram and thereby committed an offence punishable under Section 296 of the Penal Code, read with Sections 113B and 102 of the Penal Code.
2. At the same time, at Dayagama in the cause of the same transaction you the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused above named committed the murder of Krishnasami Somasundaram and thereby committed the offence of murder punishable under Section 296 of the Penal Code.
3. At the same time at Dayagama in the course of the same transaction referred to in charge one you the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused above named committed the robbery of the vehicle bearing registration No. 56-6478 in the possession of Krishnasami Somasundaram and thereby committed the offence of robbery punishable under Section 380 of the Penal Code.

The trial commenced before the High Court of Kandy (HC/85/2006) as the Appellants had opted for a non-jury trial. After the conclusion of evidence given by two prosecutions witnesses, the case was transferred to the newly established High Court of Nuwara Eliya and the rest of the trial proceeded and was concluded there.

---

After the conclusion of the prosecution case, the learned High Court Judge had called for the defence and the Appellants and 5<sup>th</sup> accused had made dock statements and closed their cases. After considering the evidence presented by both parties, the learned High Court Judge had convicted the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Appellants on 17/12/2015 as follows:

1. 1<sup>st</sup> Count - all the Appellants were convicted and sentenced to death.
2. 2<sup>nd</sup> Count - 1<sup>st</sup> and 2<sup>nd</sup> Appellants were convicted and sentenced to death.
3. 3<sup>rd</sup> Count - 3<sup>rd</sup> and 4<sup>th</sup> Appellants were convicted and were each imposed a sentence of 7 years rigours imprisonment with a fine of Rs.5000/- with a default sentence of 6 months simple imprisonment.

The 5<sup>th</sup> accused on the indictment was acquitted from all the charges.

Being aggrieved by the aforesaid convictions and sentences the Appellants preferred this appeal to this court.

All the Learned Counsels for the Appellants informed this court that the Appellants had given their consent to argue this matter in their absence due to the Covid 19 pandemic. Also, at the time of argument the Appellants were connected via Zoom platform from prison.

### **Background of the Case**

According to PW1, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants are brothers-in-law who worked in an estate in Dayagama. 1<sup>st</sup> Appellant was the Kankani (Chief Supervisor of Workers) of the estate where the witness was also occupied. The 4<sup>th</sup> Appellant was not from the estate but he knew him as a sub-agent who assisted people from the estate sector to go abroad and also sold clothes to the people in the estate. On 19/02/1996 when he returned home for lunch after work, PW1 had seen people gathered near the 1<sup>st</sup> Appellant's house.

---

Thinking that the 4<sup>th</sup> Appellant would have brought clothes for sale, he too had gone there and seen all the Appellants and a person introduced as the driver of the van. He had observed a blue-coloured van parked in the vicinity. When he inquired the 4<sup>th</sup> Appellant as to why a van had been brought, he had told him that a person from the Eastern Division was to be taken for foreign employment. Before he returned home, he had consumed a glass of beer offered to him by the Appellants.

After finishing off the work for the day, once he was at home, he had seen the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants along with the driver walking pass his house. He too joined the party on his own free will thinking that they were going to accompany the person who was supposed to go abroad from the Eastern Division. According to him the distance is about two miles to the Eastern Division from his house. The foot path leading to the Eastern Division was in an unpopulated area. While walking along a lonely stretch of the road, the second Appellant had suddenly dealt a blow on the back of the driver (deceased) with a club that he had been carrying. As a result of this sudden attack, the deceased had fallen to the ground. Immediately thereafter, the 1<sup>st</sup> Appellant had applied chilli powder on the deceased's eyes and cut his neck with a pruning knife. This witness was frightened by witnessing this unexpected event. He was severely warned by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants of the dire consequences he would have to face if he divulged this incident to anybody else. This incident had happened around 6.30 p.m. when there was sufficient moon light.

In the early hours on 20/02/1996, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had visited PW1's house and asked him to join them to check the potato cultivation. A mamoty and a Urea Fertilizer Bag were collected from the 1<sup>st</sup> Appellant's house and the 2<sup>nd</sup> Appellant had a torch in his possession. On arriving at the place of incident the witness had observed that both limbs of the deceased's body had been severed. Thereafter the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had put the body parts into the Urea Bag and carried up to a place where there was a cave. Thereafter a ditch had been dug by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants

---

and the body had been buried there. After this sequence of incidents, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had constantly followed the witness restricting his movements. After four days of the incident, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants along with the witness were taken for questioning by the police. He identified the trouser of the deceased, the mamoty used for the burial of the body, the club used for assault, the pruning knife used to cut the neck of the deceased and the fertilizer bag which was used to bury the body of the deceased.

