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

In the matter of an appeal against an order of the High Court under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

D. Hewage Saman Alias Kalu Malli

Accused-Appellant

CA Case No: HCC 225/10

HC of Embilipitiya Case No: 22/2006

Vs.

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

Respondent

Before: **Menaka Wijesundera, J.**
B. Sasi Mahendran, J.

Counsel: Indika Mallwaratchy for the Accused-Appellant
Hiranjan Peiris , SDSG for the Respondent

Written Submissions: 05.02.2020 (by the Accused-Appellant)
02.08.2022 (by the Respondent)

Argued On : 03.05.2023

Decided On : 26.07.2023

Sasi Mahendran, J.

The 1st Accused-Appellant (hereinafter referred to as 'the Accused') and another Deepthi Hewage Piyasena were indicted before the High Court of Embilipititya for having committed the offence of murder of one Athukorala Arachchige Weerasena(the Deceased) an offence made punishable under Section 296 read with section 32 of the Penal Code.

Prosecution led the evidence of eight witnesses and evidence marked as P1 to P5. The Accused made a dock statement. At the conclusion of the trial, the Learned High Court Judge acquitted and discharged the 2nd Accused and convicted the Accused for the murder, and the death sentence was imposed.

Being aggrieved by the said conviction the Accused has appealed to this court.

The following grounds were set out in the written submission.

1. Non-compliance of section 48 of the Judicature Act relating to the adoption of proceedings. (The said ground was later withdrawn).
2. Learned Trial Judge has erred in law on the principles relating to Section 27 Recoveries.
3. Learned Trial Judge erred in law by applying the Lucas principle thereby causing serious prejudice to the Accuse-Appellant.
4. The Application of the Ellenborough Principle is wholly unwarranted in the instant case.
5. The case being projected on the last seen theory, prosecution has failed to establish the exact time of death.
6. The case being on circumstantial evidence, prosecution has failed to exclude the possibility of 3rd party being the perpetrator of the crime.
7. Learned Trial Judge has erred on a critical issue of fact causing prejudice to the Accused-Appellant.
8. Learned Trial Judge has erred in law by relying upon hearsay evidence thus violating the evidence ordinance.
9. Items of circumstantial evidence are not weighty enough to support the conviction.
10. Items of evidence favorable to the accused-appellant has not been considered by the learned trial Judge consequently denying him of a fair trial.

The facts and circumstances giving rise to this appeal are that:

According to PW1 Garusinhage Karunaseeli who is the wife of the Deceased stated that on the fatal day of the 20th of October 1997, the Deceased had left home at 6:45 pm saying that he was going to the Accused (alias Kalu Mali) house which is 300 meters away from their house with a bottle of Kassipu. Since the Deceased had not returned in the morning PW1 visited the Accused's house in search of her husband there she saw the Accused and his elder brother (2nd Accused) and family were present, the Accused had then told her that the Deceased went to get more Kassipu.

This was further stated in her cross examination that there were 3 to 4 people present but she was unable to identify them clearly.

On Page 50 of the brief;

ප්‍ර : තමන්ට කලු මල්ලී හමුවුනා?

උ : ඔව්.කළු මල්ලී කිව්වා කසිප්පු මදි කියල කසිප්පු ගේන්න ගියා කියලා. මම කිව්වා ඒගොල්ලො ගෙදරදි නැති වුනේ මම පොලිසියට ගිහින් කියනවා කියලා. මම පොලිසිසියට යනවා කියලා කිව්වා..

ප්‍ර: කවිද කලු මල්ලිගේ ගෙදර ඉන්න අය?

උ : ඒ කාලයේ එයාලගේ අයියා හිටියා. කළු මල්ලි සිටියා. පව්ල සිටියා

Thereafter PW1 visited the brewer, who said that he had not seen the Deceased after he made the purchase the previous evening. PW1 then lodged a complaint at the Police Station. She was later summoned to the Police Station to identify the body which was recovered from a cesspit in front of the Accused's house.

