

Judgment  
16, 1965

IN THE PRIVY COUNCIL

No. 46 of 1963

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ABDUL KHALID ABDUL MOOMIN KHAN Appellant

- and -

MAHANTI MULLA GAMAGE ARIYADASA Respondent

---

RECORD OF PROCEEDINGS

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HATCHETT JONES & CO.,  
90, Fenchurch Street,  
E.C.3.

Solicitors for the Appellant

~~P.C.~~  
~~GLI G.2~~

U.S. DEPARTMENT OF JUSTICE  
FEB 1966  
2  
LC 80955

IN THE PRIVY COUNCILNo. 46 of 1963ON APPEALFROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ABDUL KHALID ABDUL MOOMIN KHAN

Appellant

- and -

MAHANTHI MULLA GAMAGE ARIYADASA

RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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Supplemental Petition of Appeal - 3rd, 4th, 5th and 6th accused	Undated

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ABDUL KHALID ABDUL MOOMIN KHAN

Appellant

- and -

MAHANTI MULLA GAMAGE ARIYADASA

Respondent

---

RECORD OF PROCEEDINGS

---

NO. 1

In the  
Magistrates  
Court

10

PLAINT

In the Magistrates Court of Matara

Case No. 66552

No.1

MAHANTHI MULLA GAMAGE ARIYADASA  
OF WEWAHAMANDUWA - Complainant

Plaint

18th January  
1961

Vs.

1. EXCISE INSPECTOR DOLE, OFFICER IN CHARGE, EXCISE STATION, WALGAMA, MATARA
2. ABDUL KHALID ABDUL MOOMIN KHAN, EXCISE INSPECTOR
3. P. THIBARIS TILLAKARATNE, EXCISE GUARD NO. 58
4. D. A. WELIKALA, EXCISE GUARD NO.249
5. S.A. PIYASENA, EXCISE GUARD NO. 390
6. UDAWATTEGO DON EDWIN SOMASIRI, EXCISE GUARD NO.269

20

ALL OF EXCISE STATION, WALGAMA,  
MATARA

Accused

In the  
Magistrates  
Court

This 18th day of January 1961.

The complainant abovenamed informs to this  
Court:-

No. 1  
Plaint  
18th January  
1961  
continued

1. That the accused abovenamed on or about the 27th day of December 1960 at Wewshamanduwa within the jurisdiction of this court were members of an unlawful assembly the common objects of which were:-

(a) to commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of the complainant abovenamed situate on the land called Balagewatta at Wewahamanduwa aforesaid with intent to cause hurt to the complainant. 10

(b) to voluntarily cause hurt to the complainant - and the accused have thereby committed an offence punishable under section 140 of the Ceylon Penal Code.

2. That at the same time and place aforesaid and in the course of the same transaction the accused abovenamed did in prosecution of the said common objects commit house trespass by entering into a building used as a dwelling to wit: the house in the occupation of the complainant situate on the land called Balagewatta at Wewhamanduwa aforesaid with intent to cause hurt to the complainant and the accused have thereby committed an offence punishable under section 434 read with section 146 of the Ceylon Penal Code. 20

3. At the same time and place aforesaid and in the course of the same transaction the accused abovenamed did commit rioting by using force and violence by assaulting the complainant, the complainant's brother Mahathi Mulle Gamage Gomis and the complainant's wife Daisy Wickremasinghe Gunaratne Menike with hands and batons and the accused have thereby committed an offence punishable under section 144 of the Ceylon Penal Code. 30

Sgd. M.M.G. Ariyadasa

Complainant.

Drawn by

40

Sgd. A.M. Anver

Proctor for complainant.



NO. 2  
COURT NOTES

In the  
Magistrates  
Court

18.1.61

No. 2

Complainant present. Mr. Anver supports plaint.  
Evidence 2.2.61. Complainant warned.

Court Notes

Sgd. O.S.M.Seneviratne 18.1.61

18th January and  
2nd February 1961

2.2.61

Complainant: M.M.G.Ariyadasa pt.  
Evidence. It is 3.30 p.m. No time. I called  
this case twice earlier. Mr.Anver was not ready.  
Call 16.2.61.

10

Complainant warned.

Sgd. O.S.M. Seneviratne 2.2.61.

NO.2A

No. 2A

CHARGE

Charge

1. Excise Inspector Dole
2. A.K.A. Moomin Khan
3. P.T.Tillakaratne
4. D.A.Welikala
5. S.A. Piyasena
6. U.D.E. Somasiri

20

J.N.B. 32473 Gvt. Press, Ceylon.

SUMMARY FORM NO. 1B  
Criminal P.C. 93  
(N6\*) 3/45

CHARGE SHEET

(Summary Trial by Magistrate who is also District  
Judge) SECTION 152 (3).

Being also a District Judge having jurisdic-  
tion to try the offence, I am of opinion that this  
offence (though not otherwise summarily triable by  
a Magistrate's Court) may properly be tried sum-  
marily for the following reasons:-

30

Facts are simple  
Expeditious disposal  
No complicated points of law.

In the  
Magistrates  
Court

The accused is so informed and charged as follows:-  
are

You are hereby charged, that you did, within the  
jurisdiction of this Court at WEWHAMANDUWA on 27.12.60

\_\_\_\_\_  
No. 2A

\* Vide attached sheet.

Charge  
continued

The charge having been read and (or each accused)  
having been asked if he has any cause to show why he  
should not be convicted he states as follows:-

I am not guilty.

Sgd. A.E.R.Corea  
23.6.61.

10

\*

1. Being members of unlawful assembly the common  
object of which were:-

(a) To commit house trespass by entering into a  
building used as a human dwelling to wit: the house  
in the occupation of the complainant M.L.G.Ariyadasa  
of Wewhamanduwa with intent to cause hurt and thereby  
committed an offence punishable under section 140 of  
the Ceylon Penal Code.

2. At the same time and place aforesaid and in the  
course of the same transaction the accused abovenamed  
did in prosecution of the said common object commit  
house trespass by entering into a building used as a  
human dwelling to wit: the house in the occupation  
of M.L.G.Ariyadasa situated in the land called Bala-  
gewatte at Wewhamanduwa with intent to cause hurt to  
the said M.L.G.Ariyadasa of Wewhamanduwa and thereby  
committed an offence punishable under section 434  
read with section 146 of the Ceylon Penal Code.

20

3. At the same time and place aforesaid and in the  
course of the same transaction the accused above-  
named did commit riot by using force and violence by  
assaulting the complainant M.L.G. Ariyadasa, M.M.G.  
Gomis and D.W.G. Menike W/o M.L.G.Ariyadasa of Wew-  
hamanduwa with hands and batons and the accused have  
thereby committed an offence punishable under section  
144 of the Ceylon Penal Code.

30

J.N.B. 32473 Gvt. Press, Ceylon  
NO.2B  
AMENDED CHARGE  
SUMMARY FORM NO. 1B.  
Criminal P.C.93,  
(N6\*) 3/45

In the  
Magistrates  
Court

\_\_\_\_\_  
No. 2B

CHARGE SHEET  
(Summary Trial by Magistrate who is also District Judge) SECTION 152 (3).

Amended Charge

10 Being also a District Judge having jurisdiction to try the offence, I am of opinion that this offence (though not summarily triable by a Magistrate's Court) may properly be tried summarily for the following reasons:-

- 1. Facts are simple
- 2. No complicated questions of law .....
- 3. Speedy and expeditious disposal .....

\* Vide attached sheet

The accused are so informed and charged as follows

20 The charge having been read and (or each accused) having been asked if he has any cause to show why he should not be convicted he states as follows:-

\*

IN THE MAGISTRATE'S COURT OF MATARA.

No. 66552

You are hereby charged that you did within the jurisdiction of this Court at Wewahamanduwa on the 27th December 1960 -

30 1. Were members of an unlawful assembly the common objects of which were:-

(a) to commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of the complainant abovenamed situate on the land called Balagewatta at Wewahamanduwa aforesaid with intent to cause hurt to the complainant.

40 (b) to voluntarily cause hurt to the complainant and that you did commit an offence punishable under section 140 of the Ceylon Penal Code.

In the  
Magistrates  
Court

\_\_\_\_\_  
No. 2B

Amended Charge  
continued

2. That at the same time and place aforesaid and in the course of the same transaction set out in Charge 1 above; you did in the prosecution of the said common object commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of the complainant M.M.G. Ariyadasa situated on the land called Balagewatta aforesaid with intent to cause hurt to the complainant which said offence was in prosecution of the said common object of the said unlawful assembly or was such that the members of the said unlawful assembly knew to be likely to be committed in prosecution of the said common objects of the said unlawful assembly and that you being members of the said unlawful assembly are thereby guilty of an offence punishable under section 434 read with section 146 of the Ceylon Penal Code.

10

3. At the same time and place aforesaid and in the course of the same transaction you did commit rioting by using force and violence by assaulting the complainant, complainant's brother M.G. Gomisappu and complainant's wife Daisy Wickremasingha with hands and batons and that you have thereby committed an offence punishable under section 144 of the Ceylon Penal Code.

20

4. At the same time and place aforesaid and in the course of the same transaction set out in Charge 1 above, one or more members of the said unlawful assembly did cause hurt to M.G. Ariyadasa, M.G. Gomisappu and Daisy Gunaratna Menike Wickremasingha which said offence was committed in prosecution of the said common object of the said unlawful assembly or was such that the members of the said unlawful assembly knew to be likely to be committed in prosecution of the said common object of the unlawful assembly and that you being members of the said unlawful assembly did commit an offence punishable under section 314 read with section 146 of the Ceylon Penal Code.

30

5. At the same time and place aforesaid and in the course of the same transaction you did commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of M.M.G. Ariyadasa situate on the land called Balagewatta at Wewahamanduwa with intent to cause hurt to the said Ariyadasa and you have thereby committed an offence punishable under section 434 of the Ceylon Penal Code.

40

6. At the same time and place aforesaid and in the course of the same transaction you did wrongfully confine the said M.M.G.Ariyadasa at Wewahamanduwa and other places and that you did thereby commit an offence punishable under section 333 of the Ceylon Penal Code.

In the Magistrates Court

\_\_\_\_\_  
No. 2B

10 7. At the same time and place aforesaid and in the course of the same transaction you did wrongfully confine M.M.G.Gomisappu at Wewahamanduwa and other places and you did thereby commit an offence punishable under section 333 of the Ceylon Penal Code.

Amended Charge continued

8. At the same time and place aforesaid and in the course of the same transaction you did voluntarily cause hurt to M.M.G. Ariyadasa and that you did thereby commit an offence punishable under section 314 of the Ceylon Penal Code.

20 9. At the same time and place aforesaid and in the course of the same transaction you the 2nd, 3rd and 4th accused did cause hurt to M.M.G.Gomisappu and did thereby commit an offence punishable under section 314 of the Ceylon Penal Code.

30 10. At the same time and place aforesaid and in the course of the same transaction that you the 2nd accused abovenamed did cause hurt to Daisy Gunaratna Menike Wickremasingha with an instrument which when used as a weapon of offence is likely to cause death to wit a baton and that you did thereby commit an offence punishable under section 315 of the Ceylon Penal Code.

They severally plead "I am not guilty"

Sgd. M. Jameel  
Addl. Magistrate.

NO. 3

Prosecution Evidence

PROSECUTION EVIDENCE

MAHANTHI MULLE GAMAGE ARIYADASA

\_\_\_\_\_  
No. 3

16.2.61

Complainant present.

Mr. Anver for complainant supports plaint.

Mahanthi Mulle  
Gamage Ariyadasa  
16th February  
1961

In the  
Magistrates  
Court

---

Mr. Anver calls:-

Mahanthi Mulle Gamage Ariyadasa. Sinh. Buddhist,  
Affd. 34, Driver Wewahamanduwa - Balagewatte.

Prosecution  
Evidence

---

No. 3

Mahanthi Mulle  
Gamage Ariya-  
dasa  
16th February  
1961 continued

I am the complainant. I am living in a house in the land Balagewatte. On 27th December 1960 at about 3.30 p.m. I was at home. My wife Gunaratne Menike was at home. My elder sister's daughter Amarawathie was in the house. At that time a car came and stopped in my compound. I live by the V.C. Road. I came out for that noise. That is to the verandah. My wife followed me. There were six persons wearing the uniforms of Excise officers and as such I thought they were Excise Officers. I had seen five of those persons who came in the car. Those five I knew as Excise officers. These six persons entered the house and of them one gentleman asked me "are you Ariyadasa". That was Excise Inspector Dole whom I knew. I told him I am Ariyadasa. Then Inspector Dole stated "Are you the man who attacked our man" and struck me - he kicked me. Then the other officers who came prodded me with batons. Then my wife asked Inspector Khan not to assault me. Then Mr. Khan struck my wife with the baton on her hand and pushed her. At that time there was piece of plaster sticking in the face of Mr. Khan. Then I was handcuffed. That was done by Excise guard Tillakaratne. At this time my elder brother M.G. Gomis Appuhamy was coming to my house. He lives about 200 fathoms away from my house. He had come because of this row. My brother was not allowed to enter my land but he was attacked. Only Khan was with me the others were with my brother. So that I cannot say who attacked. Then both myself and my brother was put into the rear seat of the car. Three guards sat on two of us. The car was driven with two of us to the Excise Station at Walgama. Two of us were asked to sit on a bench and we sat in that manner for about one and a half hours. Then Khan Tillakaratne and Welikala took us to a house in Pam-burana. Later I came to know that Dole stays in that house. Then Khan and Tillakaratne went into the house. Two of us were kept in the car. From there my brother and I were brought to Matara hospital. That is Khan, Tillakaratne and Welikala brought my brother and I to the Matara hospital. At Matara hospital Tillakaratne opened the parcel which had some matter and some person from the hospital weighed the contents. Khan told me that my brother and I had possessed Ganja and there are 385 grains and that a case will be filed against us.

10

20

30

40

My brother and I were asked to place our fingerprints on the parcel and I refused as a case was being fabricated. Two of us were again brought to the Excise station, Walgama. After some time two of us were got to sign two papers which were said to be bail bonds. After that two of us were released. After that both of us came to the Matara Police station. At that time my wife who had come to make a complaint at the Police station was at the police station. She had made a complaint. My brother and I made a statement to the Police. The police issued two tickets to two of us and asked us to get us examined at the hospital. At the hospital the Doctor examined two of us.

10

Regarding this matter we made a complaint to the V.H. Wewahamanduwa. It is one Siridiyas Silva who has made a complaint regarding this matter to the V.H.

20

On 25.12.60 two persons had bathed in a well close to my house and had made some improper gestures to my wife. One of them I later came to know was Excise guard Somasiri. I was at home at this time and I went and enquired from guard Somasiri why he behaved in this manner. Then Somasiri abused me. I abused Somasiri in return. Then Somasiri struck me two blows with hands. I struck Somasiri with hands in return. I informed the V.H. about this matter and the V.H. told me that it is not proper to take action on a matter concerning my wife that he will meet Somasiri and question him.

30

Sgd. O.S.M. Seneviratne  
Mag. 16.2.61.

Sgd.  
Read over and interpreted to the witness in open court in the presence of the accused and admitted by the witness to be correct.

40

Sgd. O.S.M. Seneviratne  
Magistrate.

Issue summons on accused with copy of counts as set out in the plaint for 30.3.61.

Sgd. O.S.M. Seneviratne  
Mag. 16.2.61.

In the  
Magistrates  
Court

Prosecution  
Evidence

\_\_\_\_\_

No. 3

Mahanthi Mulle  
Gamage Ariya-  
dasa  
16th February  
1961 continued

In the  
Magistrates  
Court

NO. 4

PROCEEDINGS

-----  
No. 4

30.3.61

Proceedings

30th March,  
1st and 21st  
June, 27th  
July, 3rd &  
23rd August  
1961

Complt: M.M.G. Ariyadasa pt.  
Accd: 1. Excise Inspector Dole pt.  
2. A.K.A.Moomin Khan pt.  
3. P.Y.Tillakaratne pt.  
4. D.A.Welikala pt.  
5. S.A. Piyasena pt.  
6. U.D.E. Somasiri pt.

10

SS served on all accused.

Mr. Anver for complainant. Mr. Bastiansz for accused.

Mr. Bastiansz states that there is case No. 66363 for 4.4.61 filed by accused No. 2 against accused for possession of Cannabis sativa L. Call 1.6.61 accused and complainant warned.

Sgd. O.S.M.Seneviratne  
30.3.61

1.6.61

Complt: M.M.G. Ariyadasa pt.

20

Accd: 1. Excise Inspector Dole pt.  
2. A.K.A. Moomin Khan pt.  
3. P.T. Tillakaratne pt.  
4. D.A. Welikala pt.  
5. S.A. Piyasena pt.  
6. U.D.E. Somasiri pt.

Mr. Bastiansz for accused. Accused 4 and 5 file M.C. 4th accused sends M.C. he is ill. Mr. Bastiansz move that M.C. be given back to him for accused to send M.C. to department. I peruse M.C. and return them. 30

There is an excise case No. 66363 being heard before A.D.J. In that case this complainant is an accused and most of these accused are witnesses. As such this case to be called. Call case 27.7.61. Complainant and accused warned.

Issue Notice on Nos. 4 and 5.

Sgd. O.S.M. Seneviratne  
1.6.61



21.6.61

Mr. W. Abeysuriya, Proctor for complainant files list of witnesses and moves for summons.

- 1. Vide J.E. of 1.6.61.
- 2. Next date is calling date.

Mr. Abeysuriya seems to have given a wrong No. of case. Refer this motion to him and verify.

Sgd. O.S.M.Seneviratne  
21.6.61.

In the  
Magistrates  
Court

\_\_\_\_\_  
No.4

Proceedings

30th March,  
1st and 21st  
June, 27th  
July, 3rd and  
23rd August  
1961 continued

10 27.7.61

Complt: M.M.G. Ariyadasa pt.

- Accd:
- 1. Excise Inspector Dole pt.
  - 2. A.K.A. Moomin Khan pt.
  - 3. P.T. Tillakaratne pt.
  - 4. D.A.Welikala pt.
  - 5. S.A. Piyasena pt.
  - 6. U.D.E. Somasiri pt.

20 No return to notice on 4th and 5th. Call and re-issue for 12.10.61. Mr. Anver for complainant. Mr. Bastiansz for accused. Mr. Anver states that in connected case No. 66363 this complainant was an accused was acquitted. So that this case has to be fixed for trial. Call case 3.8.61. Accused and complainant warned.

Sgd. O.S.M. Seneviratne  
27.7.61.

3.8.61

Complt: M.M.G. Ariyadasa pt.

- 30 Accd:
- 1. Excise Inspector Dole pt.
  - 2. A.K.A. Moomin Khan pt.
  - 3. P.T. Tillakaratne pt.
  - 4. D.A. Welikala pt.
  - 5. P.A. Piyasena pt.
  - 6. U.D.E. Somasiri pt.

Mr. Anver for complainant. I do not wish to hear this case. Call case before District Judge at 2 p.m. Parties warned.

Sgd. O.S.M. Seneviratne  
3.8.61.

In the  
Magistrates  
Court

3.8.61

Case called. Complainant and the accused are present.

No. 4

Evidence on 23.8.61.

Proceedings

Sgd. A.E.R. Corea.  
3.8.61.

30th March,  
1st and 21st  
June, 27th  
July, 3rd &  
23rd August  
1961  
continued

23.8.61

Complt: M.M.G. Ariyadasa pt.

Accd: 1. Excise Inspector Dole pt.  
2. A.K.A. Moomin Khan pt.  
3. P.T. Tillakaratne pt.  
4. D.A. Welikala pt.  
5. S.A. Piyasena pt.  
6. U.D.E. Somasiri pt.

10

Evidence - Vide proceedings. Trial on 6.10.61.

Sgd. A.E.R. Corea  
23.8.61.

Prosecution  
Evidence

NO.5

PROSECUTION EVIDENCE

No. 5

MAHANTHI MULLE GAMAGE ARIYADASA

20

Mahanthi Mulle 23.8.61  
Gamage Ariya-  
dasa  
23rd August  
1961

The complainant and the accused are present.  
Mr. A.N.Anver for complainant.  
Mr. Ratnasinkam for 1st, 5th and 6th accused.  
Mr. Balasuriya for the 2nd, 3rd and 4th accused.

Mahanthi Mulle Gamage Ariyadasa - Sinhalese - affirmed  
- 34 years - motor car driver - Wewahamanduwa. I am  
the complainant. I am the driver employed in the  
Ceylon Transport board. I live on the land called  
Balagewatte. I was at home at about 3.30 p.m. on  
27.12.60. My wife Amarawathie Lianachchie and Baby-  
hamy were in my house at that time. I heard the  
sound of a car coming up to the compound of my house.  
On hearing that sound I came on to the verandah of  
my house and I saw 6 people getting out of that car.  
They were the 1st to 6th accused.

30

Q. How were they dressed?

A. In uniform

One of the six accused came on to the verandah of my house and questioned me whether I was Ariyadasa and saying "you are the person who assaulted our man" he assaulted me. Then the other accused also came on to the verandah of my house surrounded me and started to assault me. They gave me about 4 or 5 blows and they handcuffed me. Then my wife came out of the house worshipped them and asked them not to assault me. Tillakaratne the 3rd accused is the man who handcuffed me. Thereafter Inspector Khan the 2nd accused dealt a blow on the arm of my wife and pushed her aside. Thereafter the 6th accused dragged me out of my house and put me inside the car. When I was put inside the car a member of my household raised cries and the people in the village came up to the spot. One of them was my elder brother Gomis. He tried to come up to my house, but the accused prevented him from coming to my assistance. The accused assaulted him also, brought him also to the car and put him into the rear portion of the car. We were then brought to the Excise Office at Walgama and kept there for about 1½ or 2 hours. There we were taken out of the car and the handcuffs round my wrists were removed. From there we were taken by 3 of the accused to Inspector Dole's bungalow and while we were left in the car two of the accused got out of the car and went inside Inspector Dole's bungalow. From there we were taken to the Matara Hospital by the 2nd, and 4th accused. In our presence some ganja was weighed and after they were made into a parcel we were asked to place our thumb impression. We refused to place our thumb impression saying that we had nothing to do with the ganja. From the hospital we were brought back to the Excise Office at Walgama. There we were asked to furnish bail and go away. We gave bail and came direct to the Police station at Matara and made our complaint. In the meantime my wife had come to the Matara Police Station and had made a complaint. I also made a statement to the Police at the Matara Police Station. Siridias had made a complaint to the Village Headman at Wewahamanduwa. Two days prior to this incident that is on 25.12.60 the 6th accused had teased my wife near a well which was close to my house. I was also at home on that day. Then I went up to the 6th accused and questioned him about it. He abused me and in return I also abused him. Then the 6th accused assaulted me and he dealt me 2 or 3 blows. I in turn gave him 2 or 3 blows. The 6th accused went away saying

In the  
Magistrates  
Court

Prosecution  
Evidence

No. 5

Mahanthi Mulle  
Gamage Ariyadasa  
23rd August  
1961  
continued

In the  
Magistrates  
Court

Prosecution  
Evidence

that he would see about it. Then I made a complaint to the Village Headman. I did not make that statement to the Village Headman in the form of a complaint. The village Headman said that if I was not making a complaint he would not record it. As I did not force him to record it he did not record it.