PW4, the wife of the deceased stated that her husband was a driver by profession and was employed by PW3, Jude Lal to drive his van for hire. The deceased had left his home on 19/02/1996 at 7.00 a.m. to go on a hire to Nuwara Eliya. As he failed to return home a complaint was lodged and thereafter, she came to know that her husband had been murdered in the Agarapatana area. She had noticed chilli powder on the deceased's eyes and the body had been cut into several parts. She identified the dead body and the trouser last worn by the deceased.

PW2, had joined the 3<sup>rd</sup> and 4<sup>th</sup> Appellants who are his childhood friends on 19/02/1996 to go to Hatton in a hired van. The reason as to why he was taken to Hatton by the 3<sup>rd</sup> and 4<sup>th</sup> Appellants was to bring back a van from Hatton to Colombo. The 5<sup>th</sup> accused also joined them and the van driven by the deceased arrived in Hatton around 1.00 p.m. Thereafter they had gone to the place of the 1<sup>st</sup> and 2<sup>nd</sup> Appellants who were introduced to him for the first time and thereafter they had proceeded to consume liquor. This was his first visit to the estate where the 1<sup>st</sup> and 2<sup>nd</sup> Appellants resided. Thereafter, he had gone to play and when he come back, he was unable to find the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Appellants and the van driver. Later in the day, the 3<sup>rd</sup> Appellant had given the van key and told him that they are leaving the estate that night. When he asked about the driver, the 3<sup>rd</sup> and 4<sup>th</sup> Appellant had told him that the driver had gone back to Colombo in the other van. Thereafter, he had driven the van to Colombo with the 3<sup>rd</sup> and 4<sup>th</sup> Appellants and with the 5<sup>th</sup> accused. The 4<sup>th</sup> Appellant had told him that the blue colored van which he had driven to Colombo belonged to his boss. The suspicious conduct of the

---

3<sup>rd</sup> and 4<sup>th</sup> Appellants had prompted him to lodge a complaint at the Maradana Police Station voluntarily. He had identified the mutilated corpse of the deceased placed inside a fertilizer bag at the estate.

The Agarapatana Police had conducted the investigation on this crime and had recovered a mamoty relying upon the statement of the 2<sup>nd</sup> Appellant and a club and a knife had been recovered based upon the statement of the 1<sup>st</sup> Appellant. Upon information gathered by the Maradana Police the dead body had been recovered by the police.

The van bearing No. 56-6478 was traced by PW9 when it was parked in the vicinity of Zahira College, Maradana. Upon the receipt of further information, PW9 had arrested the 3<sup>rd</sup> and 4<sup>th</sup> Appellants and the 5<sup>th</sup> accused.

When the defense was called all the Appellants had made dock statements and denied the charges.

**The following grounds of appeal were advanced by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants.**

1. The learned High Court Judge has failed to evaluate the evidence of PW1 to see whether he is a credible witness. Further he had not applied the test of probability and not considered the inconsistencies of the evidence of PW1.
2. The learned High Court Judge has failed to give the benefit of the doubt of the prosecution case to 1<sup>st</sup> and 2<sup>nd</sup> Appellants.

**The following grounds of appeal were advanced by the 3<sup>rd</sup> Appellant.**

1. Has the prosecution placed cogent and satisfactory evidence for the court to establish that there was a conspiracy to commit murder?
2. Did the learned High Court judge direct himself correctly in accepting the evidence of PW1 which is contradictory.

---

**The following grounds of appeal were advanced by the 4<sup>th</sup> Appellant.**

1. Has the prosecution proved that PW2's evidence is acceptable?
2. Has the prosecution proved the charges 1 and 3 beyond reasonable doubt?
3. Has the High Court Judge considered the applicable law relevant to conspiracy charge proved?
4. Has the High Court Judge considered the evidence favorable to the 4<sup>th</sup> Appellant?

As the 1<sup>st</sup> ground of appeal raised by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants is similar to the 2<sup>nd</sup> ground of appeal raised by the 3<sup>rd</sup> Appellant, those grounds will be considered together. In those grounds the Counsel argued that the evidence given by PW1 has not passed the test of probability. It was further argued that the evidence given by PW1 contains numerous contradictions.

PW1 in his evidence clearly stated how he joined the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants along with the deceased when they passed his house. He had voluntarily asked them whether he could join them as they said that they were going to the Eastern Division to bring a prospective foreign employment seeker.