PW1 states that she identified the body and the clothes that the Deceased was wearing evidence marked as P1 and P2 from the day she last saw him.

On Page 65 of the brief;

ප්‍ර : තමුන් ප්‍රකාශ කර සිටියා තමුන්ගේ ස්වාමිපුරුෂයා ඔය අවස්ථාවේ දී ඇදගෙන හිටිය ඇදුම් ගැන?

උ : ඔව්.

ප්‍ර : පුරුෂයා මොනවද ඇදගෙන හිටියේ?

උ : රතුපාට බනික් සරමක්.

ප්‍ර: උඩු කයට.

උ : නිල් පාටට හුරු කමිසයක්

According to PW8 IP Lansakara, He confirmed that PW1 had lodged a complaint regarding the disappearance of her husband, and since he was last seen at the Accused's house upon suspicion a constable was sent on PW8's directions to notify the Accused's family that the Accused was asked to come to the Police Station on the 22nd of October 1997.

On page 94 of the brief;

ප්‍ර : ඒ අවස්ථාවේ දී ඔබ මොනවාහරි සැකකටයුතු කාරණයක් දැක්කාද ඒ පුද්ගලයා සම්බන්දයෙන්?

උ : ඒ පුද්ගලයා නිවසේ නොසිටි නිසාත්, ඒ පුද්ගලයා නිවසට තමයි අර පුද්ගලයා ගියේ කිව්ව නිසා තමයි පොලිසියට එන්න කියලා දැනුම් දීමක් කලේ..

ප්‍ර : ඒ කියන්නේ ඒ අවස්ථාවේදී යම්කිසි සැකයක් ඔබට ඒ පුද්ගලයා සමබන්ධයෙන් තිබුනාද?

උ: එහෙමයි.

ප්‍ර : එතකොට මේ පුද්ගලයා මෙම සිද්ධිය සම්බන්ධයෙන් ඔබට ඔහුව සැක කිරීම සම්බන්ධයෙන් පණිවුඩය දෙන අවස්ථාවේදී ඔබ අදහස් කරගෙන තිබුනාද?

උ : නැහැ. ඔහුගෙන් තොරතුරු ලබාගෙන තමයි එන්න කිව්වේ,

On the following day, the Accused appeared before him at the Police station, after the interrogation he directed PS.4493 PC Somaratne (PW7) to record the Accused's statement. In his statement he had indicated that he can show where the knife is and where the pit is located, at his property, පිහිය එම වල පෙන්විය හැකිය මාලු මන්නය මැද කාමරයේ බිත්තිය අයිනේ ඇත. මට එය පෙන්විමට පුලුවන්. **(On page 98) which was marked as P3)**. Thereafter, this witness along with the other police officers, and The Accused had gone to the Accused's place.

When they arrived there, the Accused showed him the knife (මාලු මන්නය) which was placed on the rack on the side of the wall and showed where the pit was which was 56 feet away from the Accused's house. He smelled a repulsive stench, after removing the debris they discovered the body was facing downwards on the side of the left canal. In the presence of the magistrate and the judicial medical officer the body was recovered. Further, he stated that there were blood stains found on the front of the porch of the Accused's house and later the knife was taken into custody. This item of evidence was not challenged by the Accused.

According to Dr S.Munasinghe the Judicial Medical Officer PW5, He was present when the body was discovered in the cesspit and stated that the body had not decayed.

He identified two cut wounds, firstly, on his forehead which was measured at 2 inches secondly found on the back measured at 3 inches above the ear, and his bones were broken. He further stated that a heavy blow from a heavy weapon like a 'මන්නය' or of similar calibre can be used to inflict such harm. He stated that the Police had produced the Manna knife and that the wounds could have been caused by that weapon. In his expert evidence, he stated that the death could have been avoided if the Deceased had received medical attention but without due medical attention it would result in death. He stated that the cause of death was the shock caused by bleeding to the brain from a blow to the head with a sharp weapon. He assumed that the 1st injury was not the cause of death but rather the 2nd injury.