No. 5

Mahanthi Mulle  
Gamage Ariya-  
dasa  
23rd August  
1961  
continued

Subsequently a case was filed against me and my brother charging us with possessing ganja. That is case No. 66363. We were discharged.

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Sgd. A.E.R.Corea  
D.J. & Addl. Mag. 23.8.61.

O R D E R

On a consideration of the evidence led I propose to try this case in my capacity as Additional District Judge. The accused are charged vide Summary form No. 1B. Each of the accused states "I am not guilty". Trial on 6.10.1961.

Sgd. A.E.R.Corea  
D.J. & Addl. Mag. 23.8.61.

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No. 6

Proceedings

NO.6

PROCEEDINGS

12.9.61

12th September  
6th October  
17th and 18th  
November, 7th  
28th & 29th  
December 1961  
11th and 27th  
January and  
9th and 22nd  
February 1962

Mr. Anver, Proctor for complainant moves to call this case on the bench. Vide motion dated 12.9.61. List of witnesses filed by Mr. Anver. Mr. Ratnasinkam consents to application for a postponement. Take the case off the trial roll and call on 6.10.61.

Sgd. A.E.R.Corea  
12.9.61.

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6.10.61

Complt: M.M.G.Ariyadasa pt.

Accd: 1. Excise Inspector Dole pt.  
2. A.K.A.Moomin Khan pt.  
3. P.T. Tillakaratne pt.  
4. D.A. Welikala pt.  
5. S.A. Piyasena pt.  
6. U.D.E. Somasiri pt.

Call on 17.11.61

Sgd. A.E.R. Corea  
6.10.61.

In the  
Magistrates  
Court

17.11.61

All accused pt.

Case called. Call before Addl. Mag. on 18.11.61.  
to be fixed for trial.

Sgd. A.E.R.Corea  
17.11.61.

\_\_\_\_\_

No. 6

Proceedings

\_\_\_\_\_

12th September,  
6th October  
17th and 18th  
November, 7th  
28th and 29th  
December 1961  
11th and 27th  
January and  
9th and 22nd  
February 1962  
continued

10 18.11.61

Complt: M.M.G. Ariyadasa pt.

Accd: 1. Excise Inspector Dole pt.  
2. A.K.A. Moomin Khan pt.  
3. P.T.Tillakaratne pt.  
4. D.A.Welikala pt.  
5. S.A. Piyasena pt.  
6. U.D.E.Somasiri pt.

Mr. Bastiansz with Mr. Ratnasinkam for ac-  
cused.

20 Mr. Anver for complainant.

The case will take some time as there are 19 wit-  
nesses to be called by the complainant.

Mr. Balasuriya for accused, states that his  
counsel Mr. Adv. S. Dahanayaka will be free only  
after the 23rd December and begs that the trial  
be fixed after that day. Trial 29.12.61. Ac-  
cused warned.

Intld: L.H. de A.

7.12.61

30 Mr. A.M.Anver, Proctor for complainant files list  
of witnesses and moves for summons. Vide list  
filed. Mr. M.A.Buhari Proctor for accused also  
files list of witnesses and move for summons. Vide  
list filed. No need to issue SS as on 29.12.61.  
Addl. Mag. will not be sitting as he is proceeding  
on transfer.

Sgd. O.S.M. Seneviratne  
Mag. 7.12.61.

In the  
Magistrates  
Court

28.12.61

Case fixed for tomorrow 29th. Call case on 4.1.62.  
Inform parties tomorrow of the date.

No. 6

Sgd. L.H. de Alvis  
28.12.61.

Proceedings

29.12.61

12th September  
6th October  
17th and 18th  
November, 7th  
28th and 29th  
December 1961  
11th and 27th  
January and  
9th and 22nd  
February 1962  
continued

Mr. W. Balasuriya, Proctor for accused files motion  
and moves to call this case on 11th January instead of  
4th as the accused are on transfer orders. Vide  
Motion. Call on 11.1.1962.

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Intld. H.A.B.

11.1.62

Complt: M.M.G. Ariyadasa

Accd: 1. Excise Inspector Dole  
2. A.K.A. Moomin Khan  
3. P.T. Tillakaratne  
4. D.A. Welikala  
5. S.A. Piyasena  
6. U.D.E. Somasiri

Accused present. Trial 22.2.62.

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Intld. T.D.G. de A.

27.1.62

Proctor for complainant files list of witnesses and  
moves for summons. Vide list filed. Cite.

Sgd. H. Jameel

9.2.62.

Mr. Balasuriya, Proctor for accused files list of  
witnesses and moves for SS. Cite.

Intld. T.D.G. de A.  
Mag.

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22.2.62

Complt: M.M.G. Ariyadasa pt.

Accd: 1. Excise Inspector Dole pt.  
2. A.K.A. Moomin Khan pt.

Accd: 3. P.T. Tillakaratne pt.  
 4. D.A. Welikala pt.  
 5. S.A. Piyasena pt.  
 6. U.D.E. Somasiri pt.

In the  
 Magistrates  
 Court

Mr. S. Dahanayaka for all accused instructed by  
 M/s. Balasuriya and Ratnasinkam. Mr. G.D.C.  
 Weerasooriya instructed by Mr. Anver. Vide  
 proceedings. Accused charged from Amended  
 Charge sheet. They severally plead "I am not  
 guilty". Trial 17.4.62.

No. 6

Proceedings

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Intld. M.J.

12th September  
 6th October  
 17th and 18th  
 November, 7th  
 28th and 29th  
 December 1961  
 11th and 27th  
 January and  
 9th and 22nd  
 February 1962  
 continued

PROSECUTION EVIDENCE

NO.7

MAHANTHI MULLE GAMAGE ARIYADASA

Prosecution  
 Evidence

66552

22.2.62

All accused present. Mr. S. Dahanayaka instruc-  
 ted by Mr. Balasuriya and Mr. Ratnasinkam.

No. 7

Mahanthi Mulle  
 Gamage Ariyadasa  
 22nd February  
 1962

Mr. G.D.C. Weerasuriya instructed by Mr. Anver for  
 prosecution.

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Mr. Weerasuriya moves to amend plaint and  
 charge sheet by amending charge two and adding  
 certain other charges to enable the accused to be  
 charged.

He calls:-

Mahanthi Mulle Gamage Ariyadasa of Wewahamanduwa.  
 Affd. 35 years. Driver C.T.B.

On 27.12.60 at about 3.30 p.m. I was at home.  
 I had just got up from a nap and having had a cup  
 of tea, I was resting on the bed. Then I heard  
 a car halting on the compound of my house. Then

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In the  
Magistrates  
Court

Prosecution  
Evidence

No.7

Mahanthi Mulle  
Gamage Ariya-  
dasa  
22nd February  
1962  
continued

I got up and came up to the doorway of my house. Then I saw six excise officers had got down from a car and came up to my verandah. These excise officers are in court today. I can point them out. These accused are the six excise officers who came to my house that day. The first accused Mr. Dole asked me whether I was a man called Ariyadasa. I said "Yes" and they questioned me as to whether I was the person who had assaulted one of their men. The 1st accused kicked me on my abdomen. The second accused dealt me a blow on the nape of my neck. The other four accused got hold of me and impressed me and assaulted me. The 3rd accused handcuffed me. Then my wife came running up. 2nd accused Mr. Khan assaulted her with the baton while she was worshipping the Excise Officers. While my family were raising cries, I was dragged and taken into the car. My elder brother and a number of other neighbours came running for my cries. My elder brother's name is M.M.Gomis Appu. He too was dragged on to the road and assaulted. I saw the 2nd accused and the 4th accused assaulting my brother with the batons. They jabbed him with the batons. The other accused also ran up to where my brother was, dragged him into the rear seat of the car, drove off and we were taken to the Excise Station at Pamburana. That is about  $1\frac{1}{2}$  miles away from my house. We were there for about  $1\frac{1}{2}$  to 2 hours. After that this second accused who was accompanied by the third and the 4th accused put my brother and me into the car. They took us to the house of the 1st accused. All six excise officers got into the car at my house having taken us into the car. Mr. Dole's house is also at Pamburana. It is about  $\frac{1}{2}$  mile away from the station. I was at Mr. Dole's house for about 10 minutes and from there I was taken to the hospital. My brother, 4th accused and I remained in the car, while the 2nd accused and the 3rd accused went into Mr. Dole's house. They returned in about 10 minutes and they brought us to the Matara Hospital. In my presence some Ganja was weighed. Thereon the Ganja was parcelled. We were asked to seal it with our thumb impression. We refused and stated that we knew nothing about this. We were then taken back to the Pamburana Excise Station. We were kept there for a short time and were bailed out at about 6.30 p.m. From the Excise Station my brother and I came direct to the Police Station at Matara. When I came to the Police Station I found my wife at the Police Station. She had made a complaint to the Police by then.

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The statements of my brother and I were recorded. We were given two Police tickets and directed to the hospital. I received outdoor treatments and my brother was warded.

Sgd. M. Jameel  
 Additional Magistrate  
 22.2.62.

In the Magistrates Court

Prosecution Evidence

No.7

Mahanthi Mulle  
 Gamage Ariyadasa  
 22nd February  
 1962 continued

NO.8

No. 8

MAHANTHI MULLE GAMAGE GOMIS APPU

10 Mahanthi Mulle Gamage Gomis Appu. 52 years. Affd. Welvidane. Wewahamanduwa.

Mahanthi Mulle  
 Gamage Gomis  
 Appu  
 22nd February  
 1962

I remember the 27.1.60. On that day at about 3.30 p.m. I heard the noise of a lady shouting. Then I came running to my brother's house that is last witness'. I saw a car halted on the compound of my brother's house. The 2nd accused asked me not to go in and asked me who I was. Then I asked him what he was doing. He said you do not need to know and hit me. He hit me twice with his hand on the nape of my neck and the 4th accused jabbed me with a baton. The 5th accused also used the baton on me. Then the officers dragged me into the car in spite of my protest drove away.

The 4th and 5th accused dragged me to the car. My younger brother, the last witness was in the car. So also the 6th accused. After that the rest of the accused got into the car and we went to the Excise station at Pamburana. We were there for about 1½ hours to 2 hours. Then we were taken to the house of the 1st accused. We did not get down from the car, but the 2nd and 3rd accused got down. My brother the 4th accused and I remained in the car. From Mr. Dole's house we were taken to the hospital. After some time we were taken inside the hospital and told by the 2nd accused that our Ganja was being measured. We watched some Ganja being measured. We were asked to sign on a piece of paper. We refused. I refused to sign. I also refused to

In the  
Magistrates  
Court  
Prosecution  
Evidence

place my thumb impression. Then we were taken back to the Excise Station and bailed out. Then we came back to the Police Station. My statement was recorded at the Police Station and thereafter we were sent to the hospital where I was warded.

No.8

Mahanthi Mulle  
Gamage Gomis  
Appu  
22nd February  
1962  
continued

Sgd. M. Jameel  
Additional Magistrate  
22.2.62.

22.2.62

Resumed after lunch

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On this evidence I decided to assume jurisdiction. Charge accused from amended charge sheet.

They severally pleaded "I am not guilty".

Further trial on 17.4.62.

Cite prosecution witnesses.

Sgd. M. Jameel  
Additional Magistrate  
22.2.62.

1.3.62

Requisition for Rs. 5/- issued to (witness No.11)  
D.D.H. Kandamby V.H. Kanattegoda (vide K.R.1350 of  
23.1.62).

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Sgd. T.D.G. de A.  
Magistrate.

No. 9

Proceedings

17.4.62

NO.9

PROCEEDINGS

17th and 25th  
April 1962

Trial

Complainant

M.M.Ariyadasa

Accused

1. E.I. Dole
2. A.K.A. Moomin Khan
3. P.T. Tillakaratne
4. D.A. Welikala
5. S.A. Piyasena
6. U.D.E. Somasiri

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Complainant and accused present

I have no time today.  
Trial refixed for 11.5.62  
Parties warned.

In the  
Magistrates  
Court

\_\_\_\_\_  
No. 9

Sgd. T.D.G. de Alwis  
Magistrate

Proceedings

25.4.62

17th and 25th  
April, 1962  
continued

Proctor for Complainant files list of witnesses  
and move for summons.

Issue.

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Intld. T.D.G. de A.  
Mag.

NO.10

Prosecution  
Evidence

PROSECUTION EVIDENCE

MAHANTHI MULLE GAMAGE ARIYADASA

\_\_\_\_\_  
No.10

11.5.62

Mahanthi Mulle  
Gamage Ariyadasa

Compt. M.M. Ariyadasa

11th May 1962

- Accused
1. Dole E.I.
  2. A.K.A.Moomin Khan
  3. P.T. Tillakaratne
  4. D.A. Wilikala
  5. S.A. Piyasena
  6. U.D.E. Somasiri

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11.5.62

All accused present. Mr. Adv. Dahanayake instructed by Mr. Balasuriya for them.

Mr. Adv. G.D.C. Weerasinghe instructed by Mr. Anver for complainant.

Prosecution calls:

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Mahanthi Mulle Gamage Ariyadasa Affd. 36 years.  
C.T.B. Driver residing at Wewahamanduwa.

Examination

In the  
Magistrates  
Court

Prosecution  
Evidence

No. 10

Mahanthi Mulle  
Gamage Ariya-  
dasa  
11th May 1962  
Examination  
continued

I reside on the land called Balagewatta. I remember 27.12.60. At that time I was working at Ratmalana C.T.B. Depot. I used to come home twice or thrice a month. I took up duties at Ratmalana on 24.4.60. My wife and children were living in Wewahamanduwa in the land called Balagewatta. My house is by the main road, - that is the Wewahamanduwa - Kanattegoda road. On the same side as the road where my house is, there is a public well by the road about 60 yards, from my house. In about October and November 1960 when I returned home my wife complained to me that two persons who used to come to the well to bathe used to cast remarks at her. Sometimes they come together and sometimes they come individually to bathe. She told me that when she goes to bathe they used to offer to draw water for her and sometimes used to offer to bathe her. She made this type of complaint to me on two or three occasions. On 2.12.60 I came home on leave. I had to extend my leave because I contacted mumps. On 25.12.60 I was at home, that is at Balagewatte. That day at about 3.30 p.m. I was lying on a bed inside the house. My wife went to the public well to bathe. She returned home almost immediately without bathing. She told me that that same illbred person was at the well and hooted at her and waved his hand at her. I went up to the well. The 6th accused was at the well. He was dressed in a suspender and was bathing. There was also a school boy bathing at the well. That school boy is not a person from our village. I do not know him. I told the 6th accused that when he comes to bathe we oblige him with our bucket and rope and asked him why he harassed her and our women folk when they come to bathe. The 6th accused asked who I was. I told him I am a driver. He asked me whether I know him. I told him that I did not know who he was, but in any event he should not behave like this in our village. He asked whether I was a Ganakaraya and he gave me a slap. I returned the assault. We exchanged a few blows and I set out to go to the Headman. When I was leaving the place he told me that he was a person from the Excise Dept., and that he would see what he could do. I went to the Headman's office. He is the Headman of Kanattagoda. I told him what happened. It was in the nature of a complaint. He did not record it. The Headman told me that there is an officer of the Excise Dept., living in the village and that through him he would report this matter to the Lokumahatmaya. I came back home. On 27.12.60 I was at home. At about 3.30 p.m. I had just got up from a nap and after a cup of tea I was resting on my bed. I heard a car halting

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on my front compound. I got up and came in the direction of the front verandah. My wife followed me. I came up to the front door. When I went up there the 1st, 2nd and 3rd accused were already on my verandah. The 1st accused asked me whether I was Ariyadasa. I said yes. He then asked me whether I was the person who assaulted one of their men and kicked on my abdomen. I came to know the 6th accused on the 25th of December. By the 27th of December 1960 I had know the 2nd, 3rd, 4th and 5th accused. I did not know their names. I knew the 2nd accused as an Excise Inspector. I knew the 3rd, 4th and 5th accused as Excise guards. It was on the 27th that I saw the 1st accused for the first time. The 4th, 5th and 6th accused were standing on my front compound by the car. The car was halted on my compound. The 2nd accused struck me with his fist on the back of my neck. The 3rd accused came up to me with a pair of handcuffs. The 4th, 5th and 6th accused then came and held me. Then the 3rd accused handcuffed me. Second accused had a piece of sticking plaster stuck on his face. My wife raised cries and worshipped the 2nd accused and asked him not to assault him. The 2nd accused struck my wife on her hand with a baton and pushed her aside. My wife and three children raised further cries. The 3rd, 4th and 5th accused dragged me into the car. My niece Amarawathie was at home, as well as a woman called V. Babyhamy who had come home to assist my wife in the household work. When I was put in the car my elder brother Gomisappu and some others came running. Gomis lives about 200 yards from my house. When my brother came up to my house the 1st and 4th accused rushed on to the road and held my brother. I saw the 1st and 4th accused nudging at my brother with baton. My brother also raised cries. Then the 3rd, 4th and 5th accused dragged my brother into the car. Then these six accused got into the same car and drove to the Excise station Walgama. The Excise Station is at the border of Walgama and Pamburana. The two of us were taken into the Excise Office and made to sit on a bench. My handcuffs were removed. We were at the Excise Station for about 1½ hours to 2 hours. Thereafter my brother and I were taken into the car by the 2nd, 3rd and 4th accused. I was taken to the house of the 1st accused at Pamburana. It was about 2 days later that I came to know that it was the 1st accused's house. We remained in the car with the 4th accused. The 2nd and 3rd accused went into the house. As we were taken into

In the  
Magistrates  
Court

Prosecution  
Evidence

No. 10

Mahanthi Mulle  
Gamage Ariyadasa  
11th May 1962  
Examination  
continued

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In the  
Magistrates  
Court

Prosecution  
Evidence

No.10

Mahanthi Mulle  
Gamage Ariya-  
dasa  
11th May 1962  
Examination  
continued

the Excise station I saw the 1st accused leaving on a bicycle. The 3rd and 5th accused got on to a motor bicycle and left in the direction of the town. The 2nd, 4th and 5th accused went inside the office and we were in charge of the Reserve Officer. The 3rd and 5th accused returned in about half an hour on the same motor bicycle. It was a green coloured B.S.A. Bantam motor bicycle. At the house of the 1st accused, the 2nd and 3rd accused returned to the car in about 3 or 4 minutes time. I did not see the 1st accused at his house. We were then taken to the Matara Hospital. At the Matara Hospital a parcel of Ganja was weighed and my brother and I were asked to place our thumb impression to the seal. Both of us refused. We were then brought again to the Excise Office. That was at about 6 p.m. At about 6.30 p.m. we were bailed out. A person called E.D.Suraweera bailed us out. My brother and I went straight to the Matara police station. I saw my wife there. She had already made a complaint. Two others had gone to the police station with my wife. Their statements were recorded, immediately after that my statement and my brother's statements were recorded. On 28.12.60 I went to Colombo by the 1.30 a.m. bus. I met Mr. Mahanama Samaraweera. Through him I contacted the Commr. of Excise, Finance Minister and the Home Minister. Thereafter Case No. 66363 was instituted against me and my brother for alleged possession of Ganja. Both of us were acquitted.

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Cross-  
examination

XXD

When my wife first complained to me that she was being harassed by some person who came to bathe I was anxious to find out who they were. My wife first complained to me by about October. In October and in November she complained to me twice or thrice. I did not enquire as to whom the persons were. When she complained to me for the first time I did not take any notice. The first time she complained to me she told me that when she went to bathe a person who came there to bathe offered to bathe her and offered to draw water for her and used to sympathise with her. My wife is a young person 27 years old. I am nine years married to her. I was enraged when she made that complaint to me. She told me that this happened about a week prior to the complaint made to me. I did not tell my brother Gomis about this. I did not mention to anyone about this. When she made the complaint a second time I asked her not to go to the well when that person is there. The second complaint was also similar to the first. In December she

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complained to me only on the 25th. I had taken no steps to find out who was harrassing my wife. Some people who come to bathe at the well used to borrow our bucket and rope. We used to give our bucket and rope for people to bathe from the time I can remember. My wife had told me that she had given the bucket and rope to the person who used to play the fool of her in October. After the first complaint made by my wife to me I had asked her not to give them the bucket and rope.

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On the 25th I came to know that the 6th accused was an Excise officer. I came to know the name of the 6th accused about a week after this incident. On the 25th I did not come to know his name. On 27.12.60 I made a statement to the police. On the 27th when I made my statement to the police I knew that the incident on the 27th had some connection with the incident on the 25th. When I made the statement I had that in mind. I cannot remember whether in my statement to the police I mentioned that the 6th accused had harassed my wife.

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I cannot remember whether I told the police that the 6th accused assaulted and that I assaulted the 6th accused on the 26th. On 16.2.61 I gave evidence in Court. I do not know whether on 16.2.61 I referred to the 1st accused as "Excise Inspector Dole, whom I know". When I made my statement to the police I did not know the name of the 1st accused. I described him as a fair, short fat gentleman who I can identify wherever I see him. On 27th I formed an impression that it was the 2nd accused who was leading that Excise party. I described the 2nd accused as a fair, well built person. He was the only person in full uniform. I told the police that I was kicked in the abdomen by the 1st accused. I would have stated that the fat gentleman kicked me. I told the police that the fat person questioned me. I told the police that the fair tall gentleman struck my wife.