The contradictions marked as V1-V4 at the trial relates to the manner in which he joined the others to proceed to the Eastern Division of the Estate. The learned High Court Judge had accurately considered those contradictions and arrived at the correct finding that the marked contradictions V1-V4 are not forceful enough to attack the root of the case. (Page 377 of the brief)

The Counsels for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants submitted that the evidence given by PW1 at the Non-Summary inquiry and before the High Court Judge holds contradictory positions in relation to who dealt the first blow on the deceased.



---

According to PW1 the 2<sup>nd</sup> Appellant had dealt the blow on the back of the deceased and the 1<sup>st</sup> Appellant had thrown chilli powder into the eyes of the deceased and then cut his neck. In the Non-Summary trial, he had stated that the 1<sup>st</sup> Appellant had thrown chilli powder onto the face of the deceased first and the 2<sup>nd</sup> Appellant had dealt the blow with a wooden club thereafter. PW1 had given evidence after about 12 years of the incident before the High Court. Hence one cannot expect him to recount every minute detail of the incident which had taken place under a terrifying and unexpected situation.

In the case of **The Attorney General v. Sandanam Pitchi Mary Theresa** (2011) 2 Sri L.R. 292 held that,

*“Witnesses should not be disbelieved on account of trifling discrepancies and omissions. When contradictions are marked, the Judge should direct his attention to whether they are material or not and the witness should be given an opportunity of explaining the matter.....The court observed further, that human beings are not computers and that it would be dangerous to disbelieve the witness and reject evidence based on small contradictions or discrepancies”.*

The Counsel for the 1<sup>st</sup> and the 2<sup>nd</sup> Appellants contends that it is highly improbable that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants would return from the scene of crime leaving the dead body from 6.30 p.m. to 3.00 a.m. on the following day along a foot path that was commonly used by other residents of the estate.

According to PW1 the incident happened on an uninhabited lonely stretch of road. Hence it is an untenable argument that the foot path is commonly used by other residents of the estate.

The Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants contends that the evidence relating to the manner in which the corps was carried to the place where it was buried was improbable. He pointed out that as PW1 has stated, the 2<sup>nd</sup>

---

Appellant had held the trunk of the deceased from the legs (thighs) by one hand as he was carrying a torch by the other hand and dug a pit of 2x3x3 feet (approximately) by using a mamoty with a blade of 3 ½ x 4 inches within an approximate period of one hour and buried the dead body.

1<sup>st</sup> Appellant (even though he was a Kankani) and 2<sup>nd</sup> Appellant are well experienced labourers working in the estate. Digging and soil preparation are daily routine work done in an estate. Hence, the conduct of 1<sup>st</sup> and 2<sup>nd</sup> Appellants with regard to carrying the dead body, digging a pit and burial of the corpse cannot be considered as improbable events in this case. According to PW1 the dead body was carried by both of them to the ditch.

The Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants argued that there is an inter-se contradiction existing between the evidence of PW1 and that of the doctor and the investigating officer in relation to the manner in which the corpse was buried.

According to PW1, it was only the two legs severed from the torso that were put inside the urea bag before the burial and the trunk of the deceased was put into the pit first and the urea bag containing the severed legs was put over the trunk thereafter. However, as per the evidence given by the doctor-PW8 and the investigating officer-PW6, at the time of the recovery the entire body of the deceased including the trunk and two severed legs were found inside the same urea bag. Further, the said urea bag was tied with a cord when it was recovered from where it was buried.

PW1 under cross examination stated that he was holding the burning handmade torch (Pandama) when the burial was done by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. When the body was taken down to the place where it was buried, he had dropped the handmade torch. For this the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had said that he too should be buried. Thereafter he had remained silent until the burial was over.

---

The relevant portion is reproduced below:

ප්‍ර : කවුද තමාට කිව්වේ පන්දම අල්ලන් ඉන්න කියලා වල කපනකම්

උ : රාජේන්ද්‍රන්.

ප්‍ර : මරියරජම් වල කපලා ඉවර වෙලා මෘත ශරීරය කවුද වලට දැමීමේ

උ : දෙන්නාම තමයි දැමීමේ.

ප්‍ර : එතකොට යටියා බැග් එක

උ : ඒකත් වල ඇතුලටම දැමීමා

ප්‍ර : ඉස්සර වෙලාම දැමීමේ මිනියද ?