On Page 169 of the brief;

ප්‍ර : නලලේ තිබෙන තුවාලය?

උ : මරණීය තුවාලය නෙවෙයි. දෙවන පහර තමයි මරණීය තුවාල තත්ත්වයක් ඇති වෙන්නේ..

ප්‍ර: දෙවන තුවාලය හිසේ පැත්තෙන් ඇති තුවාලයක් පිටුපසින් අධිකරණ වෛද්‍ය විද්‍යාව අනුව කුමන වගවීකරණයට ඇතුලත් වන්නේ?

උ :එය කැපුම් තුවාලයක්. මරණීය තුවාල ගනයට අයත් වන්නේ.

According to Somaratne PW7's evidence, he recorded the statement after the Accused was interrogated by PW8 and produced by the reserve. Further, he has stated that the Accused gave the statement voluntarily. However, before accused statement had been recorded he had indicated the above facts on page 71 of the IB.

සෙවනගල පොලිසියේ බල අපරාධ පැමිණිලි සටහන් පොතෙන් උපුටා ගත් සත්‍ය පිටපතකි.

දිනය : 97.10.23 වේලාව :- පැය 08.40 පිටුව :- 71 ෙජ්දය 56

<u>මනුෂ්‍ය ඝාතනයක් සිදු කිරීම.</u>

උපසේවා රාජකාරියේ යෙදී සිටින ඌ.පොෙකා. 27121 කැටපේආරච්චි එම රාජකාරියේ යෙදී සිටියදී විමශර්නයක් සඳහා පැමිණ සිටින සමන් යන අයගෙන් ප්‍රශ්න කිරීමේදී..... වැඩ බලන ස්ථානාධිපති ඌ.පොෙප. ලන්සක්කාර මහතා වෙතට දන්වන ලදුව ඒ මහතාගේ නියෝග මත පොෙසැ 4493 සෝමරත්න වන මම සමන් යන අයගේ ප්‍රකාශය පහත සටහන් කරමි.

දිප්පිට හේවගේ සමන්

On Page 191 of the brief;

ප්‍ර: එම උදෘතය අනුව යම් කරුණක් අනාවරණය වූ කොටස අදිකරණයට ඇසෙන සේ කියවන්න.

උ : පිහිය හා එම වල පෙන්විය හැකියි.මාලු මන්නය මැද කාමරයේ බිත්තිය අයිනේ ඇත. එය පෙන්වීමට පුලුවන්. (පැ.3 දරණ ප්‍රකාශය ඇසුරින් එම කොටස කියවා සිටී.)

Thereafter the Accused was arrested by him and he had gone along with the other officers and the Accused to the Accused's house, He further stated in his cross examination that the Accused was summoned to the Police station, the reason for the Accused to be summoned was regarding the complaint made by PW1 about the disappearance of the Deceased.

The Accused's version.

The Accused gave his dock statement, where he stated that the Deceased was working at his place and afterward in the evening, went to buy some Kassipu and returned to the Accused's house. There were 4 to 5 individuals present that evening and after drinking the Deceased left at 8:30 pm. Thereafter at 9:00 pm, PW1 has come to his house in search of her husband (the Deceased), he said that he had not seen him, since the Deceased had been missing for two days, she said that she is going to lodge a complaint with the police. Thereafter he was summoned to the police station on the 23rd of October 1997 and he was beaten up by the police officer 4 or 5 times before he gave his statement. He states that he had no animosity with the Deceased and that he is innocent.

The main objection taken by the Accused was that the said recovery made under **Section 27(1) of the Evidence Ordinance (marked as P3)** is inadmissible due to the fact that when his statement was recorded on the 23rd of October 1997, he was neither a person accused of an offence and was he in custody.

In other words, the prosecution has failed to establish whether at the time of recording the statement by P7, was he a person Accused of an offence and he was in the custody of the Police officer.