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In the  
Magistrates  
Court

Prosecution  
Evidence

No.10

Mahanthi Mulle  
Gamage Ariyadasa  
11th May 1962  
cross-  
examination  
continued

Q. In your statement to the Police is it not correct that you first mentioned that fat gentleman only with reference to going to his bungalow?

A. I cannot remember.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.10

Mahanthi Mulle  
Gamage Ariya-  
dasa  
11th May 1962  
cross-  
examination  
continued

I told the Police about the first assault on me and thereafter a joint assault on me by all these accuseds. I had pain in my abdomen but I had not injuries there. I did not know whether the person who weighed the Ganja was an apothecary. I thought he may be an apothecary. I did not tell the apothecary that I was assaulted. To my recollection Gomis did not tell the apothecary that we were assaulted by the Excise Party. I came to know Mr. Samaraweera since the July 1960 elections. In July I came to know Mr. Samaraweera when he went canvassing from house to house. I worked for him in that election. In March I did not work for him. In March 1960 I was at Ratmalana undergoing a course of training. In July I requested my friends and relations to vote for Mr. Samaraweera. I took a keen interest in Samaraweera's election in July 1960. He knew that I was supporting him. I am not a public servant. C.T.B. employees are not prohibited from working at elections. I went to Mr. Samaraweera only after the authorities in Matara were informed. I knew that a complaint had been made to the Headman also. I had no external injuries at all. On the morning of 28.12.60 I made a complaint to the Deputy Commissioner of Excise. In that complaint I did not mention any of the accused by name. When I made the statement to the Deputy Commissioner of Excise I did not know the names of anyone of these accused. I deny that there was ganja in my house. I deny that the Excise party came to raid the house and I obstructed them. I first came to know the 6th accused about a week or two later.

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Re-examination Re XXD

On 25.12.60 I told the Village Headman that my wife had complained to me about a person harrassing her at the well and that I met him on the 25th at the well and that there was an exchange of words and exchange of blows. I also told the Headman that he was an Excise Officer. On 27.12.60 I was given outdoor treatment at Hospital. My brother Gomis was warded in the hospital.

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Sgd. T.D.G. de Alwis  
Magistrate

No. 11

NO.11

Malcolm  
Cornelius  
Bultjens  
11th May 1962  
Examination

MALCOLM CORNELIUS BULTJENS

Malcolm Cornelius Bultjens, Sworn 45 years, D.M.O.  
Hambantota.



In December 1960 I was D.M.O. Matara. I examined M. Gomis at about 8.30 a.m. on 28.12.60. He had been admitted to hospital on the 27th night. I found the following injuries:

- 1. Linear contusion 1½" long ½" wide over left breast.

Injury non-greivous and caused by blunt weapon. This injury could be caused with a club.

10 Q. Could it be caused with a jab or prod with a baton?

A. Yes.

XXD. Nil

Sgd. T.D.G. de Alwis  
Magistrate

NO.12

DAISY GUNARATNE MENIKE WICKREMA-SINGHE

20 Daisy Gunaratne Monike Wickremasinghe Affd. 25 years, wife of M.G. Ariyadasa, residing at Wewahamaduwa.

30 We live on the land called Balagewatta. In December 1960 my husband was working in the C.T.B Depot at Ratmalana. He used to come home about thrice a month. In about 1960 I had occasion to make a complaint to my husband. This is regarding a person who used to cast remarks at me when I went to the well to bathe. I made complaints of this nature to my husband on about three or four occasions. I told my husband that a person who comes to bathe at the well casts remarks at me. On 25.12.60 I was at home. My husband was also at home. At about 3 or 3.30 p.m. I went to the well to bathe. The 6th accused was at the well. On seeing him I returned home and told my husband that the person who plays the fool of me is at the well. My husband went towards the well. I did not go. He came back in about 10 minutes. He told me that the person at the well was an Excise Officer and he left saying that he was going to the Headman. He returned at about

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In the Magistrates Court

Prosecution Evidence

No.11  
Malcolm Cornelius Bultjens  
11th May 1962  
examination continued

No. 12

Daisy Gunaratne Menike Wickremasinghe  
11th May, 1962  
Examination

In the  
Magistrates  
Court

No.12

Daisy Guna-  
ratne Monike  
Wickremasinghe  
11th May 1962  
examination  
continued

5 p.m. I did not ask him why he went to the Headman. I heard him telling my mother that he went to see the Headman about the incident near the well. I asked him what the incident at the well was. He told me that he had a fight with the person at the well. I remember 27.12.60 that afternoon I was at home. At about 3.30 p.m. after evening tea I was washing the cups and saucers. A car came and halted at our front compound. My husband was lying on a bed and went on to the verandah. I saw all these six accused.

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Q. Did you see the 1st accused.

A. No. I did not know that he was in the Excise.

I saw him at my house, at the time of the incident. The 2nd accused was there. The 3rd accused was there. The 4th accused was there. The 5th accused was there. I am not sure whether I saw the 6th accused. I cried out asking them not to assault my husband. Then my husband was handcuffed. I did not see who handcuffed my husband. The 2nd accused struck my hand. I was holding my hands in worshipping position. The blow struck my face. He struck me with his hands. My husband was taken in the car. Then my brother-in-law Gomis came. He was struck with a baton and taken into the van. I was raising cries. The car then went off. I went immediately to the Village Headman of Wewahamanduwa. I saw a neighbour of mine already making a complaint to the Headman. His name is Sirdiyas Silva. I went to the Police Station and I made a complaint. I produced a certified copy of it marked P1. I made the complaint at 4.15 p.m. From my house to the Police Station it is about 2½ miles. A short time after I made my complaint my husband and Gomis came to the Police Station.

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Cross-  
examination

XXD. My complaint to the Police was read over and explained to me and I signed it. My complaint was correctly recorded. It is possible that there would have been mistakes on my part. One mistake is that I had mentioned that the 6th accused was not there.

Q. Was he there or not?

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A. My husband told me that he was present.

Where I am concerned I did not see the 6th accused. Because my husband said so, I believed that the 6th accused also came. It was after I made my complaint to the Police that my husband told me that the 6th

accused also came. I told the Police that all the Excise Officers struck my husband with batons. All the Officers who came that day had batons in their hands. All the people assaulted my husband. I cannot particularly mention the 6th accused. What I say is that all of them surrounded my husband and some struck with batons but I cannot remember who struck him. I cannot say how many blows were dealt.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.12

Daisy Gunaratne  
Monike Wickre-  
masinghe  
11th May 1962  
cross-examination  
continued

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Sgd. T.D.G. de Alwis  
Magistrate.

Resumed after lunch.

Daisy Gunaratne Menike Wickremasinghe Affd. Re-  
called.

XXD cont'd.

Cross-examination  
continued

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I gave a description of the 2nd accused to the Police. I could not recognise the others. I described the 2nd accused as the person who had a piece of sticking plaster on his face. I cannot say what each accused did to my husband individually. When I came on the verandah the Excise party had already got on to the verandah. I saw them getting out of the car and getting on to the verandah. I did not see whether the 1st accused was wearing a pair of shoes. I did not see the 1st accused kicking my husband on his abdomen. It may be that I did not mention in my statement that I saw Gomis being assaulted by the Excise party. I saw one blow with the baton striking my husband's back. When the accused surrounded my husband he did not do anything. He asked them what fault he had committed. My husband did not try to escape from the accused. Gomis was brought to the car being held by his shoulders. I did not see what Gomis did. My husband did not raise cries. My husband was handcuffed and pushed into the car. He did not enter the car willingly.

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I had given the 6th accused a bucket to bathe. Prior to this incident I did not know that the 6th accused is know as Edwin. I know it only now. Though I complained to my husband he did not inquire about the person who harassed me. I deny that it is false that the 6th accused was harassing me. At no time was I hit with the baton. The fingers of my right hand were swollen. I showed that to the Police. I

In the  
Magistrates  
Court

Prosecution  
Evidence

No. 12

Daisy Guna-  
ratne Menike  
Wickremasinghe  
11th May 1962

cross-  
examination  
continued

did not mention that in my statement. My husband was surrounded by the Excise party and I was about one foot away from him. I tried to cling on to my husband at that time I was struck.

Re XXD Re-examination

Prior to this incident I had seen the 6th accused in civil clothes. That is in shirt and black shorts.

Q. On that day did you see the 1st accused individually?

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A. No. I did not see him separately but saw all the accused together. I was able to recognise only the 2nd accused. He was in uniform. The others were in short trousers.

Q. Can you point out the persons who came to your house that evening?

A. All six of them were there.

To Court:-

I can definitely say that the 1st accused was present because I saw him that day and after that when I came to Court for the first time. After I came to Court I saw the 3rd accused and then identified him as the person who came to my house. The 4th and 5th accused also came to my house and after I saw them in Court I was definitely able to identify them as two other persons who came. I did not give a description of the 1st, 3rd, 4th and 5th accused because at that time I was not able to identify them so well as to give a description of their features. I could not make a note of their features well because they came all of a sudden and the whole of this incident took about 4 or 5 minutes.

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Sgd. T.D.G. de Alwis  
Magistrate.

11.5.62.

NO.13

MAHANTHI MULLE GAMAGE GOMIS

Mahanthi Mulle Gamage Gomis Affd. 50 years,  
Cultivator residing at Wewahamanduwa.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.13

Mahanthi Mulle  
Gamage Gomis  
Examination  
11th May 1962

I was Vel Vidane of my village for 23 years  
till 1961.

That is till our services were discontinued due  
to paddy lands Act being implemented. Ariyadasa  
is my younger brother. He lived at Balagewatte,  
about 150 to 200 yards from my house. I re-  
member 27.12.60. That day at about 3.30 p.m.  
after my evening tea I had gone to the carpentry  
shed close by for a chew of betel. I heard some  
cries from the direction of Ariyadasa's house.  
I ran in that direction. Four others followed  
me. They were people who were in the shed. I  
came up to Ariyadasa's house. The 2nd accused  
was by the road with a baton in hand. There  
was a car in Ariyadasa's compound. There were  
four people near the car. I entered Ariyadasa's  
compound. The 2nd accused asked who are you all.  
I told him that would not matter and asked him  
what the duty was they were performing there. The  
2nd accused gave two blows with his hands on my  
head. The 2nd accused called the 4th accused.  
The 4th accused prodded me with his baton on the  
left front of my chest. The 5th accused came and  
prodded me with a baton on the right side of my  
body. The 4th and 5th accused held me by my  
shoulders and dragged me into the car. Inside  
the car I saw the 6th accused and my brother. My  
brother was handcuffed. The 1st and 2nd accused  
got into the front seat of the car. The 2nd  
accused drove the car. The 3rd, 4th and 5th ac-  
cused also got into the rear seat. Already the  
6th accused was in the rear seat with me and my  
brother. The car drove up to the Walgama Excise  
Station. My brother and I were made to sit on a  
bench on the verandah. My brother's handcuffs  
were removed. The 3rd and 5th accused went out  
and returned on a motor bicycle twice. There-  
after we were put into the car again. We were  
taken into the car to the 1st accused's bungalow  
at Pamburana. The 2nd, 3rd and 4th accused went  
with us to Pamburana. The 2nd and 3rd accused  
went into the bungalow and the 4th accused re-  
mained with us. In about 5 minutes they returned.

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In the  
Magistrates  
Court  
Prosecution  
Evidence

No.13

Mahanthi Mulle  
Gamage Gomis  
Examination  
11th May 1962  
continued

I did not see the 1st accused at the bungalow. We were then taken to the Matara Hospital. The 2nd and 3rd accused went upstairs and came down. They told us that they had to weigh some ganja which they had and took us up to a gentleman. That gentleman weighed some ganja. I was asked to sign something, I refused. My brother also refused. We were brought back to the Excise station and bailed out. My brother and I came to the police station. My brother's wife and some others were there. I made a statement to the police. I was sent to hospital. I was at hospital that night. The next morning the Doctor examined me, on the 28th, at about 3 p.m. I was discharged from the hospital. Thereafter my brother and I were charged for possessing ganja. Both of us were acquitted.

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Cross-  
examination

XXD

Ariyadasa's land has no fence. The 2nd accused was on the road opposite my brother's verandah. That was about 45 fathoms from the verandah. Till I saw the 2nd accused I did not know that an Excise party had come. The 2nd accused was about a fathom from the road inside the garden. I was assaulted by the 2nd accused when I had gone about one fathom from the road. I saw my brother for the first time when he was brought to the car. I deny that I was inside the house when the Excise party came. I deny that I was inside Ariyadasa's house when the Excise party came. I deny that I obstructed the Excise party. I did not tell the police that I saw some Excise guards and a fair well built Excise Inspector assaulting Ariyadasa with baton. In fact I did not see anyone assaulting Ariyadasa. Apart from the 2nd accused I did not describe any of the other accused to the police. I did not know their names. Shown 1st accused. This accused came to my brother's house. I did not give a description of the 1st accused to the police. I did not see the 1st accused kicking my brother. I did not know who the gentleman was who weighed the ganja. I was not hit with the baton but I was prodded with the baton. The 1st accused did not do anything with me.

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I told them that I cannot get into the car till the Headman comes.

I did not work for Mr. Samaraweera at the Elections. My brother supported Mr. Samaraweera.

Re-examination

Re Exd I cannot recollect whether any of the accused was in uniform.

Sgd. T.D.G. de Alwis  
Magistrate.

NO.14

DON DARLIS HEWAKANDAMBI

Don Darlis Hewakandambi Affd. 51 years V.H.423  
of Kanattagoda.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.14

Don Darlis  
Hewakandambi  
Examination  
11th May, 1962

10 Wewahamanduwa is within my division. I  
know the complainant Ariyadasa. On 25.12.60 at  
about 4 p.m. Ariyadasa came to my house. He told  
me that an Excise Guard had played the fool of  
his wife and that he had a fight with him. He  
told me that it was near the public well. I  
asked him whether he was making a formal com-  
plaint, he told me that it was not necessary to  
record this as a formal complaint. I did not  
record what he said. I told him that I will  
speak to the O.I.C. of the Excise station about  
it. On 27.12.60 at 3.50 p.m. one Siridiyas Silva  
made a complaint to me. When Siridiyas was  
making the complaint to me Ariyadasa's wife did  
not come to my house. Nor did anyone else come  
20 to complain.

XXD

Cross-  
examination

I have met Ariyadasa on several occasions  
after the 25th of December. On any of these  
occasions he did not discuss with me about what  
he told me on the 25th. I am sure of it. There  
is a move by Government to discontinue the Head-  
man and appoint Gramasevaka Some Headman have  
also applied for this job. That is those who  
are under 45 years of age. My nephew is an ap-  
30 plicant. The Complainant is also an applicant.  
I know Mr. Mahanama Samareweera for about 20 years.  
I knew him from the time that he was a Proctor.  
Ariyadasa told me that he found fault with an  
excise guard, the excise guard assaulted him and  
he returned the assault. I did not ask whether  
he had injuries. I did not see injuries. I  
have not recorded that Ariyadasa came to my  
house. After 12 noon on the 25th I have been at  
home. He did not tell me that there was trouble  
40 from that Excise officer prior to 25.12.60. If  
a person comes with injury I would record that  
fact.

Re Exd Nil.

Sgd. T.D.G. de Alwis  
Magistrate  
11.5.62.

In the  
Magistrates  
Court

NO.15  
MAHANAMA SAMARAWEERA

Prosecution  
Evidence

9.6.1962

Complt. and accd. pt.

No.15

Mahanama  
Samaraweera

Mr. Adv. Weerasinghe instructed by Mr. Anver for  
complt.

9th June 1962

Mr. Adv. S. Dahanayaka instructed by Mr. Balasuriya  
for accd.

Mr. Adv. Weerasinghe calls:-

Examination

Mahanama Samaraweera. Sinhalese, Buddhist, Affd. 45  
Minister of Housing and Local Government, Colombo.

10

I was a Proctor of this Court. I know the complainant. On 28th December 1960 the complainant met me at Colombo at "Sravasti". He came with one B. Pathirana, who is also known as Buddhadasa Mahatmaya. He made a complaint to me regarding an alleged assault by some excise officers. He told me that on 27.12.60 Mr. Khan, Mr. Dole and 3 or 4 excise guards came on to the road opposite the well which is in front of his house and assaulted him and his brother Gomis who came to his rescue and pushed away his wife who also came to his rescue. He also stated that after the assault he was taken to the excise station and from there to the hospital where some ganja was weighed and his signature taken.

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Q. Did he mention any incident about two days prior to this assault?

A. Yes. He mentioned an incident two days prior to this which he said was the reason for this assault on the 27th.

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He told me that his wife had complained that one of the excise guards who bathes in the well opposite his house used to wave his hand and make indecent gestures towards her and that his wife told him that this happened on several occasions and on this particular day she pointed out the excise guard who used to do so. He then questioned the excise guard and there was an altercation in the course of which he slapped the excise guard. He told me that this incident two days prior to the main incident took place at the well. I did not make a record of what the complainant told me, but I am speaking from my recollection.

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Q. Can you remember where he said the incident of the 27th took place?

A. The complainant's house and the well are almost in the same garden and very close to each other; he may have mentioned one place or the other; I cannot say which.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.15

Mahanama  
Samaraweera  
9th June 1962  
examination  
continued

10 I telephoned the Excise Commissioner and informed him that such a complaint had been made to me and I sent the complainant and Pathirana who came with him to the Excise Commissioner Wadugodapitiya to take necessary action.

20 On 5.1.61 the complainant came and met me again with Pathirana; that was at my office at Whiteaways Building, Colombo. They handed over to me a petition addressed to the Hon. Minister of Finance signed by Pathirana. The complainant said that no action had been taken up to that time and wanted to state his case before the Minister of Finance. I took them along to the Minister of Finance and handed over the petition to him. The complainant told me that investigations against the officers involved were being hampered by their being allowed to continue in service in that particular station. I informed the Hon. The Minister of Home Affairs of what the complainant told me.

30 On 7.1.61 I attended a function at Dadalla, Galle, with the Parliamentary Secretary to the Minister of Finance. After the meeting I came to Matara Rest House at about 8 or 9 p.m. The 2nd accused Mr. Khan met me at the Rest House and spoke to me. He told me that he wished to see me at my residence in Matara. I told him that he could call on me immediately I left the Rest House. At about 10 or 10.30 p.m. Mr. Khan came to see me at my residence at Walpola, Matara. He came with one Mr. Fonseka, but not with any of the other accused. He told me that he was in 40 trouble over the complaint made by Ariyadasa. He requested me not to take any action in the matter of the complaint of Ariyadasa because during his stay at Matara he had performed his duties satisfactorily. I told him that I agreed that from my point of view I was satisfied with the discharge of his public duties and that I had no ill will towards him. I also told him that I had certain duties to perform as a Member of Parliament for

In the  
Magistrates  
Court

Prosecution  
Evidence

No.15

Mahanama  
Samaraweera  
9th June 1962  
examination  
continued

the area. The accused and Pathirana were known to me and I felt that they would not come and tell me that which was not true. I questioned the 2nd accused about the incident of the 27th December 1960. He told me that he was sorry, but that he was being dragged into it by reason of the actions of his senior officer, Mr. Dole. He mentioned Mr. Dole's name. He also told me that Mr. Dole asked him to go along with the other excise officers and teach Ariyadasa a lesson for slapping one of their brother excise officers. He told me that Dole asked him (Khan) to go because he (Dole) could not go himself. He told me that Dole made an entry in his diary that he was going to Dickwella. He told me that in spite of that entry Dole did not go to Dickwella, but accompanied them to the complainant's house and that this unfortunate incident occurred. Mr. Khan told me that he, Mr. Dole and an excise party went to the complainant's house. He told me that they assaulted Ariyadasa, his brother Gomis and in the course of the scuffle Ariyadasa's wife was pushed away. He told me that Gomis and Ariyadasa were taken to the excise station and subsequently to the hospital. He told me that some ganja was weighed at the hospital. I asked him how the ganja came in and he told me that it was an introduction. I understood what Mr. Khan said to me to mean that they had assaulted Ariyadasa and Gomis and taken them into custody and to explain what they had done they had introduced ganja. He told me that 3 or 4 excise guards accompanied them on this day. I directed security officer Sub. Inspector Wewala and two police constables who were also there for security purposes to make a note that Excise Inspector Khan visited me at my residence at Walpala that day at that time. I definitely remember Mr. Khan telling me that excise inspector Dole made a false entry that he was going to Dickwella, but actually went with him (Mr. Khan) and the rest of the excise party to the house of the complainant. I questioned Mr. Khan about Mr. Dole making a false entry regarding his going to Dickwella because I remember that such a thing was mentioned in a petition submitted to me addressed the Hon. The Minister of Finance which I read and may be that it was also mentioned in the oral complaint of Ariyadasa made to me. I did not make a record of what Mr. Khan told me at my residence at Walpala on 7.1.61, nor did I get anyone to record his statement. I only got the police officers present to make a note of the fact that Mr. Khan visited me that day at that time. I have a clear recollection of what the 2nd accused Mr. Khan told me on 7.1.61.

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XXD

In the  
Magistrates  
Court  
Prosecution  
Evidence  
No.15  
Mahanana  
Samaraweera  
9th June 1962  
cross-  
examination

10 I have known Mr. Pathirana for the last 7 or  
8 years. I came to know him in the course of my  
election campaign. He was an active supporter of  
mine. I first contested a seat in Parliament in  
1952. I have a clear recollection of Mr. Pathirana  
from 1956 onwards. I know that Mr. Pathirana  
worked for me; he canvassed for me. He ar-  
ranged election meetings and looked after polling  
arrangements. Pathirana is from Wewahamanduwa.  
In the Wewahamanduwa area arranging of meetings  
and speakers was mostly done by him. He may be  
called one of the organisers of my election cam-  
paign for that area with others helping him. I  
considered his support valuable; I consider any  
support valuable. I would wish for his support  
in future elections which I may contest. Pathi-  
rana is a landed proprietor. By village stan-  
dards he has a fairly large extent of lands. I  
20 consider him an influential man. I do not like  
to incur the displeasure of anyone unnecessarily,  
and certainly not that of Mr. Pathirana. I  
cannot say whether Pathirana has been charged in  
any excise cases. I do not expect Pathirana to  
lie to me and I do not think that he would lie to  
anyone.

30 I cannot say whether it was Pathirana or  
Ariyadasa who started the conversation. I knew  
Ariyadasa also. I know that I have known him  
during the 1960 elections; I may have known him  
earlier. He was a supporter of mine. Even if  
Ariyadasa had come along I would have paid the  
same attention to this complaint.

40 I cannot remember whether on the 27th I  
asked Ariyadasa whether a case had been filed  
against him for possession of ganja, but it is  
very unlikely that I would have asked him because  
according to him the incident had taken place only  
the previous day. When Ariyadasa came on the 5th  
he may have told me that a case had been filed  
against him, but I have no recollection. I have  
not made a record of the complaint made to me by  
Ariyadasa. I have a record in my diary that Mr.  
Khan met me at my residence on 7.1.61. I cannot  
say whether he told me that a case was filed and  
he was present in the M.C. on 2.1.61. (Mr. Adv.  
Dahanayake marks D1 the plaint in M.C. Matara,  
Case No. 66363, and Journal Entry of 2.1.61 D1A).

In the  
Magistrates  
Court

I still say that I have no recollection whether on the 5th, Ariyadasa told me that a case had been filed or not.

Prosecution  
Evidence

No. 15  
Mahanama  
Samaraweera  
9th June 1962  
cross examina-  
tion continued

I deny the suggestion that when Ariyadasa met me on the 5th he wanted me to use my good offices to have the case withdrawn. I say that that suggestion is absolutely false. Ariyadasa might have mentioned to me that a case was filed, but I cannot recollect whether he told me so or not.

I perused the petition which was presented to the Minister of Finance. My recollection is that they had been informed by someone that a false entry had been made by Mr. Dole as regards his going to Dickwella that day. My recollection is that the petition was not a typewritten one. The only document that was handed over to me that day in connection with this incident is this petition which was later handed over to the Minister of Finance. I got a copy of the petition from the Ministry of Finance along with a reply regarding the petition handed over to the Minister. I have the copy with me. The covering letter states that I am being sent a copy of the report sent by the Excise Commissioner on this petition and a copy of the petition was attached to the copy of the report sent to me. The covering letter is dated 16.5.62.

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At the Rest House Mr. Khan came and spoke to me first. My recollection is that at the Rest House Mr. Khan spoke to me first. After seeing D1 and D2 I say that I am satisfied that by the time Mr. Khan spoke to me a case had already been filed against Ariyadasa and Gomis.

30

Q. When you met Mr. Khan on 7.1.61 were you aware that a case had already been filed?

A. I am not sure.

Q. I put it to you that you knew that a case had been filed?

A. I cannot be sure.

Q. I put it to you that you asked Mr. Khan why a case had been filed?

40

A. No.

There is no requirement for activities of the excise officers to be informed to the Member of Parliament. I have met Mr. Khan earlier and I have known him. I may have talked to him about excise matters at Matara. I have spoken to him about excise cases. There have been several instances where people have come and informed me that excise articles have been introduced. Those are what I referred to as excise cases. When I met Mr. Khan casually I may have questioned him about such allegations. When I discuss such matters with Mr. Khan and if Mr. Khan states that a case has been filed I drop the matter.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.15

Mahanama  
Samaraweera  
9th June 1962  
cross  
examination  
continued

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When I met Mr. Khan on the 7th I have no recollection whether I asked him if a case had been filed. There were two aspects, one of which was the question of the assault. I asked Mr. Khan whether Mr. Dole went on this raid. I told Mr. Khan that Ariyadasa had told me that the ganja was an introduction and Mr. Khan agreed that it was an introduction. That day I questioned Mr. Khan on the representations that had been made to me. Even if I knew that a case for the ganja had been filed, I would have questioned the 2nd accused in these particular circumstances. To my recollection I was not aware that a case had been filed when I met Mr. Khan on the 7th. I knew that the admission made by Mr. Khan was very favourable to Ariyadasa. I was happy if the admissions were likely to exculpate an innocent party. I did not ask the security officer to note down the admissions that Mr. Khan made. I did not think that Mr. Khan would have made those admissions in the presence of anyone else. He made those admissions to me in private and Mr. Fonseka who came with him was also motioned to stay away. I am not aware whether the fact of a case being filed was mentioned to me. If I was aware that such a case had been filed - then in view of the admission of Mr. Khan that the ganja was an introduction I would have asked him to withdraw the case. I have no recollection whether I asked Mr. Khan if he had filed a case in Court for the ganja. I cannot say whether I asked Mr. Khan whether a case had been filed and whether I asked him to withdraw the case.

Q. Did you tell Mr. Khan "You will go away from Matara, but these people will always be there to support me?"

In the  
Magistrates  
Court

Prosecution  
Evidence

No.15

Mahanama  
Samaraweera  
9th June 1962  
cross-  
examination  
continued

A. I remember saying something about Mr. Khan leaving Matara; that was with reference to the instructions which I think were given on 5.1.61 regarding the transfer of Mr. Khan from Matara.

The complainant made representations to me that the presence of the 1st and 2nd accused was hampering the investigation regarding his complaint and I took him to the Minister of Home Affairs. From the Ministry of Home Affairs I came to know that orders were being given for their transfers. On 7.1.61 I knew that if orders had not already been given orders would soon be given for their transfers. I am definite that I did not tell Mr. Khan that the complainant and them will remain in Matara to support me.

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If it was a question of Mr. Khan refusing to withdraw this particular case I would have appealed to someone higher than Mr. Khan if there was sufficient ground.

Mr. Fonseka, with whom Mr. Khan came, is a teacher at Matara and I think he is now mobilised. Sub Inspector Wewala would have been in one of the rooms at the time. I did not tell Sub Inspector Wewala what the conversation between Mr. Khan and myself was. I have told some of the Ministers about the conversation I had with Mr. Khan. I have told the Minister of Home Affairs and the Minister of Finance. I have not addressed a written communication to anyone that Mr. Khan made such a statement to me.

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Re-examination Re EXD I spoke to the Minister of Finance and to the Minister of Home Affairs about Mr. Khan's admission to me in the course of casual conversation.

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Sgd. T.D.G. de Alwis  
Mag. 9.6.62.

No.16

NO. 16

Lal Chandra  
Wewala  
9th June 1962

LAL CHANDRA WEWALA

Lal Chandra Wewala. Sinhalese, Buddhist, Affd. 27, S.I. Police, C.I.D., Colombo.

Examination

On 7.1.61 I was the security officer attached to the Hon. The Minister of Housing and Local Government. That day we were at Matara. At about 10.35 p.m. that day the 2nd accused, excise inspector Mr. Khan, came

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to the Minister's residence with another person. He was with the Minister for 10 or 15 minutes and left. The Minister asked me to make a note in my note book that Mr. Khan visited him at that time. I made that entry.

In the  
Magistrates  
Court

Prosecution  
Evidence

No.16

Lal Chandra  
Wewala  
9th June 1962  
examination  
continued

XXD

Cross-  
examination

10 I became a security officer in about August 1960. In 1958 I was stationed at Matara. In 1958 I knew him as the M.P. for Matara. I got orders from the D.I.G. to be the security officer. I have seen this complainant coming to see the Minister. I do not know a person called Pathirana. I cannot remember whether I have seen the complainant speaking to the Minister. At the time I made the note on 7.1.61, the Minister did not tell me why Mr. Khan came. I have noted in my notebook that Mr. Khan came at 10.35 p.m. spoke to the Minister and left and that the Minister asked me to make a note of it, I have not  
20 noted the time at which he left. The same day earlier I saw Mr. Khan speaking to the Minister.

Re-Exd. Nil.

Sgd. T.G.D. de Alwis  
Mag. 9.6.62.

NO.17

No. 17

WATHUHEWAGE SIRIDIYAS SILVA

Wathuhewage  
Siridiyas Silva  
9th June 1962

Wathuhewage Siridiyas Silva Sinhalese, Buddhist, Affd. 23, Lorry Cleaner, Co-operative Department residing at Trincomalee.

30 On 27.12.60 I was residing in Wewahamanduwa. That day at about 3.30 p.m. I was at the bakery which is about 3 or 4 fathoms from the complainant's house. There was some noise from the complainant's house and I went in that direction. When I came there the complainant was in a car. I saw the 2nd accused striking Gomis twice with a baton. Thereafter the 2nd accused and the 4th accused pushed Gomis into the car. I then went to

Examination

In the  
Magistrates  
Court

Prosecution  
Evidence

No.17

Wathuhewage  
Siridiyas  
Silva  
9th June 1962  
examination  
continued

the V.H. and informed him. The V.H. recorded my  
complaint.

Cross-  
examination

XXD

I am not related to the complainant. I made a  
complaint to the V.H. on my own. I saw Gomis being  
assaulted on the compound. I did not see the com-  
plainant being assaulted. When I came he was already  
in the car. There is a well close to Ariyadasa's  
house. By that well there is a road. From the road  
to the well is about two feet. From the well to the  
place of assault is about five fathoms. I did not  
see any of these accused inside Ariyadasa's house. I  
heard the complainant's wife crying out "Don't as-  
sault my husband". I made a statement to the police  
also. I cannot remember whether I told the police  
that I heard Ariyadasa's wife shouting out "Don't  
assault my husband". I did not tell the police that  
I heard cries of murder. Gomis is also known as  
Vidana Mahatmaya. The 2nd accused was in khaki uni-  
form; he was wearing a pair of long khaki trousers.  
He was the only person who assaulted Gomis. I told  
the police that two of Gomis' assailants were dressed  
in sarong and khaki coat. It is true that only the  
2nd accused assaulted Gomis. I cannot remember  
whether I told the police that two persons in sarongs  
and khaki coats assaulted Gomis.

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Re XXD. Nil.

Sgd. T.G.D. de Alwis

Magistrate

9.6.62.

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NO.18

DON DARLIS HEWA KANDAMBY

Don Darlis Hewa Kandamby: Sinhalese, Buddhist,  
Affd. 51. V.H. No. 423, Wewahamanduwa.

On 27.12.60 witness W.A.Siridiyas Silva came  
and made a complaint to me at 3.30 p.m. I pro-  
duce a certified copy of that complaint marked  
P2.

XXD Nil

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Sgd. T.C.D. de Alwis  
Mag. 9.6.62.

Mr. Adv. Weerasinghe closes the case for the pro-  
secution leading in evidence P1 and P2.

I call upon the accused for their defence.

It is 12.30 p.m. now (Saturday) and Mr.Adv.  
Dahanayake moves that he be permitted to call  
the defence on the next date.

I allow the application. Further trial on  
21.6.62.

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Accused warned.

Sgd. T.G.D. de Alwis  
Mag. 9.6.62.

NO.19

DEFENCE EVIDENCEBABA THASIM DOLE (FIRST ACCUSED)21.6.62

Complainant and accused present.

Mr. Advocate Weerasinghe instructed by Mr.  
Anver for complainant.

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Mr. Advocate S. Dahanayake instructed by Mr.  
Balasuriya for accused.

In the  
Magistrates  
Court

Prosecution  
Evidence

No. 18  
Don Darlis Hewa  
Kandamby

9th June, 1962

Examination

Defence Evidence  
No. 19

Baba Thasim Dole

21th January 1962

In the  
Magistrates  
Court

Defence case:

Mr. Advocate Dahanayake calls:-

Defence  
Evidence

Baba Thasim Dole: Affirmed, 38, Excise Inspector,  
Mannar.

No. 19

Baba Thasim  
Dole  
21st January  
1962  
continued  
Examination

I am the 1st accused in this case. I joined the Excise Department on 1st of October 1944. On 27.12.60 I was Officer in Charge, Excise Station, Matara. I did not go anywhere that day on a detection with Mr. Khan, the 2nd accused. On the morning of 27.12.60 I came to the Excise Station at 7.20 a.m. I have made a note to that effect in my note book. I attended to some office work and came to M.C. Matara at about 8.30 a.m. to hand over some productions. After handing over the productions I went back to the station and remained there till 12.45 p.m., when I left for my quarters. I returned to the station and at 1.15 p.m. left to Dambagasara at Dikwella on my push bicycle for public contact and crime investigation. At 4.35 p.m. I returned to the station. I have made a record of all my activities that day in my note book and the note book is available for inspection. I produce my official pocket note book beginning from 11th November 1960 marked D2. There is no truth whatsoever in the allegation that I went with Mr. Khan and others on 27.12.60 at about 3.30 p.m. to Wewahamanduwa. There is no truth whatsoever in the allegation that I assaulted Ariyadasa that day. I did not assault anyone.

I met the 2nd accused Mr. Khan on the morning of 27.12.60 at about 8 a.m. I did not meet Mr. Khan in the afternoon of that day.

I know Mr. Mahanama Samaraweera, the Minister of Housing and Local Government. He is not well disposed towards me. I have made some detections in the village of Madiha and I think Mr. Samaraweera must have come to the conclusion that I am harassing his supporters. He has also made a personal complaint to the Excise Commissioner that the Excise Officers of Matara with the connivance of the V.H. are tolerating U.N.P. people carrying on illicit excise activities.

There is a log book in the Excise Station where the movements of every officer are recorded (shown log book marked D3). At page 136 my movements on 27.12.60 are shown. The first entry is that I arrived at the station at 7.20 a.m. At 7.55 a.m. there is an entry that I left for M.C. Matara, to hand over some productions. There is an entry that at 10.30 a.m. I

have returned from Courts. At 12.45 p.m. I have left for my quarters. At 1.15 p.m. there is an entry that I have returned to the station and that I am leaving for Dikwella. At page 137 in D3 there is an entry at 4.35 p.m. that I returned from Dikwella. In between the record of my movements there is a record of the movements of all other officers.

In the  
Magistrates  
Court

Defence Evidence

No. 19

10 Till I received summons in this case I was not aware that there was even a complaint of this nature against me. No police officers came to record my statement in connection with such a complaint. Now I am stationed at Mannar.

Baba Thasim Dole  
21st January  
1962 examination  
continued

I have never been charged in a Court of law. I have borne a good character and I have been 18 years in the Excise Department.

20 XXD The 2nd accused Mr. Khan is not ill disposed towards me. I saw this complainant Ariyadasa for the first time in Court; that was when the plaint was filed against him for unlawful possession of ganja. I cannot give any reason why the complainant should be ill disposed towards me. As far as I am aware they have no reason to fabricate a false case against me unless they have been asked to do so by someone.

Cross examination

30 Crime investigation is to enquire about illicit excise activities. Public contact is meeting people, specially the member of parliament for the area, Chairman of the local bodies, Officer in Charge, Police Station, Village Headman, Officer bearers of Rural Development Societies and other people of public importance.

40 Dikwella is about 14 miles from my Excise Station. On this day I went to Dikwella on the push bicycle. I have to enter my mode of conveyance. I have made that entry. I made that entry both in the log book and in my note book. Between Matara and Dikwella I did not do public contact work or crime investigation. I went to the Dikwella Police Station. Between Matara and Dikwella I passed one police station; that is the Gendara Police Station I did not meet any village Headman that day. My first stop was at the Dikwella Police Station. I met Sergeant Ranatunge the O.I.C. of the Dikwella Police Station at that time. I would have been at the Police Station

In the  
Magistrates  
Court

Defence  
Evidence

No. 19

Baba Thasim  
Dole  
21st January  
1962  
cross examina-  
tion continued

for about 5 to 10 minutes. In my notebook there is an entry that I went to the Dikwella Police Station. I reached Dikwella at 2.15 p.m. There were some constables in the charge room. I cannot remember who they were. Sergeant Ranatunga is not a witness for me. I cannot remember whether any outsiders came to the Dikwella Police Station when I was there.

From there I went to the V.C. Office and met the V.C. Chairman. I went to the V.C. Office that is opposite the Police Station. I cannot remember the V.C. Chairman's name. I was in civil clothes. I spoke to the V.C. Chairman about Excise crime. I was with him for about 5 minutes. He is not a witness for me. I met the V.C. Chairman at about 2.25 p.m. or 2.30 p.m.

I then went to Dambagasara. That is about 2 miles from the V.C. Office. I went to meet the V.H. I met him. Officially I have met the V.H. prior to this also. I was in Matara from 1st of January 1960. I had a discussion with the V.H. about excise offences. I would have been with the V.H. for about 10 minutes. I cannot remember his name. He is not a witness for me. From Dikwella I took about 15 to 20 minutes to go to Dambagasara. I reached Dambagasara, at about 2.45 p.m. I would have left Dambagasara round about 3 p.m. From there I came back to the Station.

At 4.35 p.m. when I returned to the station I did not meet any of the officers. Immediately after making my entry I left for my quarters. I returned to the station again at 6.35 p.m. during the whole of that evening I did not meet the 2nd accused or the 3rd to the 6th accused.

I gathered that Mr. Samaraweera had made representations against the Excise Officers from the papers sent to me from my explanation. I have not summoned the Excise Commissioner to state that Mr. Samaraweera has made such representations against me.

On a perusal of the log book I came to know that Excise Inspector Khan and some other officers had gone on a raid on this day. The 3rd, 4th, 5th and 6th accused, have according to the log book gone with Mr. Khan. According to the log book they had gone to Kanattegoda and Wewahamanduwa.

On the following day, the 28th, when Inspector Khan submitted to me the Crime Report I came to know

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that he had gone to Wewahamanduwa on a raid and that as a result the complainant was being charged. The 2nd accused had not taken a revolver according to the Log Book. I checked the pocket note book of the Excise Guard. I checked them daily. I do not check the pocket notebook of the Excise Inspectors unless he is a probationer to guide him on the proper lines. The 3rd, 4th, 5th and 6th accused have made notes in their pocket notebooks. The Crime Report did not disclose that they had obtained a Search Warrant. If a Search Warrant is not obtained we have to make the necessary entry under the Excise Ordinance. Recourse is had to Section 36 of the Excise Ordinance when there is no time to obtain a search warrant from the Magistrate. The 2nd accused and the others may have left on some information on this day, but I do not know what the information is. Subsequently I found out what the information was. Before going on a raid the information must be entered in the notebook. The 2nd accused told me what the information was on which he went on this raid. He told me that at Kanattegoda he received information of transport of ganja, by the complainant and his brother Gomis. I do not know who gave him that information.

The entries in my notebook were made contemporaneously with the events and not after my return to the station.

I did not discuss with the other accused what took place on their raid to Wewahamanduwa.

ReXXD I was transferred to Mannar on 1st January 1962. I was present with the other accused when instructions were given to my lawyers.

Sgd. T.D.G. de Alwis  
Magistrate 21.6.62.

NO.20

ABDUL KALIQUE ABDUL MOOMIN KHAN

Abdul Kalique Abdul Moomin Khan, Affd. 27 Excise Inspector, Kasbewa.

I am the 2nd accused in this case. I joined the Excise Department in May 1956. I have never been charged in a Court of Law. I have borne a good character throughout.

In the  
Magistrates  
Court

Defence Evidence

No. 19

Baba Thasim Dole  
21st January  
1962  
cross examination  
continued

No. 20

Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
Examination

In the  
Magistrates  
Court

Defence  
Evidence

No.20

Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
examination  
continued

I remember 27.12.60. In my notebook I have made a record of my movements that day. I have that notebook with me. I produce it marked D4. On page 73 of D4, my movements of 27.12.60 are noted. My movements that day ended at page 88. I came to the station that day at 7.55 a.m. I made an entry in the Log Book regarding my arrival; that entry is at page 136 of the Log Book. I did office work till 11.25 a.m. At 11.25 a.m. I left by car to investigate some complaint at Midigama East. I returned to the station at 2.15 p.m. and left for my quarters; that entry is also there in the Log Book. I came back to the station at 3 p.m; that is also entered in the Log Book. At 3.15 p.m. I left with Excise Cpl. 58 - Tillakaratne, Excise Guards 249 Welikala, 390 Piyasena and 269 Somasiri; they are the 3rd to 6th accused. I went to Kanattagoda and Wewahamanduwa areas on detective work. I have made an entry to that effect and I have noted the time of my departure. I have noted in my notebook that I have searched a land at Kanattagoda, but did not find anything there; that was at 3.30 p.m. I came to my car at 3.50 p.m. at Kanattagoda and there I met an informant. I have noted down the name of the informant. He gave me certain information against one Gomis Appuhamy of Wewahamanduwa. I took immediate action. I left by car to check on the information. At about 4 p.m. I saw the complainant and his brother Gomis walking along to the Wewahamanduwa - Kanattagoda Road near the public well. Gomis looked behind and when he saw us he passed on a small parcel he had in his hands to the complainant Ariyadasa. Ariyadasa took the parcel and started to run along the road. I halted the car on the main road near Gomis Appuhamy. The 5th accused immediately chased after Ariyadasa. The other three guards got down and stopped near Gomis Appuhamy. I myself ran after Ariyadasa. I saw him enter the compound of a house which I later came to know was his house. There Piyasena the 5th accused caught him. I saw Ariyadasa resisting arrest by Piyasena. I went and took the parcel and examined it. In it I found some vegetable matter resembling parts of the hemp plant *Canavis Sativa L.* The complainant again tried to run and resist and I had to use some force on him. I held the complainant Ariyadasa when he was trying to run. I did not have a baton with me. I did not have a revolver with me. Some of the guards had batons in their hands. The other three guards then brought Gomis Appuhamy to the place where I was; that is on to the compound of the complainants house. They told me that Gomis Appuhamy was trying to escape. According to the information I received there was no necessity for me to obtain a search warrant. A crowd of about

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100 or 150 persons was gathering there. Ariyadasa and Gomis were becoming restless. I brought the car up to their compound, put them into the car by force and brought them from the spot to a distance of about  $1\frac{1}{2}$  miles, stopped the car and made my notes, that is at Walgama near Peragahakoratuwa. I have made a note to that effect in D4. At Peragahakoratuwa I examined the parcel well and sealed it in an envelope. From there I proceeded to the hospital and met the apothecary in charge, Mr. T.F. Mendis. In the presence of Ariyadasa and Gomis the parcel was opened and weighed by Mr. Mendis. Neither Ariyadasa nor Gomis made any complaint to Mr. Mendis. They did not tell him anything. They did not say that the Ganja was not theirs. Ariyadasa and Gomis refused to place their thumb impressions on the parcel. There have been many occasions where accused persons have refused to place their thumb impressions on productions. When we were in the hospital a person called Don Dinis Suraweera came and bailed the accused out. They were bailed out at 5 50 p.m. near the hospital. At no stage did I take them to the excise station.

The 1st accused Mr. Dole never accompanied me on this raid. That morning when I was going into the excise station I saw Mr. Dole going out; that was the only occasion I saw him that day.

Thereafter I charged Ariyadasa and Gomis in M.C.Matara Case No. 66363. I produce a certified copy of the plaint in that case marked D1 and the Journal Entry dated 2.1.61 marked D1A. Both accused in that case were present on excise bail on 2.1.61. On 10.1.61 I gave evidence for the purpose of having the accused charged and sending the production to the Government Analyst. I produce the journal entry dated 4.4.61 marked D1B; the journal entry dated 17.4.61 marked D1C; the journal entry dated 16.5.61 marked D1D; the case was fixed for trial on 3.6.61. On that day the 1st accused was absent I produce the journal entry dated 3.6.61 marked D1E. I produce the journal entry dated 4.7.61 marked D1F. The trial was held on 15.7.61. I produce the journal entry of proceedings dated 15.7.61 marked D1G. On that day I sent a telegram to Court. I also sent a Medical Certificate to the O.I.C. of the excise station to be produced in Court. In the course of my duties I was hit with a bottle and I was injured.

In the  
Magistrates  
Court

Defence Evidence

No.20

Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
examination  
continued

In the  
Magistrates  
Court

Defence  
Evidence

No.20

Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
examination  
continued

I was in hospital for one night. On the day of the trial my face was injured and I was on liquid diet. I could hardly open my mouth. The Court refused a postponement and the accused have been acquitted.

On 7.1.61 I met Mr. Mahanama Samaraweera at the Matara Rest House. By that time I had already filed complaint D1. D1 is dated 2.1.61. By 7.1.61 no case has been filed relating to myself and the other accused in this case. The plaint in this present case is dated 18.1.61. By 7.1.61 I was not aware of any representations made to my department. I had not been questioned by anyone. I was not under interdiction and I was not under interdiction by reasons of this complaint. I had no reason whatsoever to seek the favour of Mr. Mahanama Samaraweera. I met Mr. Mahanama Samaraweera at 8.30 p.m. at the rest house. At the rest house Mr. Samaraweera walked up to me and greeted me. He told me that he wished to see me at his residence.

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I went to Mr. Samaraweera's house at about 10.30 p.m. Mr. Samaraweera spoke to me. He told me that some of his supporters had been assaulted by the excise officers and he wanted to know the truth of that. I told him that it was not true that we assaulted them. I told him that I went on a detection and detected Gomis Appuhamy and Ariyadasa when they were in possession of ganja and that a case had already been filed. He told me that he would not believe me and that he would believe every word that Ariyadasa and some others had told him. Mr. Samaraweera told me that Mr. Dole was the person to be blamed and that I was not to be blamed. He told me that I was good and that I was not to be blamed. He asked me whether I could withdraw that case. I told him that I was not empowered to do so. I told him that if he so wished he could use his influence and talk to the Excise Commissioner and if the Excise Commissioner asked me to withdraw the case I would withdraw it. Mr. Samaraweera made that request only once. I told him firmly that I could not withdraw the case.

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Even prior to this Mr. Samaraweera had spoken to me about pending cases. About pending cases he told me that some of his supporters had been charged and not to press those cases. I told him that I would not press those cases, but I did not act so in Court. I had no desire to incur his displeasure.

Mr. Dole did not accompany me on this raid.



XXD The information against Ariyadasa and Gomis  
I got only at Kanattagoda.

In the  
Magistrates  
Court

Even prior to this I have gone to see Mr. Samaraweera at his residence; that was when he asked me to come. I have gone to see him 2 or 3 times. He has spoken to me about 3 or 4 times about pending cases. I came to Matara in April 1959. On the earlier occasion he did not ask me to withdraw cases; he asked me not to press cases. The requests that he made were not to press cases. I have not carried out his requests because I am not empowered to do so.

Defence Evidence  
No. 20

Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
cross  
examination

What Mr. Samaraweera asked me on this day was whether I could withdraw this case. I told him that I was not empowered to do so. I also told him that if the Excise Commissioner gave me orders I would willingly do so. Mr. Samaraweera also asked me to come with him to the Excise Commissioner and tell the Excise Commissioner that Inspector Dole also came with me on this raid. I told him that I could not do so. I have told my lawyers about this. Mr. Samaraweera told me that he had to take some steps to show his supporters that he had taken steps and he told me that if anything happened to me I should not get angry with him. Mr. Samaraweera told me that he was a good friend of mine. I considered him only as an acquaintance. I was transferred to Kesbewa on 10th July 1961.

The evidence given by Mr. Samaraweera is not correct I was shocked when he gave that evidence in Court. I cannot understand why he should have given that evidence against me. After Mr. Samaraweera gave evidence in this case I saw him at the rest house. I did not speak to him.

On 7.1.61 I went to see Mr. Samaraweera with Mr. Fonseka. I was then boarded in Mr. Fonseka's house. At the rest house I was in the company of Mr. Fonseka. From the rest house I went home, had my dinner and went with Mr. Fonseka to Mr. Samaraweera's residence. Mr. Fonseka was with me in the rest house when the Minister requested me to come and see him in his residence. Mr. Fonseka could not have heard the conversation between me and the Minister. On the way back I spoke to Mr. Fonseka about my conversation with the Minister and told Mr. Fonseka that the

In the  
Magistrates  
Court

Minister wanted me to withdraw this case. I told Mr. Fonseka the whole conversation that transpired between me and the Minister.

Defence  
Evidence

No.20  
Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
cross examina-  
tion continued

People may have seen me at Peragahakoratuwa when I was making my notes. I was in uniform. The guards were also in uniform. I went to Kanattagoda to check up on a complaint received at the station. From Kanattagoda to Wewahamanduwa is about  $\frac{1}{2}$  a mile. I am not prepared to divulge the name of the informant. The information was that Gomis Appuhamy was going along the road taking a parcel of ganja and that if we proceeded immediately we could catch him. When I received this information I was about half a mile from Wewahamanduwa. I did not know Gomis Appuhamy's house. At that time my car was turned towards Wewahamanduwa road. The 5th accused told me that he knew who Gomis Appuhamy was. 10

Gomis did not run. I was about 25 yards away when I saw Gomis and Ariyadasa for the first time on the road. It was a small parcel which could be held in one's hand. Ariyadasa was to the right of Gomis. The parcel was wrapped in a piece of paper. There were 385 grains in 32 small packets. An ounce is 437 grains. I seized the ganja when it was in the hand of Ariyadasa. I stopped the car after reaching Gomis. By the time I stopped the car Ariyadasa would have run about 100 yards. The 3rd, 4th and 6th accused remained in charge of Gomis. From where I arrested Gomis up to the house of the complainant is about 200 yards. Ariyadasa was about 100 yards ahead of guard Piyasena and I ran behind Piyasena. From the nearest wall of the house to the road will be about 30 to 40 yards. Piyasena caught Ariyadasa on his compound about 10 yards from the road. 20 30

(Court adjourns for lunch).

Sgd. T.D.G. de Alwis

2 p.m. Court resumes after lunch.

Abdul Khalique Abdul Moomin Khan affd. (Recalled).

Cross examina-  
tion continued

XXD continued. Ariyadasa was not examined on the road. When I gave evidence in the ganja case to charge the accused I have stated, "On seeing me the 1st accused who had a parcel passed it on to the 2nd accused. This was on the road. I reached the 2nd accused and found the parcel with the 2nd accused". In my evidence that day I have not stated that I recovered the parcel on the road. 40

I now know that the complainant in this case is a bus driver. At that time I did not know. The complainant is a healthy well built man. In spite of the handicap guard Piyasena was able to catch the complainant. The complainant and Gomis have no reason to be angry with me.

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Magistrates  
Court

Defence Evidence  
No. 20

On 27.12.60 itself my statement was recorded by the Police that was at about 8.20 p.m. It may be in persuance of a complaint made by Ariyadasa.

Abdul Kalique  
Abdul Moomin Khan  
21st June 1962  
cross examination  
continued

10 From what Mr. Samaraweera told me I thought that he was not pleased with Inspector Dole. I realised that Mr. Samaraweera's evidence affects me mostly in this case.

(To Court:- When I met Mr. Samaraweera on the 7th, I was not aware that a complaint had been made to him by Ariyadasa).

XXD continued:- I was aware that a complaint had been made to the Police and in fact my statement was also recorded by the Police.

20 I deny that the conversation I had with Mr. Samaraweera at his house was in line with what he stated in his evidence. I deny that my statement that Mr. Samaraweera wanted me to tell the Excise Commissioner that Inspector Dole came on the raid is an afterthought. I mentioned to my counsel that matter; that is about Mr. Samaraweera wanting me to tell the Excise Commissioner that Inspector Dole went on this raid.

30 What Mr. Samaraweera told me was that some of his supporters had been assaulted and he wanted me to tell the truth. I deny that when he asked me to tell the truth I told him what he has stated in his evidence.

40 The 3rd, 4th and 6th accused told me that they had to use some force to restrain Gomis. My idea of using force is holding a person so that he cannot escape. They did not tell me that they assaulted him. I did not assault Ariyadasa, nor did I see Piyasena assaulting Ariyadasa. I deny that all of us went to the house of Ariyadasa and arrested Ariyadasa. I deny that this took place inside the house. I deny that in order to regularise the arrest I said that the arrest was in the compound. I know that before entering the

In the  
Magistrates  
Court  
Defence  
Evidence

No.20

Abdul Kalique  
Abdul Moomin  
Khan  
21st June 1962  
cross examina-  
tion continued

house I have to make the relevant entry under Section 36 of the Excise Ordinance. I did not notice anyone in the crowd whom I knew. At that time the 5th accused was living in Wewahamanduwa. He had been living there for some time by the time of this incident. He would have known some people in Wewahamanduwa. I deny that the ganja in the case was an introduction. I do not know whether the 6th accused used to go to this well to bathe. I think the 6th accused was living close to the excise station; I do not know exactly where. I do not know Siridiyas Silva.

10

Re examination Re Exd When Ariyadasa started to run the car was 10 or 15 yards away from Ariyadasa. As the car was slowing down Piyasena got down from the car. I cannot be exact about the distances; I gave the approximate distances.

Sgd. T.D.G. de Alwis  
Mag. 21.6.62.

No. 21

NO.21

Thirumamuni  
Francis Mendis  
21st June 1962

THIRUMAMUNI FRANCIS MENDIS

20

Thirumamuni Francis Mendis, Affd, 35, Apothecary  
Government Hospital, Matara.

Examination

On 27.12.60 at about 5 p.m. Excise Inspector Khan came to the hospital with this complainant and another person. Mr. Khan produced before me a sealed envelope containing some vegetable matter. I weighed it. I cannot remember the two persons whom Mr. Khan brought. Those persons did not make any protest. They did not say that the parcel did not belong to them. They did not tell me that they were assaulted. When I sealed the parcel again they refused to place their thumb impressions. This was the first occasion in my experience that a suspect refused to place his thumb impression on a production. By the time of this incident I had been about one year at the Matara hospital.

30

Cross  
examination

XXD As far as I remember this is the first occasion that a suspect refused to place his thumb impression. I did not ask those two persons why they refused. 385 grains is about  $\frac{3}{4}$ th of an ounce. This is a small quantity.

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Re examination Re Exd The substance was in a parcel; it was sealed.

Sgd. T.D.G. de Alwis  
Mag. 21.6.62.

NO.22

DON SYLVESTER JOSEPH JAYAMAHAIn the  
Magistrates  
CourtDon Sylvester Joseph Jayamaha, Sworn, 42, P.S.  
2467, Matara Police.Defence Evidence  
No. 22

I have with me the Information Book of the  
Matara Police for 27.12.60.

Don Sylvester  
Joseph  
Jayamaha  
21st June 1962  
Examination

10 (Mr. Adv. Dahanayake states that he is  
seeking to lead evidence of statements made by  
prosecution witnesses for the purpose of contra-  
dicting them and for that purpose he has summoned  
the officer-in-charge of the Matara Police Station  
to produce the relevant Information Book. He  
also states that the officers who have recorded  
the statements are not present and that it would  
not be proper to get out that information from  
this witness who has produced this Information  
Book. He moves for a short date to summon the  
officers who have recorded the statements.

20 I agree with Mr. Adv. Dahanayake that the  
contents of their statements cannot be got out  
from an officer who has not recorded their state-  
ments. I allow Mr. Dahanayake's application for  
a date and expressly inform him that no further  
date will be given for this purpose).

Further trial 5.7.62.

Sgd. T.D.G. de Alwis  
Mag. 21.6.62.

NO.23

No. 23

GARDIYA WELIGAMAGE ARTHUR FRANCIS  
DINISIUS DE SILVA

Gardiya Weli-  
gamage Arthur  
Francis Dinisius  
de Silva

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5.7.62

5th July, 1962

Complt. and accused present.

Mr. Adv. G.D.C. Weerasinghe instructed by Mr.  
Anver for complainant.

Mr. Adv. Dahanayake instructed by Mr. Balasuriya  
for accused.

Mr. Adv. Dahanayake calls:-

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Court

Gardiya Weligamage Arthur Francis Dinisius de Silva,  
Sworn, Inspector of Police, Ragama.

Defence  
Evidence

No.23

Gardiya Weli-  
gamage Arthur  
Francis  
Dinisius de Silva  
5th July 1962  
continued

On 27.12.60 I was attached to the Matara Police. That day I recorded the statement of Manthimulla Gamage Ariyadasa. Ariyadasa told me that he and his brother Gomis were taken to the Excise Station at Walgama and kept there for about 1½ hours and then taken to the house of a fat Excise Inspector at Pamburana. That is the one and only reference to the fat Excise Inspector in his statement. He has not told me that a fat Excise Inspector kicked him or assaulted him that day. He has not told me that any person had harassed his wife, nor did he tell me that he had the occasion to assault a person who had harassed his wife.

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Examination

I also recorded the statement of M.M.Gomis the same day at 7.30 p.m. Gomis told me that at about 3.30 p.m. he was near the bakery near Ariyadasa's house and that he saw some Excise Guards led by a fair well built Inspector assaulting Ariyadasa with batons and hands.

I also recorded the statement of W. Siridiyas de Silva. He told me that he heard the shout of "Mini Maranawo". He told me that he saw people assaulting Vidana Mahatmaya as well as Gomis. He told me that two of the assailants were dressed in sarongs and khaki coats.

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Cross  
examination

XXD Ariyadasa's statement was recorded at 7.18 p.m. I finished recording the statement at about 7.30 p.m. His statement ran to about 1½ sides of foolscap paper. Ariyadasa told me that a party of Excise Officers led by a fair well built Excise Inspector rushed into his house. I recorded the statement of Ariyadasa in the course of my investigating a complaint made by Siridiyas de Silva. That is the first intimation I had of this complaint.

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(Mr. Adv. Weerasinghe at this stage seeks to put to this witness certain parts of the statement made by Ariyadasa for the purpose of corroborating the evidence of Ariyadasa, but these portions do not relate to the contradictions which Mr. Adv. Dahanayake for the defence sought to prove. I disallow the application).

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Re Exd. Nil

Sgd. T.D.G. de Alwis  
Mag. 5.7.62.

Mr. Adv. Dahanayake closes the case for the accused leading in evidence D1 to D1G and D2 to D4.

Sgd. T.D.G. de Alwis,  
Mag. 5.7.62.

NO.24

J U D G M E N TIn the  
Magistrates  
Court

No. 24

Judgment

12th July, 1962.

This case has been filed by the complainant against the six accused on 18.1.61 in respect of an incident which is alleged to have taken place on 27.12.60. On evidence led on 22.2.62 the following charges have been framed against the accused:-

- 10 1. That they were the members of an unlawful assembly the common object of which was to commit house trespass by entering the house of the complainant with intent to cause hurt to him and to voluntarily cause hurt to the complainant an offence punishable under Section 140 of the Penal Code.
- 20 2. That they committed house trespass in furtherance of the common object of the unlawful assembly and thereby committed an offence punishable under Section 434 read with Section 146 of the Penal Code.
3. That in the course of the same transaction they committed rioting by using force and violence on M. Ariyadasa, M. Gomis and Daisy Wickramasinghe an offence punishable under Section 144 of the Penal Code.
- 30 4. That one or more members of the unlawful assembly in furtherance of their common object caused hurt to M. Ariyadasa, M. Gomis and Daisy Wickramasinghe an offence punishable under Section 314 read with Section 146 of the Penal Code.
5. That they committed house trespass by entering the house of M. Ariyadasa with intent to cause hurt to him an offence punishable under Section 434 of the Penal Code.
6. That they wrongfully confined M. Ariyadasa at Wewahamanduwa and other places an offence punishable under Section 333 of the Penal Code.
- 40 7. That they wrongfully confined Mr. Gomis at Wewahamanduwa and other places an offence under Section 333 of the Penal Code.
8. That they voluntarily caused hurt to Ariyadasa an offence under Section 314 of the Penal Code.

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continued

9. That the 2nd, 3rd and 4th accused voluntarily caused hurt to M. Gomis an offence under Section 314 of the Penal Code.

10. That the 2nd accused caused hurt to Daisy Wickramasinghe with a baton, an instrument which when used as a weapon of offence is likely to cause death an offence punishable under Section 315 of the Penal Code.

The complainant M. Ariyadasa is a bus driver attached to the C.T.B. Depot at Ratmalana. Daisy Gunaratne Wickramasinghe is his wife. She lives at Wewahamanduwa in Matara and according to the evidence led in this case Ariyadasa used to come home to Wewahamanduwa twice or thrice a month. M. Gomis is Ariyadasa's brother and he lives about 150 - 200 yards from Ariyadasa's house. He has been Vel Vidane of his village for 23 years and he ceased to be Vel Vidane in 1961 on the implimentation of the Paddy Lands Act in his area.

All six accused are officers of the Excise Department, the first and second accused being Inspectors and the 3rd to 6th accused Excise Guards. At the time material to this case they were all stationed at Matara and the 1st accused was the Officer-in-Charge of the Matara Excise Station.

The prosecution alleges that on 27.12.60 at about 3.30 p.m. these six accused came by car to Ariyadasa's house. The car was halted on his compound and the six accused entered the verandah of his house. The first accused kicked Ariyadasa on his abdomen and the 2nd accused struck him on the back of his neck. The 3rd accused handcuffed him and the 4th to 6th accused pushed him into the car. His wife Daisy Wickramasinghe pleaded with the Excise party whereupon the 2nd accused struck her with a baton. Gomis Appuhamy came to see what the commotion was and he was assaulted by the 2nd accused with hands and the 4th and 5th accused with batons and also pushed into the car. The two of them were then taken to the Excise Station at Walgama and from there to another house and then to the Matara Hospital where some ganja were weighed. They were then released on bail. They came to the Police Station and made statements. The prosecution alleges a motive for this alleged attack. The motive alleged is that two days prior to this incident Ariyadasa had assaulted the sixth accused for making unseemly and indecent gestures towards his wife Daisy Wickramasinghe.

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continued

The case against the 1st accused Mr. Dole could be taken separately from that against the 2nd to 6th accused, and I will now proceed to consider the evidence against him. The only relevant evidence against him is that of Ariyadasa and Gomis. Ariyadasa states that it was Mr. Dole who first entered his house and that he asked him whether he was the person who had assaulted one of their men and gave him a kick on his abdomen. Gomis states he saw the 1st accused in the car and both of them state that they were taken to the 1st accused's house at Pamburana, before being taken to the hospital. As against that there is the evidence of Mr. Dole that at 1.45 p.m. he left for Dombagasara in Dikwella on public contact work and crime investigation and that he returned only at 4.35 p.m. This evidence of his is supported by the entries he has made in his notebook D2 and in the Excise Station Log Book D3. Ariyadasa states that in his statement to the Police he referred to the 1st accused as a fair short fat gentleman. This no doubt would be a very correct description of the 1st accused. But the only reference to this fat short Inspector in his statement to the Police is that he was taken to his house at Pamburana from the Excise Station. Ariyadasa has not told the police in his statement that the 1st accused questioned him and kicked him on his abdomen. Further both Ariyadasa and Gomis state that they did not even see the 1st accused at his bungalow at Pamburana. Ariyadasa's wife Daisy is unable to state with any certainty whether Mr. Dole was one of the party that came to her house. It would appear that the evidence of these prosecution witnesses is not strong enough to claim a conviction against the 1st accused. The prosecution claims that the 2nd accused Mr. Khan has made a confession to Mr. Mahanama Samaraweera, the Member of Parliament for Matara and Minister of Local Government and Housing. Mr. Samaraweera has given evidence regarding this alleged confession and according to him Mr. Khan has told him that Mr. Dole also went to Ariyadasa's house and assaulted Ariyadasa. But under Section 30 of the Evidence Ordinance this evidence would not be relevant against the 1st accused who is being jointly tried with the 2nd accused in this case and hence could not form part of the prosecution case against the 1st accused. It is my conclusion that the evidence against the 1st accused is unsatisfactory and is insufficient to bring home the charges as against him. Hence I find him not guilty and acquit him.

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No. 24

Judgment  
12th July 1962 D3.  
continued

I shall now consider the case against the 2nd to 6th accused. It has been proved beyond any manner of doubt that the 2nd to 6th accused did go to the village of Wewahamanduwa that day. This is supported not only by the evidence of Ariyadasa, Gomis and Daisy, but also by the evidence of Mr. Khan the 2nd accused and the entries made by him in his official notebook D4 and the Excise Station Log Book D3.

But the defence version is that the 2nd to 6th accused went to Wewahamanduwa on a legitimate and lawful raid. Mr. Khan who gave evidence for the defence states that he went with the 3rd to 6th accused to Kanattegoda and Wewahamanduwa at 3.15 p.m. on 27.12.60 on detective work. They searched a land at Kanattegoda at 3.30 p.m. At Kanattegoda at 3.50 p.m. he received information that one Gomis was going along the road carrying a parcel of ganja and that if they proceeded immediately they could catch him. They proceeded and saw Ariyadasa and Gomis walking along the road near the public well. There is evidence that this public well is near Ariyadasa's house and the alleged assault on the 6th accused by Ariyadasa on 25.12.60 is said to have taken place at this well. Mr. Khan continues that Gomis looked back and on seeing them passed the parcel to Ariyadasa who started running towards, as they came to know later, his house. Mr. Khan stopped his car near Gomis' house. The 5th accused chased after Ariyadasa and he himself followed. The 3rd, 4th and 6th accused arrested Gomis. The 5th accused arrested Ariyadasa on his compound and he too went up to Ariyadasa. He took the parcel that was in Ariyadasa's hand and examined it and found it to contain parts of the hemp plant *Canabis Sativa* L which in common parlance is known as ganja. Gomis was also brought up to Ariyadasa's compound by the 3rd, 4th and 6th accused. Ariyadasa and Gomis were becoming restless and Mr. Khan brought his car on to Ariyadasa's compound and took the two of them into the car by force and drove away. He stopped at a place called Peragahakoratuwa and made his notes and sealed the ganja. He states that he did not do so at the spot because Ariyadasa and Gomis were showing signs of restlessness and a crowd of about 150 - 200 people collected. He then brought them to the Matara hospital, had the ganja weighed and released Ariyadasa and Gomis on bail to appear in the Magistrate's Court of Matara on 2.1.61. Mr. Khan denies that they assaulted anyone that day but states that he and the 3rd to 6th accused had to use some force on Ariyadasa and Gomis to bring them under control.

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Subsequently a case was filed in the Magistrate's Court of Matara against Ariyadasa and Gomis for the possession of 385 grains of ganja. The number of that case is 66363, and various portions of that case record have been produced in evidence. On 15.7.61 the ganja case came up for trial. On that day Mr. Khan was absent and a medical certificate was produced to show that he was ill. The learned Magistrate who heard the case refused a postponement and Ariyadasa and Gomis were acquitted.

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On behalf of the complainant two complaints have been made on 27.12.60. One of them has been made to the Village Headman of Wewahamanduwa by one Siridiyas and this has been produced marked P2. The other, P1, has been made to the Matara Police by Daisy Wickramasinghe wife of the complainant. Siridiyas has in addition made a statement to the Police. It has however been proved that his evidence in Court, and the statement he made to the Police, and the statement he made to the Headman are contradictory. He states that he went to the Headman on his own, but I am inclined to think that he was sent to the Headman by one of Ariyadasa's people and I cannot place much reliance on his evidence. But the complaint made by Daisy Wickramasinghe is not inconsistent with her evidence. She had made her complaint and was still at the police station when Gomis and Ariyadasa came there and made their statements.

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Ariyadasa has not stopped at that. The next day he has gone by the 1.30 p.m. bus to meet Mr. Mahanama Samaraweera and made a complaint to him. He states that he met Mr. Samaraweera and told him what had happened. He again met Mr. Samaraweera on 5.1.61 and gave him a petition to be presented to the Minister of Finance, which Mr. Samaraweera did.

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Mr. Samaraweera has been called as a witness for the prosecution. He states in his evidence that Ariyadasa met him in his office on 28.12.60 and complained to him that an Excise party assaulted him, his wife and his brother and took him and his brother into custody and introduced some ganja. Mr. Samaraweera immediately telephoned the Excise Commissioner Mr. Wadugodapitiya and asked him to take necessary action. He states that Ariyadasa

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met him again on 5.1.61 and handed over to him a petition to be presented to the Minister of Finance which he did.

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continued

Mr. Samaraweera further states that on 7.1.62 he attended a function at Galle and thereafter came to the Matara Rest House at about 8 or 9 p.m. He was in the company of the Parliamentary Secretary to the Minister of Finance. At the Rest House he met the 2nd accused Mr. Khan. Mr. Khan spoke to him and asked him whether he could meet him at his residence. He agreed and Mr. Khan came to see him at his residence at Walpola, Matara that night at about 10.30 p.m. He states that Mr. Khan told him that he was in trouble over the complaint made by Ariyadasa and requested him not to take any action against him. He states that he questioned Mr. Khan about the incident of 27.12.60 and Mr. Khan told him that he was sorry about that incident and that he was dragged into it by his senior officer Mr. Dole. He says that Mr. Khan also told him that he and the excise party went to Ariyadasa's house assaulted Ariyadasa and Gomis and pushed Ariyadasa's wife away in the course of the scuffle, and that thereafter they took Ariyadasa and Gomis to the Excise Station and then to the hospital. He states that Mr. Khan admitted to him that the ganja was an introduction. Immediately after Mr. Khan left Mr. Samaraweera has got his Security Officer Sub Inspector Lal Wewala to make a record that Mr. Khan visited him that night. Sub Inspector Wewala has given evidence to the effect that on the instructions of Mr. Samaraweera he has made a note in his notebook that Mr. Khan visited Mr. Samaraweera at 10.35 p.m. on 7.1.61.

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The fact that Mr. Khan visited Mr. Samaraweera at his residence on the night of 7.1.61 is not disputed. Mr. Khan himself admits it. But however Mr. Khan states that this meeting took place under different circumstances. He states that he did meet Mr. Samaraweera at the Rest House, Matara on 7.1.61 but that it was Mr. Samaraweera who requested him to come and see him at his residence. He denies having told Mr. Samaraweera that they assaulted Ariyadasa and Gomis and introduced ganja. According to him Mr. Samaraweera asked him to withdraw the case filed against Ariyadasa and Gomis. He told Mr. Samaraweera that he did not have the power to withdraw a case once it had been filed and that he would willingly do so if he is so instructed by a superior officer. Mr. Samaraweera then told him that he had to take some steps to appease his supporters and warned him not to blame him if anything were to happen to him.

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The defence contends that Mr. Samaraweera has given false evidence against them and they attribute two reasons for it - 1. That Mr. Samaraweera wants to satisfy his supporters and 2. That he was huffed over Mr. Khan refusing to withdraw the ganja case. It is in evidence that on both occasions that Ariyadasa went to meet Mr. Samaraweera that that is on 28.12.60 and 5.1.61 he went to him in the company of one Mr. Pathirana. Mr. Samaraweera states that Pathirana was a staunch supporter of his during his election and that Ariyadasa was also a supporter of his. He states that Pathirana is an influential person in his village and was the chief organiser of his election campaign in the Wewahamanduwa area. As such it is only natural that Ariyadasa would have wished to go to Mr. Samaraweera with Pathirana in the expectation that he would get a bitter reception. There is nothing to show that Pathirana himself had a personal interest in this case or any personal animosity against any of these accused. Mr. Samaraweera admits that he values Mr. Pathirana's help very much and that he would certainly not like to incur his displeasure. It may be that Mr. Samaraweera would wish to help Mr. Pathirana where he legitimately could do so. Mr. Samaraweera as an elected representative of the people of Matara would have numerous friends and supporters to whom he would be politically beholden. But that in no way would entitle one to conclude that Mr. Samaraweera would give false evidence in a Court of Law to satisfy them. Mr. Samaraweera has been a proctor practising in this very same Court and now he is the Minister of Local Government and Housing. He occupies a position of great responsibility in the country and I have no doubt that he has given evidence with a full realisation of the sense of responsibility expected of him. I cannot believe that Mr. Samaraweera would go to the extent of perjuring himself in the very Court in which he used to practice whether it be to satisfy Ariyadasa or Pathirana or anyone else.

The 2nd contention of the defence is that Mr. Samaraweera was huffed at Mr. Khan's refusal to withdraw the ganja case. In the ganja case Ariyadasa and Gomis have appeared in court on 2.1.61. When he met Mr. Samaraweera on 5.1.61 Ariyadasa would have known that a case had been filed against him. The defence suggests that by the time Mr. Khan met Mr. Samaraweera on 7.1.61

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Ariyadasa would have told him about the case that had been filed and thereby Mr. Samaraweera would have known that such a case was filed. On this basis the defence states that the interview between Mr. Samaraweera and Mr. Khan was purely about the ganja case. Mr. Samaraweera does not deny knowledge of the ganja case at that time but states he cannot be sure whether by 7.1.61 he knew a case had been filed. Mr. Khan's own evidence on this point is that Mr. Samaraweera asked him whether he could withdraw the case and that, only once and that he replied that he did not have the power to do so, I do not think that such a mild refusal would have induced Mr. Samaraweera to make up a false case against the 2nd accused. It must be borne in mind that immediately Mr. Khan left Mr. Samaraweera had got Sub Inspector Wewala to make a note about Mr. Khan visiting him. If I am to hold that Mr. Samaraweera is giving false evidence then it would appear that he decided to do so on the spur of the moment immediately Mr. Khan left and he asked his Security Officer to make a note of Mr. Khan's visit for that purpose. I do not for a moment believe that the evidence of Mr. Samaraweera is false. I am more confirmed in this view because both in the evidence of Mr. Khan and Mr. Samaraweera it appears that relations between them have been quite cordial and there is no acceptable reason for Mr. Samaraweera to scheme such a heinous plan against the accused. I accept the evidence of Mr. Samaraweera that the 2nd accused told him that he and some other Excise Officers went to the house of Ariyadasa on 27.12.60 assaulted Ariyadasa and Gomis took them into custody and introduced some ganja. Apart from the evidence of Mr. Samaraweera there is the evidence of Ariyadasa, Gomis and Daisy Wickramasinghe that this is what took place that day and I accept their evidence. As I have stated earlier the prosecution has alleged a motive for this unwarranted attack. The evidence is that there is a public well quite close to Ariyadasa's house. The 6th accused comes to this well to bathe and was in the habit of casting embarrassing remarks at Ariyadasa's wife whenever she used to be at that well. At the time the 6th accused comes there. On 25.12.60 Ariyadasa happened to be at home and that day his wife had met the 6th accused at the well. The 6th accused had cast some remarks at her that day too and she informed her husband. Ariyadasa questioned the 6th accused and assaulted him. The same day he informed that fact to the Headman. The Headman has given evidence

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and he states that Ariyadasa informed him on 25.12.60 that he had a fight with an Excise Officer at the well, over his teasing his wife. The Headmen states that he did not make a record of what Ariyadasa told him as it was not in the nature of a formal complaint. There is no reason for the Headman to speak an untruth on this matter and I believe his evidence. Furthermore Daisy Wickramasinghe has referred to this incident in her complaint to the police P1, and Ariyadasa himself has told Mr. Samaraweera about it on 28.12.60. I am quite satisfied that such an incident did take place on 25.12.60 and that it was this that made the 2nd to 6th accused to enter Ariyadasa's house "to teach him a lesson".

In the  
Magistrates  
Court

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No. 24

Judgment  
12th July, 1962  
continued

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Ariyadasa, Gomis and Daisy Withramasinghe complained that they were assaulted. Ariyadasa states that he was assaulted by the 2nd accused and by the Excise party in general. The 2nd accused admits that he had to use force on Ariyadasa. However, he has had no external injuries. Gomis states he was assaulted by the 2nd accused with hands and by the 4th and 5th accused with batons. He has had a linear contusion over the left breast which the Doctor who examined him states could be caused with a baton.

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As regards Daisy Wickramasinghe she states that she was struck on her hands by Mr. Khan and that she received injuries but she has neither told nor shown the police any injuries. Her husband states that she was hit with a baton but she does not say so. In this type of incident in the midst of the commotion and excitement it would not be possible for one to detail with accuracy the person who dealt each blow. But for the purpose of a criminal trial one would have to adhere strictly to the actual evidence given. In any event it is quite clear that Ariyadasa and Gomis have been subjected to an assault and that the 2nd accused has assaulted both of them. Gomis has been assaulted by the 4th and 5th accused.

Five persons, the 2nd to 6th accused have set out that day and entered Ariyadasa's house for an unlawful purpose. They have done so to cause hurt to him. They thus become an unlawful assembly and are guilty of the offence under Section 140 of the Penal Code. It has been

In the  
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No. 24

Judgment  
12th July 1962  
continued

proved that in furtherance of this common object they entered Ariyadasa's house and thereby they are guilty under Section 434 read with Section 146 of the Penal Code. In the course of the same transaction they have used violence on Ariyadasa and Gomis and are guilty of the offence of rioting under Section 144 of the Penal Code. The 2nd, 4th and 5th accused have whilst being members of an unlawful assembly caused simple hurt to Ariyadasa and Gomis and thereby all the members of the unlawful assembly have been guilty of an offence under Section 314 read with Section 146 of the Penal Code. The 2nd to 6th accused have also committed House Trespass and each of them is guilty under Section 434 of the Penal Code.

10

The arrest of both Ariyadasa and Gomis has been unlawful. From the time they were taken into the car till they were released on bail they have been in wrongful confinement committed by 2nd to 6th accused and they are thereby guilty under Section 333 of the Penal Code.

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It has been proved that the 2nd accused assaulted both Ariyadasa and Gomis and he is thereby guilty under Section 314 of the Penal Code.

The 3rd and 4th accused are also charged individually under Section 314 of the Penal Code with causing simple hurt to Gomis. There is however no evidence that the 3rd accused did individually cause hurt to Gomis. Hence the 3rd accused cannot be guilty on this particular count of the charge. Though the charge has been so framed on the evidence led on 22.2.62 it appears to have been oversight as on that day too Gomis' evidence is that he was struck with batons by the 4th and 5th accused. Hence I find the 4th accused guilty under Section 314 of the Penal Code.

30

There is a charge framed individually against the 2nd accused under Section 315 of the Penal Code on the basis that he struck Daisy Wickramasinghe with a baton. But as I have stated earlier Daisy Wickramasinghe herself does not claim to have been struck with a baton. Hence this charge must fail.

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In the result I find the 2nd to 6th accused guilty on counts 1 to 7 of the charge. I find the 2nd accused guilty on counts 8 and 9 of the charge and I find 4th accused guilty on count 9 of the charge.

Sgd. T.D.G. de Alwis  
Magistrate  
12.7.62.



Delivered in Open Court.

Sgd. T.D.G. de Alwis  
Magistrate  
12.7.62.

In the  
Magistrates  
Court

NO.25

No. 25

O R D E R

Order

12.7.62

12th July, 1962

I find 1st accused not guilty and acquit him.

10

I find the 2nd to 6th accused guilty on counts 1 to 7 of the charge.

I find 2nd accused guilty on counts 8 and 9 of the charge.

I find 4th accused guilty on count 9 of the charge.

I sentence 2nd accused to three months' R.I on each of the counts 1, 2, 3, 4, 5, 6, 7, 8 and 9. Sentences to run concurrently.

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I sentence 3rd accused to three months' R.I on each of the counts 1, 2, 3, 4, 5, 6 and 7. Sentences to run concurrently.

I sentence 4th accused to three months' R.I on each of the counts 1, 2, 3, 4, 5, 6, 7 and 9. Sentences to run concurrently.

I sentence 5th accused to three months R.I on each of the counts 1, 2, 3, 4, 5, 6 and 7. Sentences to run concurrently.

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I sentence the 6th accused to three months R.I on each of the counts 1, 2, 3, 4, 5, 6 and 7. Sentences to run concurrently.

In event of appeal bail each accused in Rs. 250/250.

Sgd. T.D.G. de Alwis  
Magistrate  
12.7.62.

In the  
Supreme Court  
of Ceylon

NO.26

PETITION OF APPEAL (Second Accused)

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 26

Petition of  
Appeal (2nd  
accused)

M.C. Matara  
Case No. 66552.

Mahanthi Mulle Gamage Ariyadasa of  
Wewahamanduwa.

Complainant-Respondent

20th July 1962

Vs.

1. Excise Inspector Dole, Officer-in-Charge Excise Station, Matara. 10
2. Abdul Kalique Abdul Moomin Khan, Excise Inspector.
3. P. Thiberis Tillakaratne, Excise Guard, No. 58.
4. D.A. Welikala, Excise Guard No. 249.
5. S.A. Piyasena, Excise Guard No. 390.
6. Udawattege Don Edwin Somasiri, Excise Guard No. 269 - all of Excise Station Walgama, Matara. 20

2nd to 6th accused - Appellants

To the Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

On this 20th day of July 1962

The petition of appeal of the abovenamed 2nd accused appellant appearing by his Proctor Wilmot Balasuriya respectfully submits as follows:-

1. The 2nd accused-appellant along with the other accused appellants were charged by the complainant-respondent in the Magistrates Court of Matara with having committed the offences mentioned in the plaint filed of record. 30
2. The accused severally pleaded 'not guilty' and the learned Magistrate after trial by his order dated

12.7.62 found the 2nd to 6th accused guilty on counts 1 - 7, the 2nd accused guilty on counts 8 and 9 and the 4th accused guilty on count 9 of the plaint.

In the Supreme  
Court of Ceylon

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No. 26

3. Being dissatisfied with the said conviction and sentence the 2nd accused appellant begs to appeal therefrom on the following among other grounds which may be urged by counsel at the hearing of this appeal:-

Petition of  
Appeal (2nd  
accused)

20th July 1962  
continued

- 10 (a) The said conviction is contrary to law and against the weight of the evidence adduced in the said case.
- (b) The Learned Judge has not adopted the correct procedure in assuming jurisdiction as additional District Judge. the Learned Judge who heard the case has not considered the matter of assuming jurisdiction without doing which he could not have lawfully heard  
20 the said case.
- (c) The evidence of Ariyadasa, Gomis and Siridiyas Silva has been discredited and on their evidence no case whatsoever has been made out against the 2nd accused appellant or any of the other accused. Their evidence has been contradicted by their statements to the Police to such an extent that viewed  
30 by itself their evidence is not merely unsatisfactory but wholly unreliable.
- (d) The medical evidence led on behalf of the prosecution supports the defence case that the complainant and his brother were not assaulted but had to be forcibly put into the excise car. The Learned Judge has failed to consider this aspect of the case in assessing the truth of the prosecution case.
- 40 (e) It is respectfully submitted that in the result the 2nd accused appellant and the other accused could have been convicted only on the evidence of Mr. Mahanama Samaraweera, Minister of Housing and Local Government. If one forgets for a moment the status of

In the  
Supreme Court  
of Ceylon

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Petition of  
Appeal (2nd  
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continued

this witness there is ample material on which to reject out of hand his evidence. He is an interested witness. The complainant respondent is a supporter of his and Mr. Pathirana who interceded on behalf of the complainant is described by Mr. Samaraweera as an active supporter of his. He states further 'He may be called one of the organisers of my election campaign.... Later he adds: 'I do not like to incur the displeasure of anyone unnecessarily and certainly not that of Pathirana' Secondly, Mr. Samaraweera has been guilty of conduct which would have been unhesitatingly condemned if indulged in by a lesser man. He admits in cross-examination. "I have met Mr. Khan earlier and I have known him. I may have talked about excise matters at Matara. I have spoken to him about excise cases. There have been several instances where people have come and informed me of excise matters. When I met Mr. Khan casually I may have questioned him about such allegations". It was put directly to Mr. Samaraweera that he had requested Mr. Khan to withdraw the excise case against Gomis and Ariyadasa and his answer was: 'I cannot say whether I asked Mr. Khan whether a case had been filed and whether I asked him to withdraw the case'; his whole evidence lacks candour and certainly does not ring true. Mr. Khan says that Mr. Samaraweera had requested him to withdraw the case and that he refused to do so. Mr. Khan also says that on occasions Mr. Samaraweera had asked him not to press cases he had filed in Court. Reading between the lines of Mr. Samaraweera's evidence it is very respectfully submitted one does not fail to realise how true Mr. Khan's evidence may be. The case at its best boils down to the word of Mr. Samaraweera, Minister of Housing and Local Government against that of plain Mr. Khan. A close analysis of the evidence reveals that Mr. Khan came off better.

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WHEREFORE the 2nd accused appellant prays that Your Lordship's Court be pleased to quash the said conviction and sentence, to acquit the accused and for further relief as to Your Lordships Court may seem meet to grant. 50

Sgd. W. Balasuriya  
Proctor for 2nd Accused.

NO.27

In the Supreme  
Court of CeylonSUPPLEMENTAL PETITION OF APPEAL (2nd  
Accused)

No. 27

IN THE SUPREME COURT OF THE ISLAND OF  
CEYLONSupplemental  
Petition of  
Appeal (2nd  
accused)M.M.G. Ariyadasa of Balagewatta, Wewahamanduwa,  
Matara. ComplainantM.C. Matara  
Case No. 66552

10

Vs.

1. The Excise Inspector Dole
2. The Excise Inspector Abdul Moomin Khan
3. Excise Guard 58, P. Thiberis Tillekeratne.
4. Excise Guard 249, D.A. Welikala.
5. Excise Guard 390, S.A. Piyasena.
6. Excise Guard 269, Udawattege Don Edwin Somasiri all of Excise Station, Matara. Accused

20

and

1. The Excise Inspector Dole
2. The Excise Inspector Abdul Moomin Khan
3. Excise Guard 58, P. Thiberis Tillekeratne.
4. Excise Guard 249, D.A. Welikala.
5. Excise Guard 390, S.A. Piyasena.
6. Excise Guard 269, Udawattege Don Edwin Somasiri all of Excise Station, Matara. Accused/Appellants

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Vs.

M.M.G. Ariyadasa of Balagewatta, Wewahamanduwa, Matara.

Complainant/RespondentTO THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
JUSTICES OF THE HONOURABLE SUPREME COURT OF THE  
ISLAND OF CEYLON.

1. The humble petition of appeal of the accused appellants showeth as follows:-

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2. Your Lordship's appellants were charged in a private plaint in the Magistrate's Court of Matara on the following charges:-

In the  
Supreme Court  
of Ceylon

\_\_\_\_\_

No. 27

Supplemental  
Petition of  
Appeal (2nd  
accused)  
continued

1. were members of an unlawful assembly the common object of which were:-

(a) to commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of the complainant abovenamed situate on the land called Balagewatta at Wewahamanduwa aforesaid with intent to cause hurt to the complainant.

(b) to voluntarily cause hurt to the complainant and that you did commit an offence punishable under Section 140 of the Ceylon Penal Code. 10

2. That at the same time and place aforesaid and in the course of the same transaction set out in charge 1 above you did in the prosecution of the said common object commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of the complainant M.M.G. Ariyadasa situate on the land called Balagewatta aforesaid with intent to cause hurt to the complainant which said offence was in prosecution of the said common object of the said unlawful assembly or was such that the members of the said unlawful assembly knew to be likely to be committed in prosecution of the said common objects of the said unlawful assembly and that you being members of the said unlawful assembly were thereby guilty of an offence punishable under Section 434 read with Section 146 of the Ceylon Penal Code. 20

3. At the same time and place aforesaid and in the course of the same transaction you did commit rioting by using force and violence by assaulting the complainant, complainant's brother M.G. Gomisappu and complainant's wife Daisy Wickramasinghe with hands and batons and that you have committed an offence punishable under Section 144 of the Ceylon Penal Code. 30

4. At the same time and place aforesaid and in the course of the same transaction set out in charge 1 above one or more members of the said unlawful assembly did cause hurt to M.G. Ariyadasa, M.G. Gomisappu and Daisy Gunaratne Menike Wickramasinghe which said offence was committed in prosecution of the said common object or the said unlawful assembly or was such that the member of the said unlawful assembly knew to be likely to be committed in prosecution of the said common object of the unlawful assembly and that you being members of the said unlawful assembly did commit an offence punishable under Section 314 read with Section 146 of the Ceylon Penal Code. 40

5. At the same time and place aforesaid and in the course of the same transaction you did commit house trespass by entering into a building used as a human dwelling to wit: the house in the occupation of M.M.G. Ariyadasa situate on the land called Balagewatta at Wewahamanduwa with intent to cause hurt to the said Ariyadasa and thereby committed an offence punishable under Section 434 of the Ceylon Penal Code.

In the Supreme  
Court of Ceylon

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No.27

Supplemental  
Petition of  
Appeal (2nd  
accused)  
continued

10 6. At the same time and place aforesaid and in the course of the same transaction you did wrongfully confine M.M.G. Ariyadasa at Wewahamanduwa and other places and you did thereby commit an offence punishable under Section 333 of the Ceylon Penal Code.

20 7. At the same time and place aforesaid and in the course of the same transaction you did wrongfully confine M.G. Gomisappu at Wewahamanduwa and other places and you did thereby commit an offence punishable under Section 333 of the Ceylon Penal Code.

8. At the same time and place aforesaid and in the course of the same transaction you did voluntarily cause hurt to M.M.G. Ariyadasa and that you did thereby commit an offence punishable under Section 314 of the Ceylon Penal Code.

30 9. At the same time and place aforesaid and in the course of the same transaction you the 2nd, 3rd and 4th accused did cause hurt to M.M.G. Gomisappu and did thereby commit an offence punishable under Section 314 of the Ceylon Penal Code.

40 10. At the same time and place aforesaid and in the course of the same transaction that you the 2nd accused abovenamed did cause hurt to Daisy Gunaratne Menike Wickramasinghe with an instrument which when used as a weapon of offence is likely to cause death to wit: a baton and that you did thereby commit an offence punishable under Section 315 of the Ceylon Penal Code.

3. The 6th accused abovenamed severally pleaded not guilty to the charges and their trial was completed on 5th July 1962 and the Judgment was delivered on 12.7.62.

In the  
Supreme Court  
of Ceylon

No. 27

Supplemental  
Petition of  
Appeal (2nd  
accused)  
continued

4. After trial the Learned Magistrate acquitted the 1st accused and convicted and sentenced the other five accused to undergo a term of 3 months rigorous imprisonment.

5. Being aggrieved with the said conviction and sentence Your Lordships petitioner begs to Appeal therefrom to Your Lordships Court on the following among other grounds which may be urged by counsel at the hearing of this appeal:-

- (a) The said conviction and sentence is contrary to law and against the weight of evidence adduced at the trial. 10
- (b) The learned Magistrate has failed to appraise the weight of evidence in favour of the Appellant in that being a public servant he along with four other officers carried out a public duty according to law.

WHEREFORE your Lordships appellant begs that your Lordships Court be pleased to set aside the said conviction and sentence and acquit Your humble Appellant and for such other and further relief as to your Lordships Court shall seem meet and proper. 20

Sgd. Abdul Moomin Khan  
Accused-Appellant.

No. 28

NO.28

Judgment

J U D G M E N T

6th May 1963

S.C.Nos. 707-711 of 1962 M.C. Matara 66552

Parties: A.K.A.M. Khan and others

Accused-Appellants

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Vs

M.G. Ariyadasa

Complainant-Respondent

Present: T.S. Fernando, J.

Counsel: Colvin R. de Silva (with him, M.L.de Silva and A.H. Moomin) for the 2nd and 4th accused-appellants;



G.E.Chitty, Q.C., (with him, Prins Gunasekera for the 3rd accused-appellants; 5th accused-appellant in person; Colvin R. de Silva (with him, D.R.Wijegoonewardene) for the 6th accused-appellant; C. Ranganathan (with him, G.D.C. Weerasinghe) for the complainant-respondent.

In the Supreme Court of Ceylon

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No.28

Judgment

6th May 1963  
continued

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Argued on: 8th, 9th and 10th April 1963.

Decided on: 6th May 1963.

T.S. Fernando, J

The 1st to the 5th appellants (who were respectively the 2nd to the 6th accused at the trial) and another who was the 1st accused thereat stood their trial in the Magistrate's Court of Matara on ten charges which are set out briefly in the following paragraph.

20

All six accused were charged in the first eight charges as follows:-

- (1) being members of an unlawful assembly - punishable under Section 140 of the Penal Code;
- (2) being members of the said unlawful assembly committing house trespass by entering the house of one Ariyadasa - punishable under Section 434 read with Section 146 of the said Code;
- (3) being members of the said unlawful assembly, using force or violence - punishable under Section 144 of the said code;
- (4) being members of the said unlawful assembly, one or more members of which caused hurt to certain persons - punishable under Section 314 read with Section 146 of the said Code;

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In the  
Supreme Court  
of Ceylon

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No. 28

Judgment  
6th May 1963  
continued

- (5) committing house trespass- punishable under Section 434 of the said Code;
- (6) wrongfully confining the said Ariyadasa - punishable under Section 333 of the said Code;
- (7) wrongfully confining one Gomis - punishable under Section 333 of the said Code;
- (8) voluntarily causing hurt to the said Ariyadasa - punishable under Section 314 of the said Code;

10

Charge No. 9 was one framed against the 2nd, 3rd and 4th accused in respect of hurt caused to the said Gomis - punishable under Section 314, while charge No. (10), named the 2nd accused alone as having caused hurt to one Daisy, the wife of Ariyadasa - punishable under Section 315 of the said Code.

All ten charges save charge No. (3) were triable summarily. The Magistrate, being also a District Judge assumed jurisdiction in terms of Section 152(3) of the Criminal Procedure Code to try charge No. (3) summarily and, after trial held on all ten charges, he found the 2nd to the 6th accused guilty on the first seven charges. He further found the 2nd accused guilty on charge (8) and the 2nd and the 4th accused guilty on charge (9). The 2nd accused was acquitted on charge (10). The 1st accused was acquitted on charges (1) to (8), i.e. on all the charges that had been framed against him. Each of the appellants was sentenced to a term of 3 months' rigorous imprisonment on each of the charges on which he was found guilty and convicted, the sentences being ordered to run concurrently.

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The 1st accused was at the date of the commission of the offences the Officer-in-Charge of the Excise Station at Matara, while the 2nd accused was an Inspector of Excise and the 3rd to the 6th accused excise guards, all attached also to the Matara Excise Station. The case for the prosecution which has been accepted by the learned Magistrate was that, some two days before the commission of the crimes alleged against these accused persons, the 6th accused had been assaulted by Ariyadasa, a bus driver employed under the Ceylon Transport Board, for unseemly behaviour and the making of indecent gestures at his (Ariyadasa's) wife, Daisy. The Magistrate has found that this assault was the motive for a concerted attack on the day in question

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In the Supreme  
Court of Ceylon

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No.28

Judgment  
6th May 1963  
continued

10 on Ariyadasa by the 2nd to the 6th accused who arrived in one party by car at Ariyadasa's compound, entered his verandah, kicked him, handcuffed him, forced him into the car, and then forced also into the same car Ariyadasa's brother Gomis, a retired vel vidane, who happened to come to his brother's house on hearing the noise of this disturbance. From his compound Ariyadasa and Gomis were taken in the car to the Walgama Excise Station, thence to a house and finally to the Matara Hospital where an allegation was made by the 2nd accused that Ariyadasa had ganja on him at the time he was seized. The two men were thereafter released by the 2nd accused on bail, and they promptly hurried to the Police Station and complained of the assault on them.

20 Ariyadasa and Gomis were charged in the Magistrate's Court by the 2nd accused with the unlawful possession of ganja but, the 2nd accused (a material witness) being absent on the date of trial, the Magistrate, refusing an application for a postponement, acquitted the accused. No appeal was preferred by the prosecution against the acquittal.

30 At the trial in the present case the 1st accused relied on an alibi and pleaded that he was ignorant of any transaction in relation to Ariyadasa. The Magistrate has held that "the evidence against the 1st accused was unsatisfactory and insufficient to bring the charges home to him". The 2nd accused testified at the trial in the course of which he stated that, with the 3rd to the 6th accused, he set out on this day on a legitimate raid on receiving information against Gomis; that he saw Gomis on the road with a parcel; that Gomis seeing the Excise car passed the parcel on to Ariyadasa and that they both then began running along the road; that the Excise party had to chase these two men and arrest them with some effort, but not before some force had to be used to secure their arrest. The 3rd to 40 the 6th accused gave no evidence. All six accused persons were defended by one counsel. The Magistrate rejected the evidence of the 2nd accused as being false.

In regard to the facts of the case I heard Counsel for the appellants as well as the 5th accused who appeared by himself, but I found it impossible to reach a conclusion that there has been

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Supreme Court  
of Ceylon

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Judgment  
6th May 1963  
continued

any wrong decision on the facts affecting any one of these appellants. The case against the 2nd accused was indeed strengthened by the admission of a confession of his guilt made by him to Mr. Samaraweera, at that time and even today the Minister of Local Government of this Country. Quite apart from this circumstance, learned counsel who appeared for Ariyadasa has pointed out to me that the incidents detailed by the 2nd accused when he gave evidence were not put to the prosecution witnesses Gomis, Ariyadasa and Daisy, at any stage of the prosecution on the other hand, the case for the defence as put to these witnesses while they were being cross-examined was materially different. The appeals on the facts must fail. 10

Mr. de Silva advanced two matters of law as militating against the convictions. They were -

- (a) that there has been in this case no proper assumption of jurisdiction in terms of Section 152(3) of the Criminal Procedure Code; 20
- (b) that there has been a misjoinder of charges in that charges based on the existence of an unlawful assembly have been joined with charges framed relying on Section 32 of the Penal Code.

Mr. Chitty supported objection (a), but in answer to me stated that he preferred to say nothing in regard to objection (b).

In regard to (a), as I have pointed out already, all ten charges save charge No. (3) were triable summarily. Charge No. (3), in spite of the fearsome name it carries - rioting - implies nothing more than that hurt or mischief has been committed by persons who were at the time members of an unlawful assembly. Where both the offence of unlawful assembly and that of causing hurt or committing mischief are summarily triable, it will be seen that charge No. (3) is not summarily triable only in a very narrow and technical sense. In any event, the learned Magistrate was of the opinion that the offence which was the subject of this charge No. (3) could itself be tried summarily. He has set out his reasons. They were that (1) the facts were simple, (2) there were no complicated questions of law and (3) speedy and expeditious disposal of the case was desirable. The question 40

whether jurisdiction has been properly assumed in terms of Section 152(3) must be judged on the facts and circumstances as known to the Magistrate at the time the question came on to be decided by him and not by what may have happened at the trial at a point of time after he had decided that question. In the instant case, however, I am satisfied that the reasons relied on by the Magistrate at the time he assumed jurisdiction have been vindicated by the events that accompanied the trial. I am unable to uphold objection (a).

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Court of Ceylon

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Judgment  
6th May 1963  
continued

In regard to objection (b), so far as I understood Mr. de Silva, he claimed that the trial was invalid in that certain charges which had been included in the total of ten charges could not have been joined with the others without violating the relevant provisions of Chapter XVII of our Criminal Procedure Code. More specifically, while conceding that all ten offences alleged may have been committed in the course of one and the same transaction as that expression is understood in that Chapter, he argued that the joining together at one trial (or in one indictment) of charges (2), (3) and (4) with charges (5), (6), (7) and (8) amounted to a fatal misjoinder of charges. I must confess that this argument came to me as quite a surprise having regard to my own knowledge of the practice of joining such charges together which has been obtaining in our Courts for a very long time. Indeed, had not the question been raised seriously by counsel of such long and tried experience as Mr. de Silva himself, I should have been minded to dismiss the point summarily as it seemed to me reasonably plain that the practice I have referred to above is warranted by Section 180(1) as well as by Section 180(2) of our Criminal Procedure Code.

Mr. de Silva, however, contended that what can be so joined together are different offences but not one and the same offence by different names. He argued that Section 32 of the Penal Code which was obviously the foundation of charges (5), (6), (7) and (8) created no offence, and that likewise Section 146 created no offence and remained merely a basis of criminal liability. Speaking for myself, I should have thought that this argument was set at rest some years ago by our Court of Criminal Appeal in the case of The King v Heen Baba<sup>1</sup>. The answer to the question

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of Ceylon

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Judgment  
6th May 1963  
continued

that confronted the three judges who decided that case depended on whether charges of offences (based on Section 32) are implied in charges of offences based on membership of an unlawful assembly. Said the judges in that case:-

"It is well settled law that Section 146 creates a specific offence and deals with the punishment of that offence and that Section 32 merely declares a principle of law and does not create a substantive offence".

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For this statement of the law the Court relied on the opinion of the Judicial Committee of the Privy Council in the leading case of Barendra Kuma Ghosh v Emperor<sup>2</sup> delivered by Lord Sumner. His Lordship, after referring to the Indian Penal Code equivalents of Sections 32 and 146, viz. Sections 34 and 149 of that Code, stated that "Section 149, however, is certainly not otiose for in any case it creates a specific offence and deals with the punishment of that offence alone." In the course of the same speech, Lord Sumner, explaining the difference between the two Sections 34 and 149, stated:-

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"There is a difference between object and intention, for though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action which is the leading feature of Section 34, is replaced in Section 149, by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance, and may to some extent overlap, but Section 149 cannot at any rate relegate Section 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all".

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Mr. de Silva suggested that the opinion of the Judicial Committee that Section 149 creates a specific offence is an obiter dictum. I am unable to agree, but, even if Mr. de Silva is right in that suggestion, it is necessary to remind ourselves that even an

obiter dictum of the Judicial Committee is still entitled to the highest respect in our country.

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Judgment  
6th May 1963  
continued

10 The trial judge in Heen Baba's case (supra) had directed the jury that, where the indictment consisted solely of charges framed on the basis of the existence of an unlawful assembly, even if the jury reached a conclusion that no unlawful assembly was established, it was competent for them to find the accused guilty of the substantive offences alleged in the charges by placing reliance on Section 32. The jury in that case found the accused not guilty on the charges in the indictment, but found them guilty of the substantive offences alleged in those charges read with Section 32. This course is precisely what the Court of Criminal Appeal held it was not competent for the jury to do in the absence of specific charges. To quote the words of the judgment, "for the reasons given above we are of the opinion that in the absence of a charge the appellants could not have been convicted (of any of the offences) under Sections 433, 380, 383, 382 read with Section 32". I think the language used itself, justifies one in inferring that the Court implied there that charges based on the existence of an unlawful assembly could have been validly joined with the charges based on the existence of a common intention as described in Section 32.

20

30 If I may say so with humility, I am in respectful agreement with the decision of the Court of Criminal Appeal in Heen Baba's case (supra) and the practice of the Attorney General in framing indictments, at any rate after the date of the judgment in that case, has always been in keeping with the law as interpreted therein. In any event, it is sufficient to observe that I am bound by the ruling of the Court of Criminal Appeal in that case.

40 Mr. de Silva, however, brought to my attention in the course of his argument a hitherto unreported judgment delivered by the Supreme Court on March 19, 1963 in the case of B. Don Marthelis and others v. The Queen<sup>3</sup>. In that case, Abeyesundere J (with Herat J. agreeing), upholding an argument that the indictment presented by the Attorney General was invalid in that charges based on the allegation of unlawful assembly could not be validly joined with charges based on common intention, stated as follows:-

50

In the  
Supreme Court  
of Ceylon

—————  
No. 28

Judgment  
6th May 1963  
continued

"Section 178 of the Criminal Procedure Code requires every charge to be tried separately except in the cases mentioned in Sections 179, 180, 181 and 184 of that Code. Crown Counsel who appeared for the Attorney General conceded that none of the four last mentioned Sections applied to the counts in the indictment in this case. The joinder of the two sets of charges referred to above is therefore not according to law".

10

As I find that the Attorney General, this concession of Crown Counsel notwithstanding, is even today persisting in presenting and supporting indictments in the same form which has been successfully objected to in Don Marthelis v The Queen (supra), I fear I must surmise that the concession is personal to the learned Crown Counsel concerned and is not one made on the authority of the Attorney General. Even if I am found to be wrong in this surmise, being a concession of counsel on a question of law, it is not binding on the court. I am therefore free to ignore it where I am satisfied that there is express provision in the Code enabling the joinder. I have referred above already to the enabling provisions, viz: sub-sections (1) and (2) of Section 180 of the Criminal Procedure Code, and I need only add that the effect of joining charges must be understood as limited by the provisions of Section 67 of the Penal Code. As no reference has been made in the recent judgment to Heen Baba's case (supra), it is not unreasonable to infer that the Court has not considered its effect on the point raised. Had the Court considered it I entertain little doubt that the Court would have referred to it in the judgment, particularly as the decision being one of the Court of Criminal Appeal is presumably binding on a bench of two Judges of the Supreme Court, although the Court of Criminal Appeal is technically a Court different from the Supreme Court. Moreover, the opinion of the Privy Council is binding on the Supreme Court.

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30

40

In regard to the principle of stare decisis which is observed also in Ceylon, the law as at present understood appears to be that if a relevant authority is not mentioned in the judgment, the decision may be challenged. It is useful in this connection to refer to a fairly recent decision of the Court of Appeal in England, Morelle Ltd v Wakeling<sup>4</sup> where five judges concurred in stating that:-



"as a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided per incuriam must, in our judgment, consistently with the stare decisis rule which is an essential feature of our law, be, in the language of Lord Greene, M.R. of the rarest occurrence".

In the Supreme  
Court of Ceylon

\_\_\_\_\_

No. 28

Judgment  
6th May 1963  
continued

10

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30

If the wrong concession on the part of counsel has led to the court entertaining the feeling that it was unnecessary to examine the wording of Section 180, and if that Section though referred to, did not come to be examined by the court, and if when it is now examined it plainly supports the validity of the set of charges, then it seems to me it may be said that the case has been decided per incuriam; alternatively, as Heen Baba's case (supra) has not even been mentioned in the judgment, it must be presumed that the judgment was arrived at through forgetfulness of that decision which was binding on the Court. In that sense too, it seems to me that Don Mart- helis v The Queen (supra) was decided per incur- iam.

40

50

As the sections of the corresponding provisions of the Indian Penal Code are word for word the same as those of our Penal Code which came to be modelled largely on that very code, it may be of some interest to refer to the view taken recently by the Supreme Court of India on the question of law decided in Heen Baba's case (supra). In Manak Chand v State of Punjab<sup>5</sup>, three judges of that Court have in the year 1955 come to a conclusion that a person charged with an offence read with Section 149 cannot be convicted of the substantive offence without a specific charge being framed. Said Imam J (delivering the judgment of the Court) - at p. 278 - "A charge for a substantive offence under Section 302 or Section 325 is for a distinct and separate

In the  
Supreme Court

\_\_\_\_\_  
No. 28

Judgment  
6th May 1963  
continued

offence from that under Section 302 read with Section 149 or Section 325 read with Section 149". Mr. de Silva, in support of his argument that Section 146 created no offence, pointed to the absence in that Section of any provision in respect of punishment. This matter too has received comment in the Indian judgment where it states - see p.278 that "Section 149 creates an offence, but the punishment must depend on the offence of which the offender is by that Section made guilty. Therefore, the appropriate punishment section must be read with it. It was neither desirable nor possible to prescribe one uniform punishment for all cases which may fall within it". The Code provides other similar instances of specific offences being created, e.g. abetment and conspiracy, where the punishment section has to be read with the section creating the offence. Further, it seems to me that a simple test for deciding whether what the prosecution alleges are two distinct and separate offences are in reality one and the same offence would be to consider whether the elements necessary to establish the one are the same as those necessary to establish the other. Judged by this simple test, it will be readily seen that what was alleged in charge No. (2) in this case was an offence different from that alleged in charge No.(5), and what was alleged in charge No. (4) was an offence different from that alleged in charge No.(8).

10

20

Whatever view may be taken on the question whether Don Marthelis v The Queen (supra) was decided per incuriam, bound as I am by the decision of the Court of Criminal Appeal in Heen Baba v The King (supra), I am free not to follow Don Marthelis' case.

30

The second question of law relied on, also fails. In the result all the appeals are dismissed.

Sgd. T.S. Fernando

PUISNE JUSTICE

1. (1950) 51 N.L.R. 265.
2. (1925) A.I.R. (P.C.) 1.
3. S.C. Nos 5 - 10 of 1962 - D.C. (Cr.) Colombo. No.2055/33289/X. Now reported in 65 N.L.R. 19.
4. (1955) 1. A.E.R. at 718.
5. A.I.R. (1955) S.C. 274.

40

NO.29

In the Privy  
Council

ORDER IN COUNCIL GRANTING SPECIAL  
LEAVE TO APPEAL

No. 29

Order in Council  
granting special  
leave to Appeal

L.S.

27th November  
1963.

At the Court of Buckingham Palace.  
The 27th day of November, 1963.

Present: The Queen's most Excellent Majesty  
Lord President Lord Drumalbyn  
Lord Carrington Mr. Secretary Fraser

10 WHEREAS there was this day read at the Board  
a Report from the Judicial Committee of the Privy  
Council dated the 21st day of November 1963 in the  
words following viz:-

20 "WHEREAS by virtue of His late Majesty King  
Edward the Seventh's Order in Council of the  
18th day of October 1909 there was referred  
unto this Committee a humble Petition of  
Abdul Khalid Abdul Moomin Khan in the mat-  
ter of an Appeal from the Supreme Court of  
Ceylon between the Petitioner and Mahanti  
Mulla Gamage Ariyadasa (Respondent) setting  
forth that the Petitioner desires to obtain  
special leave to appeal to Your Majesty in  
Council from the Judgment of the Supreme  
Court of Ceylon dated the 6th day of May  
1963 dismissing the Petitioner's appeal  
from his conviction and sentence by the  
Magistrates Court at Matara on the 12th day  
30 of July 1962 on charges of (1) being a mem-  
ber of an unlawful assembly the common ob-  
ject of which was to commit house trespass  
by entering a house with intent to cause  
hurt and to voluntarily cause hurt (2) com-  
mitting house trespass in furtherance of the  
common object of the unlawful assembly (3)  
in the course of the same transaction com-  
mitting rioting by using force and violence  
(4) in furtherance of the common object of  
the unlawful assembly causing hurt (5) com-  
40 mitting house trespass by entering a house  
with intent to cause hurt (6) wrongfully

In the Privy  
Council

\_\_\_\_\_  
No.29

Order in  
Council  
granting  
special  
leave to  
Appeal  
27th November  
1963  
continued

confining a person (7) wrongfully confining a  
person (8) voluntarily causing hurt and (9)  
voluntarily causing hurt: And humbly praying  
Your Majesty in Council to grant him special  
leave to appeal from the Judgment of the Supreme  
Court of Ceylon dated the 6th day of May 1963  
and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His  
late Majesty's said Order in Council have taken  
the humblePetition into consideration and having  
heard Counsel in support thereof and Counsel ap-  
pearing as amicus curiae no one appearing at the  
Bar on behalf of the Respondent Their Lordships  
do this day agree humbly to report to Your  
Majesty as their opinion that leave ought to be  
granted to the Petitioner to enter and prosecute  
his Appeal against the Judgment of the Supreme  
Court of Ceylon dated the 6th day of May 1963:

10

"And Their Lordships do further report to Your  
Majesty that the authenticated copy under seal  
of the Record produced by the Petitioner upon  
the hearing of the Petition ought to be accepted  
(subject to any objection that may be taken thereto  
by the Respondent) as the Record proper to be laid  
before Your Majesty on the hearing of the Appeal".

20

HER MAJESTY having taken the said Report into  
consideration was pleased by and with the advice of  
Her Privy Council to approve thereof and to order as  
it is hereby ordered that the same be punctually ob-  
served obeyed and carried into execution.

30

Whereof the Governor-General or Officer admini-  
stering the Government of Ceylon for the time being  
and all other persons whom it may concern are to take  
notice and govern themselves accordingly.

Sgd. W.G. Agnew.

PRODUCTIONS

Productions

P.1 (By Prosecution)

By Prosecution

EXTRACT FROM THE P.C.1.B. OF MATARA POLICE STATION

Date: 27.12.60

Time: 4.15 p.m.

P.1.

Page: 16

Para. 413

Extract from  
P.C.I.B. of  
Matara Police  
StationComplaint against Excise Officers27th December  
1960

10 Daisy Gunaratne Menike Wickramasinghe wife of  
M.G. Ariyadasa, age 24 years, staying the land  
called "Balagewatta" Wewahamanduwa present and  
complains thus - TODAY at about 3.30 p.m. my  
husband, one cooly, Babyhamy, niece Amarawathie  
Liyandarachi and I were at home. At that time I  
heard the noise of a car coming and stopping in  
our front compound. My husband and I came to-  
wards the front of the house. Then I noticed  
some excise officers in uniform getting out of the  
car. One of the officers asked my husband, "Are  
you Ariyadasa?" My husband replied "Yes". At  
20 this time my husband was in the front verandah  
and so was I. Then all the excise officers sur-  
rounded my husband assaulted him with baton and  
hands all over his body. I then raised cries  
and worshipped them not to assault my husband.  
Just then one of the officers who had a dressing  
on one of his cheeks hit me with his right hand  
to my both hands in the worshipping position. I  
can identify him if seen again. In all there  
were about 7 officers in number; out of them one  
30 was dressed in uniform coat and sarong and I can  
identify him also if seen again. All the rest  
of the officers were in shorts and shirts. One  
of them had something like a leather bag hanging  
on to his belt worn round his waist. I have not  
seen these excise officers before. Immediately  
after the assault on my husband they handcuffed  
him and put him in the back seat of the car. At  
the same time the officers caught the elder brother  
of my husband one M.G. Gomis Appuhamy who had come  
there to see what the trouble was and took him  
40 also in the same car. The excise officers did  
not tell me or the persons who had collected there  
why they were taking my husband and his elder  
brother away. I am unable to say why they (the  
Excise Officers) acted so. Two days ago my hus-  
band warned a man for playing the fool with me.

Productions This was close to my house and about 4 p.m. my  
 \_\_\_\_\_ husband told me that the person whom he had  
 By Prosecution did not see this person today with the excise party.  
 \_\_\_\_\_ My witnesses are Cecil Babyhamy, Amerawathie Liya-  
 P.1. narachi and several neighbours. This is all. Read  
 and explained admitted correct. Signed in English.

Extract from P.C.1.B. of Matara Police Station 27th December 1960 continued  
 DAISY Ariyadasa - She further states - My hus-  
 band is a driver attached to C.T.B. Ratmalana  
 Depot. He came home on 2.11.60. His full name  
 is Mahandu Mullagamage Ariyadasa. The car in  
 question is a black one, make - not known and also  
 number not known. 10

This is all.

Read over and explained admitted correct.

Sgd. Daisy Ariyadasa.

Sgd. P.S. 19 Osman

Correct.

I certify that this is a true  
 copy of extract taken from the  
 P.C.I.B of Matara Police of which  
 the original document is in my  
 personal custody. 20

Sgd on a A.Mavaratnem  
 Rupee stamp. 1.2.61.

Sgd:  
 for Headquarters Inspector  
 of Police

M A T A R A

P.2.

PRODUCTIONS

Complaint

P.2 (By Prosecution)

COMPLAINT

30

Sgd. T.D.G. de Alwis  
 Mag. Matara.

Translation

On 27.12.60 at about 3.50 p.m. W.A. Siridiyas  
 Silva came to my house and complained as follows:-

Today at about 3.30 p.m. about six excise officers came to the house at Balagewatta and assaulted Ariyadas, Liyaanamahattaya and Vidana Mahataya with hands and batons and they were taken in a car. I do not know their names. The reason for this is that there was a quarrel with Liyanamahataya on an earlier date.

Witnesses to this incident are -

1. H. Dayapala of Wewahamanduwa

10

2. K.A. Baby do

Sgd. V.H.Kannattegoda  
Wewahamanduwa.

Translated by

Sgd.

Interpreter: M.C. Matara.

PRODUCTION

D.1 (By Defence)

PLAINT

A.K.A. Moomin Khan v Appubamy and Ariyadasa

20

Sgd. T.D.G. de Alwis  
Magistrate 12.7.62.

IN THE MAGISTRATE'S COURT OF MATARA.

No. 66363

This 2nd day of January 1961.

I, A.K.A.Moomin Khan, Inspector of Excise, Matara in terms of Section 148 (1) (b) of The Criminal Procedure Code, 1898 hereby report to the Court that -

30

1. Mahantimulle Gamage Gomis Appuhamy of Arambagewatta, Wewahamanduwa and
2. Mahantimulle Gamage Ariyadasa of Balagewatta, Wewahamanduwa, Matara.

on the 27th day of December 1960 at Wewahamanduwa within the jurisdiction of this Court did without

Productions

By Prosecution

P.2.

Complaint  
continued

D.1

By Defence

Plaint  
(A.K.A.Moomin  
Khan v Appu-  
bamy and Ariya-  
dasa

2nd January 1961

Productions

By Defence

D.1.

the licence of the proper authority have in his possession seeds, pods, leaves, flowers and other parts of the hemp plants Cannabis Sativa L weighing 385 grains (three hundred and eighty five grains) in contravention of Section 26 of the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 172) read with Section 76 (1) (a) of the said Ordinance.

Plaint  
(A.K.A.Mommin  
Khan v Appu-  
bamy & Ariya-  
dasa  
2nd January  
1961  
continued

WITNESSES

1. Ipr. A.K.A.Moomin Khan
2. E.G.390, S.A. Piyasena
3. E.G.249, D.A.W.Welikala

PRODUCTIONS

P1 One sealed parcel containing 385 grains of parts of hemp plant.

10

and thereby committed an offence punishable under Section 76 (5) (a) of the said Ordinance.

Sgd. A.K.A.M. Khan  
Complainant Inspector  
2.1.61.

D.1A

PRODUCTION

Journal  
Entry

D.1A (By Defence)

2nd January  
1961

JOURNAL ENTRY

20

Sgd. T.D.G. de Alwis  
Magistrate 2.1.1961

Accused: 1. Arahantimulle Gamage Gomis Appuhany -  
present

2. Mahantimulle Gamage Ariyadasa - present

(Both on Excise Bail)

10th January  
1961

Evidence 10.1.61.  
Each accused to give bail Rs 100/100.

Surety - M.G. PIYASENA

Sgd. O.S.M. Seneviratne  
Magistrate  
2.1.61.

30

10.1.61

Accused: 1. M.G. Gomis  
2. R.M.G. Ariyadasa - Both off bail  
Sgd. T.D.G. de Alwis - Magistrate.



10.1.61No. 66363

Productions

Mr. Dole I.P. for prosecution

By Defence

Accused - present. Mr. Nanayakkara for them.

D.1A

Abdul Kalique Abdul Moomin Khan Affd. Muslim 25  
Excise Inspector, Matara.Journal Entry  
Evidence10th January  
1961  
continued

10

On 27.12.60 on certain information received I went to Wewahamanduwa. On seeing me the 1st accused who had a parcel passed on that parcel to the 2nd accused. This was on the road. I searched 2nd accused and found the parcel with the 2nd accused. I examined the parcel. I opened the parcel and suspected the contents to be parts of hemp plant Cannabis Sativa L. I brought the accused to Walgama and at Walgama I sealed the parcel. I placed my seal on the parcel. The accused refused to place the seal. Then I brought the two accused to Matara Hospital. The 1st apothecary of the Hospital opened the parcel and weighed the contents of the parcel. The accused were present. There were 385 grains of this vegetable matter and I was issued weighing certificate - P2. Then this parcel was again sealed at the Hospital. I placed my private seal. The apothecary had no private seal to place. The accused refused to place the seal. I produce the sealed parcel marked P1.

20

30

I move that P1 be forwarded to Govt. Analyst for examination and report as to whether the contents are parts of hemp plant Cannabis Sativa L. I bailed out the accused to appear in Court.

XXD. Nil.

Re XXD Nil.

Sgd. A.K.A.M.Khan  
E.I. (M)Sgd. O.S.M.Seneviratne  
Mag. 10.1.61.

Read over to the witness in open Court in the presence of the accused and admitted by the witness to be correct.

40

Sgd. O.S.M. Seneviratne  
Magistrate.

Productions

ORDER

By Defence

Forward P1 to Government Analyst for report.  
 Accused will be charged on receipt of report.  
 Call case - 7.2.61.  
 Accused warned.

D.1A

Journal Entry  
 10th January,  
 1961  
 continued

Sgd. O.S.M. Seneviratne  
 Magistrate  
 10.1.61.

7.2.61

Accused: 1. M.G. Gomis Appuhamy - present  
 2. M.G. Ariyadasa - present

10

Analyst's report not received. Call case  
 on 4.4.61.

Sgd. O.S.M. Seneviratne  
 Magistrate

10.2.61

Analyst's receipt No. CD.46 of 7.2.61 is filed  
 of record.

Intld.  
 10/2/61.

23.2.61

Analyst's report No. 1265(CD/46) of 17.2.61 filed 20  
 of record

Intld.

D.1B

PRODUCTIONJournal  
Entry

D.1B (By Defence)

JOURNAL ENTRY

4th April  
 1961

Intld: T.D.G. de A.  
 Magistrate 4.4.61.

Accused. 1. M.G. Gomis Appuhamy - present  
 2. M.G. Ariyadasa - present

Analyst's Report received.

30

Mr. Nanayakkara for accused.

I have recorded evidence of Excise Inspector who can speak to facts on 10.1.61. Excise Guard 432 Paranagama. Each accused charged from Charge Sheet. Each not guilty. In this 2nd accused filed a private plaint No. 66552 in which case some evidence was had before me. That case has a bearing on this case and some facts pertaining to this case have been set out before me.

Production

By Defence

D.1B

Journal Entry

4th April 1961  
continued

10

As such I do not wish to hear this case as such call case before Addl. D.J. to be heard by him.

Call before A.D.J. on 17.4.61.

Sgd. O.S.M. Seneviratne  
Magistrate  
4.4.61.

PRODUCTION

D.1C

D.1C (By Defence)

Journal Entry

JOURNAL ENTRY

17th April 1961

20

Intld. T.D.G. de A.  
Magistrate 17.4.61.

Accused. 1. M.G. Gomis Appuhamy - present  
2. M.G. Ariyadasa - present

Excise Inspector Dole of Matara Excise for prosecution.

Mr. Marikkar for both accused.

Trial on 3.6.61.

Cite prosecution witness for same day. Both accused are warned.

30

Sgd. G.C. Niles  
Addl. Magistrate  
17.4.61.

Intld. T.D.G. de A  
Magistrate

Productions

PRODUCTION

By Defence

D.1D (By Defence)

JOURNAL ENTRY

No.D.1D

Intld. T.D.G. de A  
Magistrate 16.5.61

Journal Entry

16th May 1961

Mr. Dole, Excise Inspector files list of witnesses and move for summons, Cite.

Intld. G.C.N.  
Mag.1.6.61

10

Mr. Manayakkara, Proctor for accused files list of witnesses and moves for summons on witnesses 1 and 10 - 17 in hand. Issue.

Intld. G.C.N.  
Mag.2.6.61

E.G. 249 Welikala sends telegram stating that he is unable to attend Court on 3.6.61 as he is ill. Mention on 3.6.61.

Intld. G.C.N.  
Mag.

20

D.1E

PRODUCTIONJournal  
Entry

D.1E (By Defence)

JOURNAL ENTRY3rd June  
1961Intld. T.D.G. de A  
Magistrate 3.6.61.

Accused. 1. M.G. Gomis Appuhamy - absent

2. M.G. Ariyadasa - present

Excise Inspector Dole of Matara Excise for prosecution. Mr. Nanayakkara for both accused, produces Medical certificate for absence of 1st accused. He moves for a postponement (M.C. filed) Prosecution officers consent. He states prosecution witness No. 3 is ill. Trial revised for 15.7.61.

30

Prosecution witness except No. 3 present warned.  
 Re cite prosecution witness No. 3 for same day.  
 2nd accused warned to appeal. Mr. Nanayakkara  
 undertakes to inform the 1st accused.

Productions

By Defence

Intld. G.C.N.  
 Mag. 3.6.61.

D.1E

13.6.61

Journal Entry  
 3rd June 1961  
 continued

10 Mr. Nanayakkara, Proctor for accused, files motion  
 and moves for summons on witnesses in the list  
 already filed by him.

Issue to all except No.11 as for witness No.  
 11, Proctor to support application before A.D.J.  
 who is hearing case.

Sgd. O.S.M. Seneviratne  
 Mag. 12.6.61.

PRODUCTION

D.1F

D.1F (By Defence)  
 Intld. T.D.G. de A  
 Magistrate 4.7.61.

Journal Entry

4th July 1961

20

JOURNAL ENTRY

Mr. Nanayakkara, Proctor for accused files motion  
 and moves to call this case on the bench today  
 before A.D.J. to support the application for  
 summons on witness.

Vide proceedings. I refuse application.

Intld. G.C.N.  
 Mag. 4/7/61.

M.C. 663634.7.61

30

Mr. Nanayakkara Proctor for both accused  
 appearing in support of his motion dated 4.7.61  
 states that he is asking for summons only on one  
 witness - that is the Hon. The Minister of Local  
 Government Mr. Mahanama Samaraweera in his per-  
 sonal capacity. He says that the summons on  
 the other witnesses has already been allowed and  
 had been issued. He seeks to call Mr. Samara-  
 weera as a witness on behalf of the accused to  
 prove through him certain statements alleged to

Productions have been made to him by the witness for the prosecution to the effect that the witnesses for the prosecution have made statements relating to the facts of this case.

By Defence

D.1F.

I refuse the application.

Sgd. G.C.Niles  
Mag. 4.7.61.

Journal Entry  
4th July 1961  
continued

11.7.61

Mr. Nanayakkara, Proctor for accused files additional list of witnesses and moves for summons.

10

1. Vide motion
2. No time
3. File

Sgd. G.C. Niles  
Mag.

D.1G

PRODUCTION

Journal Entry D.1G (By Defence)

15th July  
1961

JOURNAL ENTRY

Intld. T.D.G. de A  
Magistrate 15.7.61

20

TRIAL (A.D.J)

Accused. 1. M.G.Gomis Appuhamy

2. M.G. Ariyadasa

Vide telegram filed.

Excise Inspector Khan is unable to attend Court.

Vide proceedings

I find accused not guilty and acquit them.

Sgd. G.C.Niles

Magistrate

15.7.61.

30

M.C. 6636315.7.61

Productions

1st accused M.G. Gomis Appuhamy and  
2nd accused M.G. Ariyadasa are present.

By Defence

Excise Inspector Dole for the prosecution.

D.1G

Mr. Adv. G.D.C. Weerasinghe instructed by  
Mr. A.M. Nanayakkara for both accused.

Journal Entry  
15th July 1961  
continued

10

Inspector Dole moves for a postponement on the ground that Excise Inspector Khan is ill and unable to attend Court today. He submitted a Medical Certificate from Dr. K.S.Perinpanayagam in support.

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Learned Counsel for the accused objects to a postponement on the ground that the Medical Certificate does not state that the witness is unfit to attend Court today. He submits that the witness may be fit to attend Court to give evidence though he may not be fit to attend to his normal duties as an Excise Inspector and that the Medical Certificate refers to only multiple lacerations on the left side of the face. He submits 18 witnesses including Hon. Mahanama Samaraweera, Minister of Local Government and Housing - are present to give evidence for the defence. The Medical Certificate states that the witness is not fit to attend to his duties for a week from 11.7.61.

O R D E R

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The plaint in this case was filed on 2nd January 1961. The accused have appeared in Court on 2.1.61 and on 10.1.61 when evidence was led and they were charged. Thereafter, the case has been called four times for various steps. The case came up for trial for the first time on 3.6.61. The case was postponed on that day as one of the accused was ill.

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The prosecuting officer has asked for a postponement on the ground that Excise Inspector Khan, Witness No. 1 is unwell and unfit to attend Court and has submitted a Medical Certificate dated 11.7.61 issued by the House Officer (Dr. K.S. Perinpanayagam) General Hospital, Colombo, which states that the accused has multiple lacerations probably caused as a result of an assault with a bottle. The Doctor also states

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Journal Entry  
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continued

in his Medical Certificate that the witness is not fit for duty and has recommended leave for a period of one week from 11.7.61. Learned Counsel for the accused objects to a postponement on the ground that the Medical Certificate does not state that the witness is unfit to attend Court. He submits that exemption from duty means that the witness will not be fit to perform duties as an Excise Inspector, but not necessarily that he is unfit for attendance in Court. He also submits that the accused have come ready for trial with all the witnesses, one of whom is the Hon. Mahanama Samaraweera - Minister of Local Government and Housing.

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In answer to Court, the prosecuting Officer has stated that he does not know when Inspector Khan sustained the injuries. In my view, prosecuting officers and official witnesses should not be encouraged to send Medical Certificates of this nature. When they go before a medical officer for a Medical Certificate, they must specifically tell the medical officer that they have been summoned to attend Court so that the medical officer will be able to state definitely whether the officer is fit to attend Court. It seems to me that the accused persons should not be penalised by making them attend Court a number of times; the case being postponed on a mere application by a prosecuting officer on the ground that a witness is absent as he is ill, without placing sufficient material before Court as to whether the witness is fit to attend Court or not. In this case, as I stated earlier there is nothing to show that the witness concerned is unfit to attend Court today. This is not the first date on which the accused have come to Court. They have come to Court on a number of occasions and this is the second date of trial; I therefore, refuse the application for a postponement.

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I inform the prosecuting officer that he can proceed to call other witnesses who are present today.

The prosecuting officer states that Excise Inspector Khan is a material witness and in his absence he is unable to proceed with the case and is not calling any evidence.

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Learned Counsel for the accused moves that the accused be acquitted.



The prosecuting officer is not calling any evidence, and the application for a postponement has been refused. I find the accused not guilty and acquit them.

Sgd. G.C. Niles  
Addl. Magistrate  
15.7.61.

I certify that the above is a true copy of the proceedings in M.C. Matara Case No. 66363.

Sgd. K.A.R. Wijesekera  
Chief Clerk

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Productions

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By Defence

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D.1G

Journal Entry  
15th July 1961  
continued

IN THE PRIVY COUNCIL

No. 46 of 1963

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

ABDUL KHALID ABDUL MOOMIN KHAN Appellant

- and -

MAHANTI MULLA GAMAGE ARIYADASA Respondent

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RECORD OF PROCEEDINGS

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HATCHETT JONES & CO.,  
90, Fenchurch Street,  
E.C.3.

Solicitors for the Appellant