උ : ඉස්සර වෙලා මිනිය දාලා පස්සේ යටියා බැග් එක දැමීමේ

ප්‍ර : ඊට පස්සේ

උ : මගේ අතේ තිබුන පන්දම වැටුනා බිමට, ඊට පස්සේ මොහුවත් කපල වලටම දාලා ගියානම් හොඳයි කියලා එයා කිව්වා.

ප්‍ර : කාටද එහෙම කිව්වේ

උ : මට කිව්වේ.

ප්‍ර : ඊට පස්සේ තමා මොනවාද කලේ

උ : මම කටා කලේ නැහැ.

ප්‍ර : ඊට පස්සේ කවුද වල වැහුවේ

උ : මාරුවෙන් මාරුවට ඒ දෙන්නාව වැහැව්වා.

Page 168 of the brief.

This evidence clearly shows that he did not have the handmade torch in hand when the final burial was done. Hence, he may not have seen how the body was finally buried in the ditch. But the witness had very clearly stated how the burial was done. Considering the circumstances PW1 faced at that time, I don't think this inter-se contradiction has any bearing on the prosecution case.

---

The Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants argued that the medical evidence does not corroborate the evidence of PW1 in relation to throwing chilli powder into the eyes of the deceased and the attack on the back of the deceased.

PW1 clearly stated that he saw the 1<sup>st</sup> Appellant throwing chilli powder into the eyes of the deceased after the deceased was struck from his behind by the 2<sup>nd</sup> Appellant. PW4 who identified the dead body had noticed that the eyes of the deceased appeared soggy due to chilli powder being present in them. But doctor who had examined the dead body had not made any reference regarding chilli powder in the eyes of the deceased. This is a lapse on the part of the doctor. This lapse cannot be considered as sufficiently material to disturb the prosecution case.

In the case of **Menoka Malik and others v. The State of West Bengal and others** (2018) 2 SCeJ 1390 held that:

*“It is by now well settled that the medical evidence cannot override the evidence of ocular testimony of the witnesses-If there is a conflict between the ocular testimony and the medical evidence, naturally the ocular testimony prevails-In other words, where the eye witnesses account is found to be trustworthy and credible, medical opinion pointing to alternative possibilities is not accepted as conclusive”.*

The learned Additional Solicitor General has pointed out that the JMO has noted an injury on the occipital bone at the base of the skull of the deceased. Thus, she correctly submitted that there is no contradiction between the evidence of the eye witness and the medical evidence, as the eye witness had stated that the deceased was attacked on his back, with a club by the 2<sup>nd</sup> Appellant.

The Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants contended that the place of surreptitious burial of the corpse was identified by the officers of the Maradana Police Station based upon a statement made by a suspect who

---

was in the custody of the Maradana police. The 3<sup>rd</sup> and 4<sup>th</sup> Appellants and the 5<sup>th</sup> accused had been taken into custody by the Maradana Police. As none of the persons who had allegedly participated at this surreptitious burial of the dead body were taken into custody by the Maradana police, the Counsel argues that receiving knowledge about the place of burial by the Maradana Police raises a reasonable doubt.

The incident pertaining to this case has come to light upon the complaint lodged by PW2 who had suspected about the conduct of the 3<sup>rd</sup> and 4<sup>th</sup> Appellants. The receipt of information about the place of burial by the Maradana Police cannot be disputed as the 3<sup>rd</sup> Appellant was present when the deceased was killed by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. This was confirmed by PW1 in his evidence.

Therefore, with regard to the grounds of appeal considered above raised by the Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants, I am of the view that those grounds have no merits.

As the 1<sup>st</sup> ground of appeal of the 3<sup>rd</sup> Appellant and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal of the 4<sup>th</sup> Appellant are connected to the charge of conspiracy, all those grounds are considered together hereafter.

The learned President's Counsel for the 3<sup>rd</sup> Appellant contends that the evidence given by PW1 only reveals that the 3<sup>rd</sup> Appellant was merely present when the murder took place.

The learned President's Counsel for the 4<sup>th</sup> Appellant contends that the 4<sup>th</sup> Appellant had come to Dayagama Estate for the purposes of business namely for selling clothes to the persons in the estate and therefore, drawing an adverse inference against the 4<sup>th</sup> Appellant is not justifiable.

According to PW2, it was the 3<sup>rd</sup> and 4<sup>th</sup> Appellants who were known to him from his childhood who had invited him to accompany them to Hatton to bring back a vehicle from there. PW2 had agreed with his relevant charges. The van was driven by a driver. After reaching Hatton, they had gone to the

---

estate where the 1<sup>st</sup> and 2<sup>nd</sup> Appellants lived and had consumed liquor together. This was the first time he met the 1<sup>st</sup> and 2<sup>nd</sup> Appellants in the estate. He had gone to play to a nearby ground and when he returned the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants and the driver were not to be seen. Thereafter, in the evening the 3<sup>rd</sup> Appellant had given the key of the van in which they travelled to the estate and told him that they were leaving the estate in the later the same day. Upon inquiry, the 3<sup>rd</sup> and 4<sup>th</sup> Appellants had told him that the driver of the vehicle had gone back to Colombo in the other van. Thereafter, the witness had driven the vehicle back to Colombo with the 3<sup>rd</sup>, and 4<sup>th</sup> Appellants and the 5<sup>th</sup> accused. The 4<sup>th</sup> Appellant had told him that the van in question belongs to his boss. Due to the suspicious conduct of the 3<sup>rd</sup> and 4<sup>th</sup> Appellants, PW2 had lodged a complaint at the Maradana Police Station.

A conspiracy occurs when two or more people agree to commit an illegal act and take some steps towards its completion. Conspiracy is an inchoate crime because it does not require the illegal act to actually be completed. Conspiracy is also unique in that, unlike attempt, a defendant can be charged with both conspiracy to commit a crime, and the crime itself if the crime is completed.

According to PW1, the 3<sup>rd</sup> Appellant was present when the deceased was attacked by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. Hence, the 3<sup>rd</sup> Appellant was very well aware that the deceased had been killed when he gave the key of the van to PW2 to drive the van back to Colombo. Even before leaving Colombo when headed to Hatton, both the 3<sup>rd</sup> and 4<sup>th</sup> Appellants had told PW2 that the purpose for which he was been taken to Hatton was to bring a van back to Colombo from Hatton. Hence, this piece of evidence clearly shows that both the 3<sup>rd</sup> and 4<sup>th</sup> Appellants were very well aware about their sinister plan. Further the 4<sup>th</sup> Appellant had told PW2 that the van driven by the deceased belonged to his boss. This clearly shows that he was privy to the commission of the offence as he was part of the conspiracy.

---

The subsequent conduct of the 3<sup>rd</sup> and 4<sup>th</sup> Appellants, which was the 3<sup>rd</sup> Appellant giving the keys to the van to PW2 and the 4<sup>th</sup> Appellant lying to PW2 that the van belonged to his boss, clearly shows that they were privy to the crime committed.

The Learned High Court Judge had considered all these matters in his judgment and correctly concluded that they were guilty of the respective charges levelled against them. Hence, the grounds considered above also have no merit.

In the final ground of appeal, the Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants contends that the learned High Court Judge had failed to give the benefit of the doubt of the prosecution case to the 1<sup>st</sup> and 2<sup>nd</sup> Appellants.

The learned High Court Judge had considered all the evidence presented by both parties to arrive at his conclusion. He has properly analysed the evidence in keeping with the standard of proof in a criminal trial and arrived at a correct finding that the Appellants are guilty of their respective charges levelled against them. As such, it is incorrect to say that the learned High Court Judge had not awarded the benefit of the doubt to the 1<sup>st</sup> and 2<sup>nd</sup> Appellants. Therefore, this ground also has no merit.

Considering the final ground of appeal advanced by the 4<sup>th</sup> Appellant, even though he had stated in his dock statement that he had gone to the estate with two other persons for the purposes of carrying out his clothes business, had taken two different stances when divulging his reasons for the visit. According to PW1 the 4<sup>th</sup> Appellant had said that he came to transport a person who was willing to go abroad. But to PW2, he had said that he was going to bring a van back to Colombo from Hatton. Further the 4<sup>th</sup> Appellant had told PW2 that the van was belonging to his boss. The learned High Court Judge has considered all the evidence presented before him by both parties to decide this case. He has provided proper reasoning as to why he accepts the evidence presented by the prosecution. As the prosecution had led

---

overwhelming evidence in this case, the learned High Court Judge had very correctly relied on the evidence of the prosecution and convicted the Appellants of their respective charges. Hence this ground is also sans any merit.

In the circumstances, I am of the view as there are no merit in the appeals of the Appellants and therefore their appeals ought to be dismissed. Hence, I affirm the conviction and sentence of the Appellants and proceed to dismiss their appeals.

The Registrar of this Court is directed to send a copy of this judgment to the High Court of Nuwara Eliya along with the original case record.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**