Section 27(1) of the Evidence Ordinance reads as follows; "When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer so much of such information whether it amounts

to a confession or not as relates distinctly to the fact thereby discovered may be proved."

What we have to decide is whether a formal accusation and custody of a police officerare vital as a pre-requisite to the admissibility of the statement in terms of section 27(1) of the Evidence Ordinance, if a fact is discovered in consequence of that statement.

This issue was considered in several cases in both Indian and Sri Lankan judgements.

In the case of **Narayana Swami V. Emperor, A.I.R 1939 Privy Council 47 at page 51, Lord Atkin** held that;

"It would appear that one of the difficulties that has been felt in some of the Courts in India in giving the words their natural construction has been the supposed effect on Sections 25, 26 and 27,Evidence Act, 1872. S 25 provides that no confession made to a police-officer shall be proved1 against an accused. S 26 No confession made by any person whilst he is in the custody of a police-officer shall be proved as against such person. Section 27 is a proviso that when any fact is discovered in consequence of information received from a person accused of any offence whilst in the custody of a police-officer so much of such information whether it amounts to a confession or not may be proved..... It is obvious that the two sections can in some circumstances stand together. Section 162 is confined to statements made to a police-officer in course of an investigation. Section 25 covers a confession made to a police-officer before any investigation has begun or otherwise not in the course of an investigation. Section 27 seems to be intended to be a proviso to Section 26 which includes any statement made by a person whilst in custody of the police and appears to apply to such statements to whomsoever made e.g., to a fellow prisoner, a doctor or a visitor. Such statements are not covered by Section 162. Whether to give to Section 162 the plain meaning of the words is to leave the statement still inadmissible even though a discovery of fact is made such as is contemplated by Section 27 it does not seem necessary to decide."

This case was referred in by **Banadaranayke J** in the case of **Samson Atygala v. Attorney General 1986 1 SLR 390**.

In the case of **The State of Uttar Pradesh v. Deoman Upadhyaya (1960) 61 Crim L.J 1504 at page 1510 Shah J,** held that;

"Section 27 of the Indian Evidence Act is one of a group of sections relating to the relevancy of certain forms of admissions made by persons accused of offences. Sections 24 to 30 of the Act deal with admissibility of confessions, i.e., of statements made by a person stating or suggesting that he has committed a crime. By s. 24, in a criminal proceeding against a person, a confession made by him is in- admissible if it appears to the court to have been caused by inducement, threat or promise having reference to the charge and proceeding from a person in authority. By s. 25, there is an absolute ban against proof at the trial of a person accused of an offence, of a confession made to a police officer. The ban which is partial under s. 24 and complete under s. 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective the person need not have been accused of an offence when he made the confession. The expression, " accused person " in s. 24 and the expression " a person accused of any offence " have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. As observed in Narayan Swamy v. Emperor, 66 Ind App 66: (AIR 1939 PC 47), by the Judicial Committee of the Privy Council, " s. 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation ". The adjectival clause " accused of any offence " is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person, at the time of making the statement for the applicability of the ban. Section 26 of the Indian Evidence Act by its first paragraph provides " No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate prosence of a Magistrate, shall be proved as against a per. son accused of any offence." By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate. Whereas s. 25 prohibits proof .of a confession made by a person to a police officer whether or not at the time of making the confession, he was in custody, s. 26 prohibits proof of a confession by a person in custody made to any person unless the confession is made in the immediate presence of a Magistrate. Section 27 which is in form of a proviso states " Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." The expression, " accused of any offence " in s. 27, as in s. 25, is also descriptive of the person concerned, i.e., against a person who is accused of an offence, s. 27 renders provable certain

statements made by him while be was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered. Even though s. 27 is in the form of a proviso to s. 26, the two sections do not necessarily deal with the evidence of the same character. The ban imposed by s. 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By s. 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered."

In **The State v. Memon Mohamad Husain and Another, A.I.R (1959) at Page 534 and page 536, Patel J** held that;

"In Section 24 of the Evidence Act, words precisely similar to those used in Section 27 are used; it refers to a confession made by an accused person and if the contention that is now made is accepted, it might introduce a great deal of injustice to persons accused of an offence because all confessions made by a person before he became an accused, would be admissible even if they were obtained by inducement, threat or promise. Section 24 in considered in the case of Emperor v. Cunna, 22 Bom LR 1247; (AIR 1920 Bom 270) (FB). Sir Lallubhai Shah at p. 1261 (of Bom LR): (at page 273 of AIR) says that section will be applicable to a confession made by a person, who becomes subsequently accused on an offence. The other Judges in effect accept this, but they differed from the learned Chief Justice on the question of fact as to whether the confessions were made by inducement, threat or promise. The phrase has been used in both sections and it must be interpreted in the same manner in both sections. No possible reason can be suggested why it should have a different meaning. We are therefore of opinion that the words information received from "a person accused of any offence" in Section 27 cannot be rad to man that he must be an accused when he gives the information but would include a person if he became subsequently an accused person, at the time when that statement is sought to be received in evidence against him."

The above said judgements were considered by **Alles J** in the case of **P.P.Petersingham v. The Queen 73 NLR 537 at page 543,** His Lordship held that;

"The words "person accused of any offence" appear in Section 25 and as section 27 is a proviso to section 25 as well as section 26, according to the trend of judicial decisions, there is no reason why the interpretation of the words in section 27 should be any different from the construction that could be reasonably placed on the words in section 25. In section 25 there is an absolute ban on information made to a police officer at any stage and therefore it is reasonable to argue that the words "person accused of any offence" in section 27 does not necessarily mean a person against whom a formal accusation for an offence is made."

Recently **Colin-Thome, J** followed the above said judgements in the **Nandasena v. Republic of Sri Lanka 1978-1979 (2) SLR 235,** His Lordship held;

"For the reasons enumerated above, I am in respectful agreement with the interpretation of the majority of the Judges in *the State of Uttar Pradesh v. Deoman Upadhyaya (supra)* and I hold that the words 'accused of any offence' in section 27 A the Evidence Ordinance is descriptive of the person against whom evidence relating to information alleged to be given by him is made provable by section 27 and that " it does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability."

The crucial evidence postulated is the pit containing the body of the deceased, which was discovered by a police officer from the statement (P3) made by the Accused and recorded by PW7. The Accused was under suspicion at the time, making his statement admissible; prior to making his statement, he was well aware that he was under investigation for a murder charge regarding the now-deceased individual, last seen at the Accused's house. He was then asked to report to the Police Station. Therefore, we assert that at the time the statement was recorded, he was a person accused of an offense.

Next point to be consider is whether the Accused was under the custody of the Police when he made a statement leading to the discovery of the relevant fact.

In the instant case the evidence was that, in the course of the investigation the police wanted to question the Accused regarding the whereabouts of the Deceased who had gone to the Accused place at night and thereafter was not seen. Therefore, the Police has sent a message for him to appear at the Police station where he was then interrogated.

The expression 'in the custody of the police officer' in **section 27(1) of the Evidence Ordinance** was interpreted in the following judgements.

His Lordship **Shah J** in **State of Uttar Pradesh v. Deoman Upadhyaya (Supra)**,

"This distinction between persons in custody and persons not in custody, in the context of admissibility of statements made by them concerning the offence charged cannot be called arbitrary, artificial or evasive: the legislature has made a real distinction between these two classes, and has enacted distinct rules about admissibility of statements confessional or otherwise made by them.

There is nothing in the Evidence Act which precludes proof of information given by a person not in custody, which relates to the facts thereby discovered; it is by virtue of the ban imposed by S. 162 of the Cr. P.C., that a statement made to a police officer in the course of the investigation of an offence under Ch. XIV by a person not in police custody at the time it was made even if it leads to the discovery of a fact is not provable against him at the trial for that offence. But the distinction which it may be remembered does not proceed on the same lines as under the. Evidence Act, arising in the matter of admissibility of such statements made to the police officer in the course of an investigation between persons in custody and persons not in custody, has little practical significance. When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person in sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the custody " of the police officer within the meaning of S. 27 of the Indian Evidence Act."

In **Nandasena v. Republic of Sri Lanka (Supra),** "With regard to the expression 'in the custody of a police officer' in section 27 it does not necessarily mean formal arrest. In *Aishan Bibi v. Emperor* (7) at 15, where a person had not been formally arrested but had been a suspect from the beginning and had apparently been treated as an accused person and much restraint on his movements was not imposed as he could hardly have absconded, it was held by the Lahore High Court that he was in police custody and that the statements given by him in consequence of which recoveries were made could be proved under section 27 of the Evidence Act.

This case adopted the same principles followed in *Maung Lay v. Emperor*[8] and *Jallo v. Emperor*[9]. *In Maung Lail v. Emperor (supra)* it was held that as soon as an accused or suspected person comes into the hands of a police officer, he is, in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is, therefore, in custody within the meaning of sections 26 and 27 of the Evidence Act. In other words, a detention of a person by the police as a suspect amounted to his being in police custody.

In *Allah Ditta v. Emperor* [10] at 1085 it was held that: (*a*) in order that a statement under section 27 be admissible, the maker of the statement should be in the custody of the police, but that custody need not be a formal arrest ; (*b*) in the case of mere suspects who have not been formally charged with any offence or arrested under any section of the Criminal Procedure Code their presence with the Police under some restraint amounts to 'custody' which is contemplated by section 27; and (*c*) if a statement made by a person in the above circumstances, leads to the discovery of any matter, it is admissible.

In a recent case *Umed v. The State of Madhya Pradesh* [11] it was held that the word 'custody' in section 27 cannot be said to mean only When the accused is actually taken into custody by the police officer. it also includes such state of affairs in which the accused can be said to have come into the hands of a police officer or can be said to have been under some sort of surveillance or restriction.

The above principles, with which I agree, have to be applied to the facts of the instant case. It is true that S. I. Chandradasa stated in evidence that at the Maturata Police Station: " I recorded his statement at about 3.30 a.m. on 8.2.1974. At that time I took him into custody." However, all the circumstances in the case have to be examined in order to decide this question."

Recently **Bandaranayaike, J** in **Samson Atygala v. Attorney General (supra)** has considered "whether the deponent should be in the custody of the police in order to make a statement leading to the discovery of a relevant fact admissible."

He held that "From the above evidence it is clear that from the time the accused submitted himself voluntarily at the police station for the purposes of the investigation that was afoot, he was not free to go away. It is a compelling inference that as a result of the interrogation the police had got vital information which they then proceeded to record

so that at the time the accused gave this information to the police it could fairly be said that he was in police custody, and that at the time the information was reduced to writing he was in police custody. These facts therefore satisfy in my view the requirements of s. 27. In this view of the facts the submission of learned counsel for the accused-appellant that the appellant was not an accused in custody is without merit and fails."

The evidence reveals upon message received with regard to the disappearance of the deceased the Accused appeared at the Police station. Thereafter he was interrogated and subsequently his statement was recorded which led to the discovery of the Deceased's body from the pit. From the above evidence he himself voluntarily surrendered to the Police. Until the recovery was made, he was under the custody of the Police.

For the above said reasons we hold that when the Accused made a statement to the Police on the 23rd of October 1997 the Prosecution has established through the evidence that the Accused was a person accused of an offence and that he was under the custody of the Police officer. For this reason, the submission of the learned counsel must fail.

There is no reason for us to disturb the findings of the learned High Court Judge, where he held that the prosecution had established beyond reasonable doubt. We therefore dismiss the appeal.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL