

1967 / 11

IN THE PRIVY COUNCIL

No. 23 of 1965

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N:

PANDITHA APPUHAMILAGE DHARMASENA
(3rd Accused)

- and -

MALLAWANTHANTHRIGE SIRIPALA PERERA (4th Accused)
Appellants,

- and -

INSPECTOR OF POLICE, KEGALLA
Respondent.

RECORD OF PROCEEDINGS

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ACCESSION NUMBER

91439

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
18 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

O N A P P E A L

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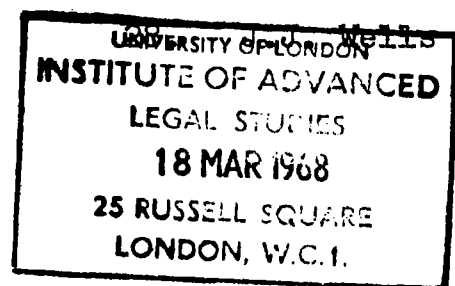
INSPECTOR OF POLICE, KEGALLA
Respondent

RECORD OF PROCEEDINGS

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EXHIBITS NOT TRANSMITTED

Exhibit Mark	Description of Exhibit
P.3.	Certificate of Registration
P.5.	Certificate of Registration
P.7	Car handle
P.10.	Shirt
4D3.	Diary of K.M.P. Banda

IN THE PRIVY COUNCIL

No. 23 of 1965

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N:

PANDITHA APPUJAMILAGE DHARMASENA
(3rd Accused)
- and -

MALLAWANTHANTHRIGE SIRIPALA PERERA
Appellants

10

- and -
INSPECTOR OF POLICE, KEGALLA
Respondent

RECORD OF PROCEEDINGS

NO. 1
INDICTMENT

In The District
Court

No. 1
Indictment
25th January
1962

61. Magistrate's Court

Kegalla Case No. 35332.

INDICTMENT (DISTRICT COURT)

IN THE DISTRICT COURT OF KEGALLA.

20

The Queen
Versus

In the
District
Court

No. 1

Indictment
25th January
1962
(Contd.)

1. Heerala Pathirennelage Hendrick Appuhamy
2. Jayasinghe Pathirennelalage Sarpin Singho
3. Panditha Appuhamilage Dharmasena
4. Mallawa Tantirige Siripala Perera
5. Bulathsinghalago Dharmasena alias Lany
6. Arachchige Henry Fernando
7. Damunupola Appuhamilage Jayawardene Hemendranath. 10

You are indicted at the instance of the Hon. Douglas St. Clive Budd Janszo', Q.C., Her Majesty's Attorney General, and the charges against you are:

1. That on or about the 6th day of February 1961 at Andiramada in the division of Kegalla within the jurisdiction of this Court, you with others unknown, were members of an unlawful assembly, the common object of which was to commit robbery of Motor Car bearing registered number EL. 5241 from the possession of Kuruppu Mudiyanalage Punchi Banda and that you have thereby committed an offence punishable under Section 140 of the Penal Code. 20

3.

2. At the same time and place aforesaid and in the course of the same transaction you H.P. Hendrick Appuhamy the 1st accused being a member of the unlawful assembly aforesaid were armed with a deadly weapon, to wit: a revolver and that you have thereby committed an offence punishable under Section 141 of the Penal Code.

In the District Court

No. 1

Indictment
25th January
1962
(Contd.)

10

3. That at the time and place aforesaid and in the course of the same transaction one or more members of the unlawful assembly aforesaid did commit robbery of the said Motor Car valued at Rs.4000/- property in the possession of K.M. Punchi Banda of Eriyaula which said offence was committed in prosecution of the common object of the said unlawful assembly aforesaid and you being members of the unlawful assembly aforesaid at the time of the committing of the said offence are thereby guilty of an offence punishable under Section 380 of the Penal Code read with Section 146 of the Penal Code.

20

4. That at the time and place aforesaid: in the course of the same transaction you the above named accused did commit robbery of the said Motor car valued at Rs. 4000/- property in the possession of the said K.M. Punchi Banda of Eriyaula and that you have thereby committed an offence punishable under Section 380 read with Section 32 of the Penal Code.

30

This 25th day of January 1962.

Sgd.....(Illegible)

Crown Counsel.

NO. 2

LIST OF PRODUCTIONS AND WITNESSES

62. LIST OF PRODUCTIONS

1. Statements made by accused before the Magistrate, Kegalla.

No. 2

List of Productions and Witnesses
25th January,
1962

In the
District
Court

—
No. 2

List of
Productions
and Witnesses
25th January,
1962.
(Contd.)

2. Letter written by M. Siripala Perera of Horagasmulla marked P2.
3. Certificate of registration of EL 5241 - marked P3.
4. Receipt given by H.D. Wilbert Appuhamy - marked P4.
5. Certificate of registration of EL. 8229 - marked P5.
6. Certified copy of statement made by H.P. Hendrick Appuhamy - marked P6. 10
7. Car handle - marked P7.
8. Identification parade notes - marked P8.
9. Certified copy of statement made by K.M. Punchi Banda - marked P9.
10. Shirt - marked P10.
11. Identification parade notes - marked P11.
12. Extract from the Register of Motor Vehicles marked P12. 20

LIST OF WITNESSES.

1. K.M. Punchi Banda, Eriyaula.
2. U.B. Dias, Clerk, M.D.S.
Gunawardens & Co.,
Andirama Hiriw dunna.
3. T. Mahatun, Cashier, Andiramada.
4. M. Gunaratne, Cultivator, Dunukewala.
5. A.M. Wickremapala, S/o, A.M.
Punchi Singho, Mahena, Warakapola. 30
6. R.A. Pooris Singho, Waiter, Hiriwadunna.

In the District
Court

No. 2

List of
Productions
and Witnesses
25th January,
1962.
(Contd.)

7. B. Carolis Silva, Trader,
Horagasmulla, Diulapitiya.
8. A. Siripala, Police constable 1089,
Diulapitiya.
9. R.W. Amarasinghe, Inspector of
Police, Ratnapura.
10. U.A. Ariyaratne, Casheir, Mobil
Gas Station, Negombo.
- 10 H.D. Wilbert Appuhamy, Car driver,
Kadawala, Katana.
12. L.A. Gunawardene, J.P.U.M. Kegalla.
13. A.B. Samarakoon, Police Sergeant
3207, Kegalla.
14. D.M. Namaratne, Police Constable
5019, Traffic Police, Colombo.
15. D.P. Dissanayake, Police Constable
4251, Kegalla.
16. B.R. Punchi Banda, Peon, Magistrate's
Court, Kegalla.
- 20 S.R. Siriwardene, Peon, Magistrate's
Court, Kegalla.
18. P. Samarakoon, Escort Guard, Prison-
lock-up, Kegalla.
19. C.H. Udulagama, J.P.U.M., Crown Proctor,
Kegalla.
20. M. PUNCHIRALA, Retired Escort Guard,
Pussella, Kegalla.
21. M. Paghmanathan Pillai, Police
Constable 7877, Kegalla.
- 30 J.J. Wells, Clerk, Office of the
Registrar of Motor Vehicles, Colombo.
23. F.A. Gnanendran, Sub-Inspector of
Police, Ratnapura.
24. W.A. Thogis Appuhamy, Trader, Aluththapala,
Minuwangoda.
25. B.M. Kularatne, Police Constable 4928, Kegalla.

The 25th day of January 1962

Sgd. illegibly.....

Crown Counsel.

In the District
Court

NO. 3

COURT NOTES OF SUBMISSIONS

No. 3

Court Notes of
Submissions
24th May 1962

63. D.C. 2839

Mr. G.S. Suraweera for the Crown
Mr. Adv. Sunil Rodrigo inst. by Mr.
D. Balasuriya for the 1st accused.
Mr. D. Balasuriya for the 2nd, 3rd,
4th, 5th, 6th and 7th accused.

Mr. G.S. Suraweera submits the authority
from the Acting Solicitor General to prosecute 10
in this case. These papers are filed of
record.

Mr. G.S. Suraweera for the Crown states
that before the indictment is read, he has to
add one more production to the List of
Productions. He moves to add Morris Minor Car
bearing Registered No. EL 5241 as P13. He
states that this production has been referred
to in the charge-sheet and it has been produced
in the Lower Court but not marked. It has 20
also been referred to in the evidence given
in the Lower Court and the complainant,
witness No. 1 was asked to bring same today.

Mr. Sunil Rodrigo for the 1st accused
states that the production which Mr. Suraweera
moves to mark as P13 is not on the back of the
indictment and as such objects to this
production being marked at this stage.

Mr. Balasuriya also objects to this
being marked as it has been already 30
produced.

Mr. G.S. Suraweera states that no
prejudice will be caused to the accused by
amending the indictment as this production
has been referred to in the evidence in the
lower Court and by some oversight it has
not been marked.

H/N NO. 4
COURT ORDER

S/N
In the District
Court

No. 4

Court Order
24th May 1962

O R D E R

10 I find that the production with Mr. Siraweera on behalf of the Crown moves to add to the List of Productions has been already produced in the Lower Court I do not think that any prejudice will be caused to the accused by including this production in the List. According to the indictment the charges against the accused are with reference to the theft of this product.

64. I allow the application of Mr. G.S. Suraweera and add Car No. EL 5241 to the List of Productions as P.13

Sgd. T.J. Rajaratnam.
Actg. District Judge,
Kegalla.

20

NO. 5
H/N PLEAS

No. 5
Pleas
24th May 1962

The indictment is read and explained to the accused, and they are charged from the indictment.

30

- 1st accused states "I am not guilty"
- 2nd accused states "I am not guilty"
- 3rd accused states "I am not guilty"
- 4th accused states "I am not guilty"
- 5th accused states "I am not guilty"
- 6th accused states "I am not guilty"
- 7th accused states "I am not guilty"

Sgd. T.J. Rajaratnam
Actg. District Judge
Kegalla.

Mr. G.S. Suraweera opens the case for the Prosecution.

Mr. Suraweera calls:

H/N PROSECUTION EVIDENCE

In the District
Court

NO. 6

K.M.P. BANDA

Prosecution
Evidence

Mr. Suraweera calls:

No. 6
K.M.P. Banda
24th May, 1962
Examination

Kuruppu Mudiyaaselage Punchi Banda, Afd.,
39 yrs.,

Driver and Cultivator, Eeriya ulla.
(Sinhalese)

I know the 1st accused. I have known him for about a year at Negambo. He is known as Hoeralu Fathirannege Hendrick Appuhamy.

10

Q. Did you also know the 3rd and 4th accused.

A. Yes.

Q. In 1959, were you in possession of Ford Car No. EN 3111?

A. Yes.

Q. In 1960, did you take it for a Car Sale in Negombo?

A. Yes.

20

Q. Who undertook to sell that car?

A. The 1st accused undertook to sell this car.

Q. You gave that Ford car to him?

A. Yes.

Q. Then what happened?

A. After I gave my Car for sale the 1st accused gave me an Austin Car No. EY 1840 for my use.

Q. What Horse Power is it?

A. He gave me an Austin A40 car.

30

I gave the 1st accused my Ford Car for sale and I was given by the 1st accused an Austin A40 Car to be used by me until he sells the Ford car.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Examination
(Contd.)

Q. On the latter part of 1960, did you go to Negombo?

A. I went to see whether this Ford car is sold or not.

Q. Can you say the date?

10 A. I cannot.

Q. Can you say the month?

A. It was towards the end of 1960. I went to see whether my Ford car was sold.

Q. At that time did the 1st accused give you any information?

20 A. The 1st accused told me that there is a Morris Minor car to exchange for the Ford Car and also I will be paid a sum of Rs.500/-.

The 1st accused told me that the Morris Minor is at Kandawela. After that the 1st accused gave me the Registration Card and a sum of RS.200/- in Cash and said that after the A 40 Car is handed back he will hand over the Morris Minor to me.

Q. What day was it?

A. It was a Sunday.

Q. Did the 1st accused want a commission?

30 A. Yes. He asked me to pay Rs.150/- on this transaction.

The 1st accused also handed me a cheque for Rs.200/-. I handed same back to him and wanted him to deduct the commission and return the balance to me. The 1st accused gave me

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Examination
(Contd.)

Rs.200/- in cash and a cheque for Rs.200/-
and the documents pertaining to the Car.
I asked the 1st accused to cash the cheque
and deduct the commission and return the
balance.

Shown P3.

Q. Was this handed over to you by the
1st accused?

A. Yes.

Q. Was anything else also handed over to
you at that time.

10

A. He gave me a receipt and a transfer
form.

Shown P4

This is the receipt.

Q. What do you mean by Transfer Form?

A. The transfer form which I referred to
is in my favour.

The owner of the Car has signed a
Transfer Form and handed same to me. I
later filled the form and signed same, and
sent it to the Registrar of Motor Vehicles.

20

Q. How did you come back?

A. I came back by bus.

Q. On the next day what happened?

A. On the following day I got a telegram
from Siripala Perera, to come back with
the books.

Siripala Perera is the 4th accused in
this case.

Q. What about the Morris Minor Car?

30

A. It was brought and given to me by the
1st accused and another unknown person.

- Q. From that date was that car in your possession? In the District Court
- A. Yes. Prosecution Evidence
- Q. Were you driving the car? No. 6
- A. Yes. K.M.P. Banda
24th May, 1962
Examination
(Contd.)
- Q. About a week later did anybody come to your house?
- 10 A. After about a week's time, Hendrick Appuhany the 1st accused, Siripala Perera the 4th accused, Dharmase the third accused, and another un-known person came to me.
- Q. Did the 1st accused tell you anything?
- A. The 1st accused told me that the Morris Minor Car is worth more than the Ford and asked me to pay him Rs.500/-.
- I was not agreeable to pay him Rs.500/-
- Q. What happened then?
- 20 A. He told me that he will not allow me to use the car and left the Place.
- Shown P2.
- Q. Did you receive this letter?
- A. Yes.
- Q. Who sent this letter?
- A. Siripala Perera. This was enclosed in the envelope P2a.
- I produce P2 and P2A. I also produce the Certificate of Registration marked P3.
- 30 Q. On the 6th of Feb. 1961, were you driving Car No. EL 5241 on the Rambukkana Road?
- A. Yes.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Examination
(Contd.)

- Q. From what direction were you going?
- A. I was driving from Kegalla towards the direction of Rambukkana.
- Q. At that time who were in the Car?
- A. One Nilame and a boy.
- Q. Are you aware that the name of the other person is Wickramapala?
- A. At that time I did not know his name, but I now know it.
- Q. Was Nilame also called Gunaratne? 10
- A. Yes.
- Q. What happened while you were driving?
- A. From Kegalla I Started and after passing Randiwela, near Hiriwadunna a car crossed the road and tried to block the road for me. It was Hendrick Appuhamy who tried to stop my car. He asked me to stop, but I did not stop the car. I went towards the direction of Hiriwadunna. The car that crossed the road and another chased me and at Andirimada I was obstructed by the Ford car in front and a van behind. 20
- Q. At that time who drove the Ford car?
- A. The 4th accused was driving the Ford Car.
- Q. Did anybody get down from the car?
- A. Almost all got down. They were the 1st, 3rd, and 4th accused. They all came up to my car. Another two unknown persons came to my car. 30
- Q. Did any other person get down from the Car?
- A. Almost all got down.

At that time I did not know their names, but I can now say that 6 & 7 accused also got down.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Examination
(Contd.)

Q. Then what happened?

A. The 3rd accused came and held me by my neck.

Q. Did anybody have anything in the hand?

10 A. They had clubs. The 1st accused had a pistol. The 3rd accused and some others pulled me out of the car. Then I fell into a drain. Some of them had iron rods also. Then the 3rd accused drove the car and went away.

Q. Did you lose anything at that time?

A. I had about Rs.400/- I did not know what happened to it.

Q. What happened to the other two cars?

20 A. Morris Minor went first and the other two cars followed it. I did not know where they went.

Later I made a complaint to the Kegalla Police. I also visited certain areas with the Police.

Q. Did you go with Inspector Amarasinghe to Divulapitiya?

A. Yes.

Q. There did you point out any of the accused to Inspector Amarasinghe?

30 A. I pointed out the 2nd accused to Inspector Amarasinghe. I showed the 2nd accused to Inspector Amarasinghe as one of the persons who came to take my car.

Q. Did you find any van there?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Examination
(Contd.)

A. A Van and the 2nd accused were there. It was the same van that came to take my car. Inside the van there were two starting handles.

Shown P7.

This starting handle is one of them.

Q. Did you say that it belonged to your car?

A. Yes.

10

I produce that as P7.

Shown P10.

Q. When this incident took place were you wearing a shirt?

A. Yes this is the shirt I was wearing. It was taken by the Police.

Q. Did you go with Sgt. Samarakone to Salgoda Bakery?

A. Yes.

Q. Did you see four people taking tea?

20

A. Yes.

Q. Of them were there any of the accused?

A. Yes. 1st accused, 3rd accused and the 4th accused were there.

Q. Did you point out to them at the Parade?

A. Yes. At that time I pointed out these people as the people who came to remove my car.

30

On the 24th of March 1961, an Identification Parade was held by Mr. L.A. Goonewardene. There I identified

the 6 and 7 accused. P13 was the car that was stolen. It was given back to me by Court. I produce that as P13.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Examination
(Contd.)

Q. When the car was handed over to you was anything missing?

A. Yes. Two tyres were changed and the tools were missing.

10 I handed over P2 and P4 to the Police.

X Xn. by Mr. Adv. Rodrigo.

(Cross
Examination)

Q. You said that you bought the Ford Car in 1959?

A. Yes.

Q. Do you remember the day on which you gave that car?

A. I cannot remember.

20 Q. On how many days did you take that car to the 1st accused?

A. I did not take the car to him specially, but on Sundays as Car brokers gather there I took my car.

Q. The day you took the car the 1st accused bought it?

A. Yes. The 1st accused took over my car for sale.

Q. Did you sell that car to the 1st accused?

A. No, I did not sell.

30 Shown 4D2.

Q. Who has written that document 4D2?

A. The signature on the stamp is mine.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Cross-
Examination
(Contd.)

Q. What is the date on that document?

A. 19.9.1960.

(Witness reads document 4D2)

Q. K.M. Punchibanda of Keriya ulla
is yourself?

A. Yes. Car No. EN 3111 is mine. It is
a Ford car.

H.T. Hendrick Appuhamy of Divulapitiya
is the 1st accused. I wanted to sell
the Ford car.

10

Q. You wanted to sell your Ford Car for
Rs. 4000/-?

A. No.

Q. At what price did you want to sell the
car?

A. I wanted to sell my car for Rs.4500/-

I said that the signature on the
stamp in 4D2 is mine. The value of
my Ford car is given there.

Q. Would you say that the day 19.9.60
was the date on which the
transaction took place?

20

A. Yes.

Q. This receipt purports that you have
sold that car for Rs.4000/- and Rs.
2,700 has been paid as advance?

A. I did not receive any money as
advance.

Q. You were to receive the balance on
29.9.60?

30

A. The receipt is written like that.

I can read Sinhalese normally.
I find it difficult to read 4D2.

In the District
Court

Q. When you signed this document
did you read it?

Prosecution
Evidence

A. I did not read. On trust I
signed 4D2.

No. 6

Q. Your position is that you left
behind the documents and the
Ford car?

K.M.P. Banda
24th May, 1962
Cross-
Examination
(Contd.)

10 A. Yes. I came in the A40 car.

Q. Did you take a writing for the
A40 Car?

A. No.

Q. You did not know whose car it was?

A. Yes.

Q. You did not know whether it was a
stolen car?

A. Yes.

20 Q. On your way did you make an entry
that you are bringing a car from
a broker?

A. No.

Q. What is the faith you had to trust
the 1st accused?

A. I trusted the 1st accused as I had
only handed him the car and the
documents were with me.

30 Though I signed 4D2 I know that
a car cannot be transferred in the
1st accused's name in this manner.

Q. When you left the car with the 1st
accused you knew that he could easily
take the 4 tyres of the car?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962

Cross-
Examination
(Contd.)

A. Normally these transactions take place and I have heard about it, and therefore I trusted the 1st accused.

Q. Had he changed the 4 tyres you could have not done anything?

A. Yes.

Had he changed the battery I could have done nothing about it.

Q. You say that the 1st accused gave an Austin car for your use? 10

A. Yes.

Q. Was it on rent?

A. The Austin Car was not given to me on rent, but till my car was sold I was given this car for my use.

Q. What was the understanding when you handed the car?

A. That car was given to me on no condition.

The Petrol tank was not filled by the 1st accused. 20

Q. Were you given documents in respect of that car?

A. No.

Q. Did he give you the Certificate of Insurance of that car?

A. The Insurance certificate was given to me in respect of that car.

Q. In whose name was it insured?

A. I cannot remember. 30

Q. You know that Rs.2,700 was referred to in document 4D2?

- In the District
Court

Prosecution
Evidence
No. 6
K.M.P. Banda
24th May, 1962
Cross-
Examination
(Contd.)
- A. Yes.
- Q. What does that represent?
- A. That is the value of the Austin car that was handed over to me.
- Q. Do you accept that as the value of the Austin?
- A. I was not aware of that receipt 4D2, but as the receipt was given I admit that it was for Rs.2,700/-
- 10 Q. Rs.2,700/- was not the value of the Austin Car?
- A. I am not aware of the value of that car.
- Q. You know the last line of the document states that Rs.1,600 rupees should be paid on the 26th?
- A. Yes.
- Q. What did you intend by that?
- A. I did not read the body of 4D2.
- 20 Q. Your position is that you signed document 4D2 without knowing anything about it?
- To Court.
- Q. You can read Sinhalese?
- A. Yes.
- Q. You could have read it and if you found it difficult, you could have got it read?
- A. Yes.
- 30 Q. You signed the document without knowing it and further left a car and came?
- A. I left my car and signed that on trust.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Cross-
Examination
(Contd.)

Cross-examination Contd.

Q. Do you know the two witnesses who signed it?

A. I do not know.

Q. They are not your people?

A. No.

Q. They are people who were in the Car Garage?

A. I do not know who signed 4D2 as witnesses.

10

Q. Did you go there with anybody?

A. I went with another person. I made a mistake. I went alone.

Q. Did you take the necessary documents with the car?

A. No.

Q. You went without taking the documents?

A. Yes.

Q. Was that car being financed to any Finance Company?

20

A. No.

Q. You were the outright owner of that car?

A. Yes.

Q. This transaction took place on the 19th of September 1960?

A. Yes.

There was no finance in respect of the Ford Car.

Q. When did you next go to Negombo after the 19th of September 1960?

30

- A. I went after that regarding my car.
- Q. When you left on the 19th of September you were anxious to see that this car is sold?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962

Cross-
Examination
(Contd.)

- A. Yes. I went after that.
- Q. When did you go?
- A. I cannot remember.
- Q. Was it 10 days later or 5 days later?

A. It was after a month I went there.

- 10 Q. Was that the first time you went after 19th September?

A. They promised to send me a letter regarding the sale of the car and as I did not receive a reply I went to Negombo.

I went to see the 1st accused again.
He was present there.

- Q. Did you ask him as to what happened to the car?

A. Yes.

- 20 I met the 1st accused. I saw my car also there. Then the 1st accused told me that several people had made offers and asked me to come on the following Sunday.

- Q. Did you go on that day?

A. Yes. I cannot remember the date.

- Q. What happened when you went on that Sunday?

A. It had been exchanged for a Morris Minor car.

- 30 Q. You say that your Ford Car was exchanged for a Morris Minor?

A. Yes.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Cross-
Examination
(Contd.)

Q. The Minor car is the one you referred to in respect of this charge?

A. Yes.

Q. Was that Minor there.

A. Yes.

Q. Did you examine the Minor car?

A. Yes.

I tested the car. I opened the doors and examined the car. But I did not drive the car.

10

Q. Were you satisfied with this exchange?

A. I was satisfied with this exchange as I was getting some cash also with the Minor car.

Q. Can you remember the date?

A. I cannot remember the date.

Q. In relation to the 19th September what would be this date?

A. I cannot remember. I cannot say whether it was 16th of October.

20

Q. When you went on that date you saw the owner of the Morris Minor car there?

A. Yes.

Q. Was he waiting for you?

A. Yes.

The 1st accused was expecting me on that Sunday and he also requested me to bring the documents regarding my Ford Car. The owner of the Morris Minor Car was present. He is one H.J. Wilbert P. Appuhany.

30

Q. What time on that Sunday did you go?

A. I went there at about 12 or 12.30 p.m.

Q. Did you take anybody?

A. No, I went alone.

Q. How did you go there?

A. I went by car.

Q. What happened to the Austin Car?

A. That car had met with an accident.

10 Q. When did the accident take place?

A. After about 15 days I met with this accident.

Q. Austin Car was given to you on the 18th September?

A. Yes.

Q. After about 15 days you met with this accident?

A. Yes.

20 Q. You said that you came about a month after 19th of September to Negombo?

A. Yes.

Q. On that day the 1st accused asked you to come two weeks later on a Sunday?

A. Yes.

Q. On that day you came and the 1st accused and Wilbert Appuhamy were there?

A. Yes.

Q. That is the day you examined the car?

A. Yes.

In the District Court

Prosecution Evidence

No. 6

K.M.P. Banda
24th May, 1962

Cross-
Examination
(Contd.)

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962
Cross-
Examination
(Contd.)

Hendrick Appuhamy told me that the car is a good one. I did not ask anything about the car from the owner as to how he had used the car, but on the recommendations of the 1st accused I took the car.

Shown P4

Q. What is the date of this document?

A. 16.10.1960.

This document I gave to the Police. I met Wilbert Appuhamy on the day I took the car.

10

Q. You say that you got that document on that date?

A. Yes.

Q. You had this document with you?

A. Yes.

According to this document the owner of the Morris Minor car had sold it to Hendrick Appuhamy for Rs.4000/-. All these transactions took place before me. This was the Morris Minor Car that was exchanged for my Ford Car.

20

Q. On this day Wilbert Appuhamy also gave the registration Forms?

A. Yes.

Q. In that transfer form Wilbert Appuhamy or any one else did not insert your name?

A. No.

Q. When the Transfer form was filled up by you, you filled your name in your own handwriting?

30

A. I got a person from Kegalla to fill up the transfer form. Wilbert Appuhamy only signed the form and gave the receipt which was in the name of Hendrick Appuhamy

and he gave same to me.

Sgd. T.J. Rajaratnam.

Actg. District Judge

Kegalla.

It is 4 p.m. now.

Cross-examination to be continued
on the next day.

Further hearing on 28.5.62.

Sgd. T.J. Rajaratnam,

Actg. District Judge

Kegalla.

10

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
24th May, 1962

Cross-
Examination
(Contd.)

28th May, 1962

Further Hearing

Mr. G.S. Suraweera for the prosecution.

Mr. Adv. Sunil Rodrigo inst. by
Mr. D. Balasuriya for the 1, 3, 4, 5
& 6 accused.

Mr. D. Balasuriya for the 2nd & 7th
accused.

20

All the accused present.

Prosecution case (Continued).

Kuruppu Mudiyanseelage Punchi Banda,
Affd., recalled.

Cross-examination continued.

I am a cultivator and a driver. I
drive my own car on hire. At the moment,
I am driving a Morris Minor car. Before that
I had a Ford Car, No. EN 3111 and before that

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962

Cross-
Examination
(Contd.)

I had an A 40. I did not have any car before the A40. The first car I had was the A40. I did not ply this car for private hires. I had that car for my private use and as I had to bring my two children to the Kegalau Vidyalaya.

Q. Your position is that you used this car for your domestic purposes?

A. Yes.

Q. You did not hire that car?

10

A. No.

Q. Even on your way to school you did not hire this car?

A. If I get some passengers for hire, I put them into my car.

Q. You earn sometimes Rs.7/- or Rs.8/- a day?

A. On some occasions I used to earn this amount and on some days Rs.3/- or Rs.4/-.

Q. You remember you said on the last occasion that the 1st accused gave you an A40 car?

20

A. Yes.

Q. This car was given to you on the 19th of September?

A. I cannot remember the date.

(Shown the date in 4D2)

Q. Is it not on this day that you got the A40 car?

A. Yes.

30

Q. This is the 19th September 1960?

A. Yes.

Q. You deny that you bought this car on this document?

In the District Court

A. Yes.

Prosecution Evidence

Q. On the last occasion you said that on 16th October 1960, the Ford Car was exchanged for the Morris Minor car?

No. 6

A. Yes.

K.M.P. Banda
28th May, 1962

(Shown P4)

Cross-
Examination
(Contd.)

I can remember this document P4.

10 Q. (P4) refers to the sale of a Morris Minor car by Wilbert Appuhamy to Hendrick Appuhamy?

A. Yes.

Q. This is the day on which the 1st accused asked you to come regarding the sale and exchange of your car?

A. Yes.

Q. It is on this day that you met Wilbert Appuhamy?

20 A. Yes.

Q. For the first time?

A. Yes.

Q. That is also the day you saw the Morris Minor car for the first time?

A. Yes.

Q. You came on 16.10.60 to Negombo at the request of the 1st accused?

A. Yes.

30 Q. You came in the A40 car that the 1st accused gave you from Kegalla.

A. I did not go in the A40 car to Negombo from Kegalla.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962
Cross-
Examination
(Contd.)

Q. On 16.10.60 you say that you did not go to Negombo in the A40 car.

A. Yes.

Q. Did not the 1st accused ask you what had happened to the A40 car?

A. Before 16.10.60 the 1st accused was aware that I had met with an accident in the A40 car. On a previous occasion I went to Divulspitiya and informed the 1st accused that I had met with an accident in the A40.

10

Q. Did you go about a week prior to 16.10.60?

A. I cannot remember any dates.

Q. On what day did you meet with this accident in the A40 car?

A. I cannot remember the day or the month.

Q. Is it before you met Wilbert Appuhamy on 16.10.60 or after?

20

A. It was before I met Wilbert Appuhamy on 16.10.60.

Q. You recollect you wrote a letter to the Finance Company and the Insurance Company regarding the accident to the A40 car?

A. Yes. I only wrote to the Insurance Company regarding this.

Q. In the letter to the Insurance Company did you say that the car met with an accident on 6.11.60?

30

A. Yes. I mentioned the date in the letter to the Insurance Company.

Q. Will you accept that you mentioned the date as 6.11.60?

A. I cannot remember the date.

- Q. If you have mentioned 6.11.60 will you accept it as the correct date? In the District Court
- A. If I have mentioned this date in the letter written by me, I will accept it. Prosecution Evidence
No.6
- Q. Did you write any letters to the Insurance Company. K.M.P. Banda
28th May, 1962
- A. Yes. Cross-Examination
(Contd.)
- 10 Q. You are in the habit of getting other people to write letters on your behalf?
- A. What I can understand I write but at times, I get others to write letters on my behalf.
- Q. If anyone else has written on your behalf that this accident took place on 6.11.60, will you accept it?
- A. No.
- 20 Q. Can you recollect even roughly how long before 16.10.60 this accident took place?
- A. I cannot remember.
- I met with this accident at Galigomuwa. I made a complaint to the Kegalla Police. I made this complaint on the same day I met with this accident.
- Shown P4.
- Q. This document is dated 16.10.60?
- 30 A. Yes.
- Q. This document was given by Wilbert Appuhany to Hendrick Appuhany?
- A. Yes.
- Q. The moment it was given to Hendrick Appuhany he handed it over to you?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962
Cross-
Examination
(Contd.)

A. Yes.

I did not read this document P4 when it was handed over to me.

Q. Do you deny that 16.10.60 is the correct date on this document?

A. I accept this date.

Q. This is the date on which you met Wilbert Appuhamy for the first time?

A. Yes.

Q. This was the date on which you first saw this Morris Minor car?

10

A. Yes.

Q. On 16.10.60 you say the A40 had met with an accident?

A. I cannot remember.

Q. Can you remember how you went to Negombo on that day?

A. I went by bus.

Q. Why did you go by bus on this day?

A. I know that I went by bus but I cannot give the reason as to why I went by bus because I cannot remember.

20

Q. If the A40 was in a working condition, would you have gone in that?

A. I only remember that I went by bus.

Q. You came back also by bus?

A. Yes.

Q. By Court. The last time in your evidence did you not say that you went by bus because the A40 had met with an accident?

30

A. Yes.

What I stated in evidence on that occasion is correct.

In the District Court

Q. How many accidents did this A40 car meet with?

Prosecution Evidence

A. I met with only one accident in this car.

No. 6

Q. How long was it in the garage?

K.M.P. Banda
28th May, 1962
Cross-
Examination
(Contd.)

A. For about a month.

10 Q. According to you, on 16.10.60 you purchased the Morris Minor car?

A. No.

Q. The transfer forms were handed to you on this day?

A. Yes.

Q. This receipt (P4) was handed to you?

A. Yes. P4 was handed to me on the day the transfer forms were handed to me.

Q. The Morris Minor was available to you on this day?

20 A. Yes.

Q. Why did you not bring it back to Kegalla on this day?

A. Hendrick Appuhamy told me that till I returned the A40 he will not give the Morris Minor car.

Q. If the A40 had met with the accident on 6.11.60 on this day the car should have been available?

A. Yes.

30 Q. Did you in the Lower Court give your position as not being able to remove the Morris Minor on that day as it had gone on a trip?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962
Cross-
Examination
(Contd.)

A. Yes.

Q. Did you say this, "I was not able to bring the Morris Minor that day as I was told that it had gone on a trip"?

A. Yes. On the day I took the A40 after repairs I was told that the Morris Minor had gone on a trip and it was not available. I cannot remember whether I gave this evidence in the Lower Court. If I have stated so in Lower Court, it is incorrect.

10

(Mr. Adv. Rodrigo moves to mark this portion of the witness' evidence as 4D7).

Q. On which day did you say that the Morris Minor had gone on a trip?

A. On the day that I took the A40 and handed it over I was told that the Morris Minor had gone on a trip. Two elderly people attempted to cross the road and I tried to avoid them and crashed on to a post. The repairs cost me Rs.100/- and I purchased the necessary parts. It was in the garage for the purpose of repairs for about a month.

20

Q. Can you remember the date on which you removed it from the garage?

A. No.

Q. Can you remember the date on which you gave it to the 1st accused?

30

A. No.

Q. Can you remember how long before you got the Morris Minor car?

A. Before I got the Morris Minor I returned the A40.

Q. Did you go and personally give this car to the 1st accused?

A. I personally handed the A40 to the 1st accused and requested him to give me the Morris Minor?

In the District Court

Q. Were you alone there or was there anyone else?

Prosecution Evidence

No.6

A. There were several other people and this took place at Negombo.

K.M.P. Banda
28th May, 1962

Q. Did you get a receipt for having given the A40?

Cross-
Examination
(Contd.)

10

A. No.

Q. Is it not the fact that the A40 was removed by a Finance Company when it was in your possession for having defaulted the payment of instalments?

A. No.

Q. Was this car ever removed from your possession by anybody - whether a Finance Company or anybody else?

A. No.

20

Q. At no stage did any Finance Company write to you asking you when you got possession of this car?

A. No.

I did not receive any letter from the Lotus Finance Company regarding this A 40 car.

Q. When did you get possession of the Morris Minor car?

A. I cannot remember.

30

Q. You know that on a certain day you sent the transfer forms to the Registrar of Motor Vehicles?

A. Yes.

Q. How many days before this did you get the Morris Minor car?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962

Cross-
Examination
(Contd.)

A. On the day previous to this.

Q. If you sent the transfer forms on the 21st or 22nd of December, you would have got the Morris Minor on the 20th or so?

A. Yes. It may be a day or two after I had sent the transfer forms.

Q. How long before that day did you return the A40?

A. About 2 or 3 days before that I went and gave the A40. 10

Q. You said the moment the A40 was repaired you went and gave it to the 1st accused?

A. After a week I took the A40 and handed it to the 1st accused.

Q. Your position is that on 16.10.60 this car was under repairs and that is why you did not come on this day by this car?

A. Yes.

Q. How long before that date did you meet with the accident? 20

A. I cannot remember.

Q. Can you say roughly how long this A40 was under repairs?

A. I cannot definitely say for how long it was under repairs.

Q. Did you say this in the Magistrate's Court, "I handed over the Devon car about a month and 10 days after I took charge of it"?

A. I cannot specify the number of days. 30

Q. Did you say this "The 1st accused took charge of this car opposite the Petrol shed in Negombo?"

A. This is correct.

In the District
Court

I gave evidence before the Magistrate in April 1961. My recollection of events then was fresher than now.

Prosecution
Evidence

No. 6

Q. If you told the Magistrate that you gave charge of the car to the 1st accused, for about a month and 10 days, will it be correct?

K.M.P. Banda
28th May, 1962
Cross-
Examination
(Contd.)

10 A. If I have stated so, I will accept it.

Q. So you are now saying that you handed back the car after about a month and 10 days?

A. I cannot remember.

On the day that I was promised the Morris Minor car I got it. On the day that I took the A40 I was promised that the Morris Minor would be brought on the following day, and likewise he brought it to Kegalla and handed it to me.

20

Q. Your position is that you handed the A40 on the 19th December 1960?

A. I cannot remember the date.

Q. Do you accept your evidence in the Magistrate's Court that you handed over the Devon about a month and 10 days after you took charge of it?

A. My position is that I did not mention any dates when I gave evidence in the M.C.

30

(Mr. Rodrigo moves to mark this portion of the witness's evidence as 4D8).

I have not come to this Court previously but I have come to the Magistrate's Court. Besides this case, I have had other cases in the Magistrate's Court. I have been to the Magistrate's Court in regard to criminal cases. There was a case in which I had failed to send the registration

In the District
Court

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No. 6

K.M.P. Banda
28th May, 1962
Cross-
Examination
(Contd.)

forms and I was charged.

I know the 4th accused fairly well, I have had no dealings with him. I have had no car transactions with the 4th accused. (Shown P1). This telegram was sent by Siripala, the 4th accused. This is dated 21.12.1960 and sent in Sinhalese. It reads "come to Divulapitiya and bring transfer forms". It has been sent by one Siripala, and I think, it is the 4th accused.

10

Q. If it is the 4th accused what is the car that is referred to?

A. I do not know.

Q. Were there any other Morris Minor cars that you were dealing with at this time?

A. No.

Q. You find it difficult to say as to which car this telegram refers to?

20

A. I thought that this was in connection with the Morris Minor that was handed over to me.

Q. You could not make sense over that?

A. By that time I had sent the transfer forms to the company.

Q. According to you, the 1st accused willingly gave you the transfer forms and also willingly gave you the car?

30

A. Yes.

Q. You cannot understand why the 4th accused should ask you to bring the transfer forms one day afterwards?

A. I cannot understand.

(Shown P2).

This is dated 16.1.1961.

In the District
Court

Q. When did you last visit Siripala before this letter?

Prosecution
Evidence

A. I cannot remember.

No. 6

Siripala had come for some other business and he casually met me in Kegalla Town.

K.M.P. Banda
28th May, 1962

Q. Could you tell why Siripala was expecting a letter from you?

Cross-
Examination
(Contd.)

10 A. Siripala asked me to inform a person at Ambanpitiya to send the transfer forms in connection with car No. CL 1940.

Siripala was aware that I knew the owner of CL1940 and asked me to convey this information. The 1st accused Hendrick Appuhamy Dharmasena, Siripala, and another person came and wanted a further sum of Rs.500/- as the Morris car was worth more and they threatened me.

20

Q. If this man threatened you, would he write a letter to you asking you to do him a favour?

A. It was only Hendrick Appuhamy who threatened me.

Q. Is it not the fact that you are withholding certain papers belong to the 4th accused?

30

A. No.

Q. And does not this letter (P2) refer to these documents?

A. No.

(Shown 4 D1.)

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962

Cross-
Examination
(Contd.)

I did not write this postcard. This has been posted at Hiriwaduna on 21.12.60. This postcard has been addressed to Siripala Perera, Govt. Hospital, Divulapitiya. I do not know whether this is the 4th accused Siripala's address. I do not know Siripala's address. I do not know whether his address is Govt. Hospital Divulapitiya. I am aware that the 4th accused is living close to the Govt. Hospital, Divulapitiya.

10

Q. Your position then is that you did not write this document (4D1)?

A. Yes.

Q. Did you ask anybody to write this document?

A. No.

Q. Are you in the habit of getting post-cards and letters written on your behalf by others?

20

A. If there is something urgent, I used to get it written by someone else.

(Shown 4D2 letter dated 22.12.60 to the witness)

This is not my handwriting but I got this written by another person at the Kegalla Post Office I have signed this document. I got it written by a person not very well known to me and he had a pen with him and I got him to write this letter for me.

30

(Shown 4D2 and 4D9).

This person who wrote (4D9) signed my signature in his handwriting. The entire document (4D9) was written by this person and my name was also written by him on my behalf.

Q. Then why did you a little while ago say that you signed this document (4D9)?

40

- A. I stated so but it is not correct.
(Shown 4D1)
- I do not know who the writer of this document is. I did not write it nor did I get anyone else to write it for me.
- Q. The same person who wrote the letter to the Registrar of Motor Vehicles also wrote (4D1)?
- 10 A. I cannot say.
- (Shown 4D6): I do not know who wrote this. I did not get this postcard written by anybody. I said that the transfer forms in respect of the Morris Minor was received by me on 16.10.60.
- Q. Do you know that the Examiner of Motor Vehicles had received the transfer forms only in December 1960?
- 20 A. I posted the transfer forms in December 1960. After I got the car, along with the 1960 License, I posted it to the Registrar of Motor vehicles.
- Q. Why did you not send the transfer forms in October 1960, if you had got it in October?
- A. I thought that I had to send the transfer forms along with the licence.
- 30 When I got the Morris Minor car it was licensed for the year 1960.
- Q. You did not know that you could transfer a car without sending the licence?
- A. As far as I know, the transfer forms and the current year's licence had to be sent.
- On the day of the transaction, I received only the forms and the registration card.

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962

Cross-
Examination
(Contd.)

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda
28th May, 1962

Cross-
Examination
(Contd.)

Q. Why did you not ask for the licence?

A. I did not ask for the licence as they would be unable to use the car without the licence.

Q. Your position then is that they were going to use the car which you had bought?

A. The arrangement was that when I handed the A40 I was to be given the Morris Minor car.

10

Q. From the 16th of October to the 19th of December what were you doing with the A40 car?

A. The A40 was under repairs during this period and once it was repaired, I went and handed it over.

This two month repair bill cost me Rs.100/-. I was content to wait without any single document for this car.

No. 7

Court Note of
Submissions
Arguments and
Direction
28th May, 1962

NO. 7

20

COURT NOTE OF SUBMISSIONS
ARGUMENTS AND DIRECTION

At this stage, Mr. Adv. Rodrigo moves that documents 4D1, 4D6 and 4D9 be sent to the examiner of Questioned documents for the following reasons

(i) in respect of (4D9) this witness has taken up the position for the first time in this Court that he got this document written by somebody else at his instance and he did not write it nor did he sign it.

30

(ii) the witness denies the signature on (4D1) or having got it written at the instance of another.

(iii) the witness denies that he wrote 4D6 or he got someone else to write it on his behalf.

Mr. Rodrigo says he is making this application under Sec. 429 of the Criminal procedure Code. He is making this application for the E.Q.D. to report whether.

10 (1) one and the same person wrote anyone of these documents.

(2) one and the same person signed one or more of these documents.

He says he is making this application in the interests of justice because should the Examiner of Questioned documents report that anyone of these three documents were written by the same hand, the witness evidence will be completely contradicted.

20 Mr. Balasuriya supports this application on behalf of the 2nd and 7th accused. He states that in the Lower Court there was no opportunity to have the signature on the alleged document compared with any document. He states that (4D9) was not available earlier.

30 Mr. Suraweera objects to this application, and states that this application cannot be made under Sec.429. He states that in the Lower Court the witness had denied the writing (4D1).

I refuse this application.

Direction

Sgd. T.J. Rajaratnam
Actg. D.J. 28.5.62.

No time. Further hearing on 6th and 7th of June, 1962 prosecution and defence witnesses warned.

Sgd. T.J. Rajaratnam
Actg. D.J.

40

28.5.62

In the District
Court

Prosecution
Evidence

No. 7

Court Note of
Submissions
Arguments and
Direction
28th May, 1962

In the District
Court

NO. 6

K.M.P. BANDA - CROSS-EXAMINATION
CONTINUED.

Prosecution
Evidence

No. 6

21.6.62

No.D.C.C.2839
M.C.K.35332

K.M.P. Banda
Cross-
Examination
(Contd.)
21st June 1962

Accd. Pt.
Same appearances as before.

Mr. Suraweera for the Crown calls:

K.M. Punchi Banda, affd., recalled.

Cross-examined by Mr. Adv. Rodrigo.

10

On the day of the incident I made a statement to the Police regarding the incident. I cannot remember the date on which I made the complaint to the Police. If I have stated to the Police that the incident took place on 6.2.61, I accept that date.

Q. Did you buy a Morris Minor on 16.10.60?

A. Yes.

I met with an accident on my way to Negombo. I went by bus as it was less expensive.

20

Q. Did you receive a telegram on 21.12.60?

A. Yes.

The telegram was signed by Siripala. I thought that it was the 4th accused who had signed the telegram.

Shown 4D1. I did not sign 4D1. I do not know from where 4D1 had been posted. It is purported to have been sent by K.M. Punchi Banda of Eriyaula.

30

Q. Is it dated 21.12.60?

A. Yes

10 It was on the same day that I received the telegram. On 6.2.60 my car was taken. 1st accused had a revolver. 1st accused did not shoot. He pointed the revolver at the car. He threatened to shoot. He did not Cock the gun. One or two persons had iron rods. Someone raised an iron rod, but I cannot remember who it was. I deny that 1st accused came in the company of other people and asked for the car, and that I gave the car to the 1st accused promptly.

In the District Court

Prosecution Evidence

No. 6

K.M.P. Banda

Cross-Examination (Contd.)

21st June 1962

Cross examined by Mr. Balasuriya

20 I stated that this incident was witnessed by several people. The two people were travelling in my car were eye witnesses. I do not know whether any other witnesses had mentioned about the revolver to the Police in their statements. I cannot say why the other people did not see the revolver. I was questioned about the licensing of this vehicle. I cannot remember when I got the transfer form regarding the Morris Minor Car. I have not

30 mentioned the dates when I got the transfer form regarding the Morris Minor car. I waited till 20.12.60 to forward the papers. I did not get the license till 20.12.60. When I got the car the licence for that year was attached to the car. The car was licensed by someone other than myself for the year 1960.

40 Q. Did you licence this car for the year 1960?

A. No. I did not licence the car for the year 1960.

Q. Was this car insured when you received it?

In the District
Court

Prosecution
Evidence

No. 6

K.M.P. Banda

Cross-
Examination
(Contd.)

21st June 1962

A. It was insured when I received it.

Q. Do you admit that you insured this car before it was transferred in your name?

A. I insured the car with the Ceylon Insurance Company. I went to the Kegalla Branch of the Ceylon Insurance Company and got it insured.

Q. Was the Insurance Certificate handed over to you at the time you got this car? 10

A. I was given the Insurance Certificate at the time I got the car.

I kept that with me and I got it re-insured. I had dealings with second hand vehicles. If the Policy does not cover for a long period, it may be transferred in favour of the person who possessed that car. I cannot remember the period of the policy and that the Insurance Certificate was handed over to me by the accused. I cannot remember the period of expiration at the time I got the Insurance Certificate. I deny that I got the Insurance Certificate hurriedly because if had to send the transfer form to the Registrar of Motor Vehicles. I did not send the transfer form to the Registrar of Motor Vehicles hurriedly. 20
30
On the day of the incident I was coming towards Hiriwadunna from Kegalla. I was going to Rambukkana. It was a fair day at Rambukkana. I normally go to Rambukkana on fair days to buy vegetables.

Q. Were you questioned about one Jayawardene who lives at the junction?

A. Yes, I was questioned about him. This incident took place about 100 yards 40

away from the house of Jayawardene.

Q. Were there several people standing at the time close to you?

A. Yes. They came near me.

Re-examined. Nil. Sgd. T.J.
Rajaratnam.
A.D.J.

In the District Court

Prosecution Evidence

No. 6

K.M.P. Banda
Cross-
Examination
(Contd.)
21st June 1962

NO. 8

M.R. GUNARATNE

10 M.R. Gunaratne, Affd., Sinhalese, Buddhist, 35 yrs.,

No. 8

M.R. Gunaratne
21st June 1962
Examination

Landed Proprietor, Residing at Danukewela

I am also a cultivator. I am also known as Nilame in the village. On 6.2.61 I came to Kegalla. At about 9.30 a.m. I was waiting at the bus stand with one Wickremapala. At that time I saw the car of the last witness. I stopped that car. Then I and Wickremapala got into that car. I got into the front seat and Wickremapala got into the rear seat, and we were going towards Andirimada. While we were going near this spot at Hiriwadunna, a car came and stopped us. It was a Ford car. That car was travelling on a side, and as it approached it was driven on the centre of the road and obstructed us. Last witness was able to go over the grass verge and proceeded. A little later at Andirimada that car overtook the last witness's car and stopped us. Last witness was trying to go passing that car. Almost at the same time a morris minor van came and stopped behind last witness's car. Then some persons got down from the van armed with some weapons. About 12 to 15 persons got down from the van. They were armed with iron rods. One person had a revolver.

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40 The door of the last witness's car was

In the District
Court

Prosecution
Evidence

No. 8

M.R. Gunaratne
21st June 1962
Examination
(Contd.)

opened and the last witness was taken out. Last witness was held bodily and taken out. Wickremapala and I got down from the car. After last witness was dragged out, the person got into the last witness's car and drove the car away. Morris Minor van also followed the last witness's car after all the people got in. For about 5 minutes the Ford car was halted at the junction and it was driven towards Hiriwadunna. For about 5 minutes later that car was driven towards Polgahawela where the other two cars were driven. EL8239 is the number of the Ford car. I made a statement to the police. I had not seen these persons before this incident. An identification parade was held in this case and I identified 3rd and 4th accused as the persons who travelling in that car. Out 10 or 12 persons 3rd and 4th accused were two of them.

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20

Cross
Examination

Cross-examined by Mr. Adv. Rodrigo

No one hurt me either by deed or by word. They left me alone. That applied to Wickremapala also. That pistol was not found out. The pistol was in the hand, but it was not used.

No one attempted to use the iron rods. They only scolded the last witness with those weapons. No one attempted to do anything with these weapons. They got down from the car with these weapons. I cannot remember whether there was an argument or not. There were number of houses and boutiques close to this place. Those people in the boutiques came ther. I did not hear 1st accused saying that they came to remove the car. I asked the last witness as to what the meaning of this was. Last witness said that he did not know. He said that he did not understand it. There were no other incidents except the removal of the car.

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40

Cross-examined by Mr. Balasuriya.In the District
Court_____
Prosecution
Evidence

No. 8

M.R. Gunaratne
21st June 1962Cross-
Examination
(Contd.)

After the incident was over, Wick-remapala and I went away. I told the last witness to go and make a complaint to the Police. I did not think of going to the Police Station. I went home. I gave evidence in this case about one year ago. At that time the facts were fresh in my mind. The facts regarding the incident were much clear in my mind than today. I was not questioned about the revolver, when I gave evidence in this Court. I cannot remember the other details regarding the incident, and not only the revolver. I cannot remember the revolver. In my statement to the Police I have mentioned about the fact that I saw a person armed with a revolver. I deny that someone had asked me to come out with this piece of evidence. I was not questioned in detail in the Lower Court. I was questioned regarding the incident. I said that the people who came out of the Morris Minor van had iron rods. I have said that they were armed with iron rods, but I cannot remember what weapons they had. I mentioned about the revolver to the Police, but I was not questioned about the revolver in the Lower Court. I admit that I did not mention about the revolver in the Lower Court. I have forgotten about it. Not only the possession of the revolver in the hands of one person, but also the other details I cannot remember.

Re-examined. No questions.

Sgd. T.J. Rajaratnam.

A.D.J. 21.6.62.

In the District
Court

NO. 9

A.M. WICKRAMAPALA

Prosecution
Evidence

A.M. Wickramapala, affd., 16 years, Sinhalese, Buddhist, trader, residing at Mahena.

No. 9

A.M. Wickramapala
21st June 1962
Examination

On 6.2.61 I came to Kegalla with the last witness.

At about 9.30 a.m. I got into the car of Punchi Banda with the last witness Nilame. Thereafter we travelled towards Hiriwadunna, in order to go home. At that time a car came from behind. We proceeded up to Andirimada, and Punchi Banda stopped his car at Andirimada. Whenever we pass that way, we stop there to take tea or to buy some things. When we got down, some people came there, and pulled out Punchi Banda out of the car. A Ford car came and blocked Punchi Banda's car in front. At the time Punchi Banda was pulled out of his car, I cannot remember the number of persons who came there. I got excited. I cannot remember whether those people were armed with any weapons. A morris Minor van was halted behind Punchi Banda's car on the other side. I cannot remember what happened thereafter. One person removed Punchi Banda's car. That is one of the persons who came in the van. Morris Minor van also was driven following Punchi Banda's car in the same direction. Those people who came and pulled out Punchi Banda out of his car were not known to me. I made a statement to the Police.

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20

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Cross-
Examination

Cross-examined by Mr. Adv. Rodrigo.

Punchi Banda's car was stopped near Andirimada boutique. A car was following us, Punchi Banda must have anticipated it, but I do not know about it. The car was stopped and before anyone got out of the car, Punchi Banda was pulled out. At first

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10 Punchi Banda stopped the car opposite the boutique. I cannot remember whether anyone came and stopped Punchi Banda. I got down from the car on account of the commotion. I cannot remember whether anyone came and spoke to Punchi Banda. Punchi Banda was pulled out of the car. I rushed inside the boutique. I did not look back at the car.

I cannot say whether anyone held Punchi Banda asking him to get down from the car. I do not know whether Punchi Banda was assaulted. I did not look back. I rushed inside the boutique. I did not ask Punchi Banda what that was about.

Cross-examined by Mr. Balasuriya.
No questions.

20 Re-examined. No questions.

Sgd. T.J. Rajaratnama

A.D.J. 21.6.62

NO. 10

R.A.P. SINGHO

R.A. Peiris Singho, Affd., 23 years, Sinhalese, Buddhist, Waiter residing at Hiriwadunna.

30 I am a waiter in the hotel of Jayasinghe Mudalaly Jayasinghe Mudalaly's hotel is situated at the junction of Rambukkana Hiriwadunna road. I remember 6.2.61. On that day at about 10 a.m. a Morris Minor van came near the boutique, and 4 persons came into the boutique. Later I saw 3 cars including a Morris Minor van racing towards Andirimada. I know Punchi Banda's car. I identified

In the District Court

Prosecution Evidence

No. 9

A.M. Wickramapala
21st June 1962

Cross-Examination
(Contd.)

No. 10

R.A.P. Singho
21st June 1962
Examination

In the District
Court

Prosecution
Evidence

No. 10

R.A.P. Singho
21st June 1962
Examination
(Contd.)

that car. That car was being chased by two other cars. I identified the Morris Minor van that came to my boutique earlier. I made a statement to the Police.

Cross-examined by Mr. Adv. Rodrigo.
No questions.

Cross-examined by Mr. Balasuriya.
No questions.

Sgd. T.J. Rajaratnam,
A.D.J. 21.6.62.

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No. 11

B.C. Silva
Examination
21st June 1962

NO. 11

B.C. SILVA

Boruggomuwage Carolis Silva, Affd., 43 yrs. Sinhalese, Buddhist trader, residing at Horagasmulla.

I am the registered owner of Ford Prefect Car No. EL 8229. I have brought that car to Court. Shown P5. This is the registration certificate. I produce it. I had no permanent driver for the car. But I employed a casual driver. That is the 5th accused. On 6.2.61 at about 6.30 a.m. 5th accused took out the car. He returned the car at about 12.30 p.m. that day. Later I questioned the 5th accused as to where he took the car. He told me that he went to bring a car belonging to the 1st accused. He said that he came in the car to Kegalla. I cannot exactly remember it. It may be Kegalla or Rambukkana. When the Police questioned me, I searched for the 5th accused. I was not able to trace him.

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Cross-examined by Mr. Adv. Rodrigo.
No questions.

Cross-examined by Mr. Balasuriya. No questions.

Sgd. T.J. Rajaratnam.
A.D.J. 21.6.62.

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NO. 12
COURT NOTE

In the District
Court

Siripala affd.

Prosecution
Evidence

No.12

Court Note
21st June 1962

At this stage Mr. Suraweera moves to call P.C. 1089 and states that this statement was made before the accused was arrested by the Police and he moves to produce the statement

Sgd. T.J. Rajaratnam.

10

A.D.J. 21.6.62.

NO. 13

A.D. SIRIPALA

No. 13

A.D. Siripala
21st June 1962
Examination

A.D. Siripala, Affd., 32 years, Sinhalese Buddhist, P.C. 1089, of Diulapitiva Police.

NO. 14

COURT NOTE

No. 14

Court Note of
Submissions and
Objections, 21st
June 1962.

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At this stage Mr. Suraweera moves to produce a certified copy of the statement made by the 1st accused to the Diulapitiya Police on 6.2.61 and which had been produced in the Lower Court marked P6. Mr. Adv. Rodrigo objects to this witness producing a certified copy of this statement without making available to Court the original information book from which the certified copy is made, as he is contesting the date in the statement, namely 31.12.60. He states that it should be 21.12.60.

30

Mr. Balasuriya objects on the ground that prosecution is seeking to produce

In the District
Court

a certified copy without the original
being available to Court.

Prosecution
Evidence

No. 14

Court Note of
Submissions and
Objections, 21st
June 1962. (Contd.)

No. 15

Court Order
21st June 1962

NO. 15

COURT ORDER

O R D E R

In this case since the
defence is contesting the date 21.12.60
in the statement of H.P. Hendrick
Appuhamy, 1st accused, I order the
Police Officer to produce the original
information book in which he recorded
the statement of this witness, as such
the trial has to be adjourned at this
stage for another date. Further trial
on 10.7.62. Accused and witnesses
warned.

10

T.J. Rajaratnam

A.D.J. 21.6.62

No. 16

Court Note
25th July 1962

NO. 16

COURT NOTE

20

25.7.62

D.C.K. Case No.2839

Further trial

All accused present.

Same appearances as before.

Mr. Suraweera appearing for the
Crown brings it to my notice that none of
the witnesses cited for today are

present in Court. On a perusal of the record I find that I had made an order on 17.7.62 for witnesses 2, 3, 8, 9 to 25 to be cited for today.

No action appears to have been taken by the District Court Office to have these witnesses cited.

Secretary District Court for report.

In the District Court

Prosecution Evidence

No. 16

Court Note
25th July 1962
(Contd.)

10 In the absence of the witnesses, this case cannot proceed for further trial today. I have no other alternative, but to postpone Case.

Further trial on 7.8.62.

Sgd. T.J. Rajaratnam
A.D.J. 25.7.62

NO. 13
A.W. SIRIPALA
(Continued)

No. 13
A.W. Siripala
Examination
(Continued)
7th August 1962

20 7.8.62 D.C. Criminal Case
No. 2839.

Further inquiry.
Accused 1 to 7 pt.
Same appearances as before.

Mr. Suraweera for the Crown calls.

A.W. Siripala, affd., 32 years, Sinhalese, Buddhist, P.C. 1089 of Diulapitiya Police.

30 On 6.2.61 at about 4.15 p.m. I was on reserve duty at the Diulapitiya Police Station. The 1st accused came to the Police Station and made a statement to me. I recorded it. I produce a certified copy of that statement marked P6. I am having

In the District
Court

Prosecution
Evidence

No. 13

A.W. Siripala

~~Cross-~~

Examination

7th August 1962
(Contd.)

Cross-examination

the information book in Court containing the relevant statement. According to the statement, Punchi Banda had removed the car on 31.12.60. The 1st accused did not bring any vehicle to the Police Station at that time.

Cross-examined by Mr. Adv. Sunil Rodrigo.

The date 31.12.60 cannot be a mistake. Diulapitiya Police Station is on a higher elevation than the road. I could not see the road from the charge room. If a vehicle was stopped on the road, I could see it, if it was stopped at a place where I could see it. I deny that the 1st accused told me that the date was 21.12.60 and not 31.12.60. I wrote out what the 1st accused told me.

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Cross-examined by Mr. Balasuriya nil.

Re-examined. Nil.

Sgd. T.J. Rajaratnam.

A.D.J. 7.8.62.

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No. 17

R.W. Amarasinghe
7th August 1962
Examination

NO. 17

R.W. AMARASINGHE

R.W. Amarasinghe, Affd., 47 years, Sinhalese, Buddhist, Inspector of Police, Ratnapura.

On 6.2.61 I was attached to Kegalla Police Station. On that day at about 9 p.m. I left Kegalla along with the complainant Punchi Banda for inquiries. I visited the Diulapitiya Police Station at about 10.35 p.m. At the Police Station on receipt of certain information I went to the house of the 1st accused. That was at about 11 p.m. I had the assistance of a P.C. from the Diulapitiya Police Station. I did not meet the 1st accused at his house I was not able to trace the 1st accused. I found Morris van bearing No. 1Sri 4350. Punchi Banda

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identified that vehicle as one of the vehicles that came on that day. Thereafter the 2nd accused came to the compound of the 1st accused. Punchi Banda identified him as one of the persons who took part in the robbery. Thereafter I took him into my custody. At about 1 a.m on 7.2.61 I visited the house of the owner of car No. EL8229. 10 The owner was present in the house. I took his car into custody and recorded his statement. I also searched Morris van bearing No. 1Sri 4350. I found two starting handles in that car. I am a motorist. As far as I am aware there is only one starting handle for a car. Punchi Banda identified one of those handles as belonging to him. 20 I took into custody that handle. I produce it marked P7. I then went in search of the 1st accused to various places, but I was unable to trace him at any of those places.

Cross-examined by Mr. Adv. Rodrigo.

I searched for the 1st accused in the house where he was alleged to be residing. I visited Negombo and Diulapitiya and made general inquiries. I did not go to the car sale of the 1st accused 30 at Negombo. I went to Wellawatta, and searched for the 1st accused. I think it was at high street, Wallawatta I searched for the 1st accused. I did not search for the 1st accused on the Colombo-Negombo road opposite the A.S.P's house. Punchi Banda gave me the registered number of the car. I only accompanied Punchi Banda in search of the car and 40 the 1st accused. Punchi Banda did not tell me as to how he came to possess this car. I did not look for a revolver. I searched for the Morris Minor car. I did not look for a particular knife.

Cross-examined by Mr. Balasuriya.

In the District Court

Prosecution Evidence

No. 17

R.W. Amarasinghe
7th August 1962
Examination
(Contd.)

Cross-Examination

In the District
Court

Prosecution
Evidence

No. 17

R.W. Amarasinghe
7th August 1962

Cross-
Examination
(Contd.)
Re-Examination

Subsequently I went to Diulapitiya in search of the 1st accused. I did not accompany P.S. Samarakoon on that trip. The accused were not known to me at that time. I had been 6 months at the Kegalla Police Station at that time. I did not know any of the accused.

Re-examined.

I searched for the 1st accused at Diulapitiya, high street, Wallawatta, and I made a general inquiry in Negombo area. I did not get any information regarding the 1st accused in the course of my enquiries.

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Sgd. T.J. Rajaratnam.

A.D.J. 7.8.62

No. 18

H.D.W. Appuhamy
7th August 1962
Examination

NO. 18

H.D.W. APPUHAMY

H. Don Wilfred Appuhamy, Sworn, 35 yrs., Sinhalese, Roman Catholic, Driver residing at Kanaula, Katana.

20

I was the registered owner of the car No. EL 5242.

Q. Did you exchange that car with another car on 6.10.60?

Mr. Adv. Rodrigo objects to this question on the ground that it is a leading question.

Mr. Balasuriya also objects on the same ground.

30

Order.

I allow the question.

Sgd. T.J. Rajaratnam.

A.D.J. 7.8.62.

- A. Yes. I exchanged for the Ford Prefect Car No. EN 3111.
- Q. Who was the owner of that car?
- A. I cannot remember the name of that person who owned that car.
- Q. Did that person hold a receipt for that car?
- A. He had a receipt.
- Q. Was that man from Kegalla area?
- 10 A. Yes. That man is from Kegalla area.
- Q. Was that man from Hiriwadunna?
- A. That man must be from Hiriwadunna.
- Q. Do you remember the name when you gave evidence in the Lower Court?
- A. Yes.
- Q. Did you exchange car No. EL 5241 with that car?
- A. I exchanged that car not with that person.
- 20 Q. Who was the broker to that transaction?
- A. One Hendrick Appuhamy was the broker to that car.
- Hendrick Appuhamy is the 1st accused.
- Q. Did you sign the transfer form blank?
- A. Yes.
- Shown P4.
- Q. Did you sign this receipt?
- A. Yes. I signed this receipt. I have been dealing with cars before this.

In the District Court

Prosecution Evidence

No. 18

H.D.W. Appuhamy
7th August 1962
Examination
(Contd.)

In the District
Court

Prosecution
Evidence

No. 18

H.D.W. Appuhamy
7th August 1962
Examination
(Contd.)

Transfer forms are generally given blank. If there is anyone to fill it, then it is filled and then given. The transfer form for the Ford Prefect car I received blank.

- Q. Who acted as a broker for that car?
A. 1st accused was the broker for that car also.

I wrote P4 in his name.

Cross-
Examination

Cross-examined by Mr. Adv. Sunil Rodrigo

10

- Q. You wrote P4 in the name of the 1st accused because he sold the car to you?
A. He said that he was the buyer. Both of them were present.

The document was written as Morris car was sold to Hendrick Appuhamy. In the receipt P4 I say that I sold the Morris Minor car to Hendrick Appuhamy. The blank transfer form for the Morris Minor car I signed and gave it to Hendrick Appuhamy. The registered book also I gave to Hendrick Appuhamy. Punchi Banda was present there. I handed over the transfer form of the car to Hendrick Appuhamy. Shown 4D6. I write Sinhala. I received 4D6. It is addressed to me. I was aware that the postcard was not written by Hendrick Appuhamy. It was a postcard purported to be written by Hendrick Appuhamy.

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Cross-examined by Mr. Balasuriya.

At the time the transaction took place and I handed over the Morris Minor car to Hendrick Appuhamy, Punchi Banda was present.

Re-
Examination

Re-examined.

Shown 4D6. 4D6 was in my custody. I had 4D6 with me when I came for this case.

I may have handed it over to the Proctor. I cannot remember whether I have handed it over to the Court or to the Proctor from Negombo. It might be to Mr. Balasuriya. I stated that I exchanged the Ford Prefect car with the Morris Minor car.

In the District Court

Prosecution Evidence

No. 18

H.D.W. Appuhamy
7th August 1962
Re-Examination
(Contd.)

Q. Was any cash paid in part payment of the car?

A. I paid money.

10 Q. Who paid money and to whom?

A. All the transactions were with Hendrick Appuhamy.

I cannot say to whom I paid the money. I am sure the amount is Rs.450/-.

Q. If you made an exchange of cars to whom did you pay the money?

A. I would have paid the money to Punchi Banda.

20 I cannot remember whether I paid money to Punchi Banda or not.

T.J. Rajaratnam.

A.D.J. 7.8.62.

NO. 19

L.A. GUNAWARDENE

L.A. Gunawardene, Sworn 49 years, Christian, Sinhalese, Proctor S.C.J.P.U.M. Kegalla.

No. 19

L.A. Gunawarden
7th August 1962
Examination.

30 I am also a justice of peace and an unofficial Magistrate. On 24.3.61 on instructions from the Magistrate, Kegalla, I held an identification parade in the Magistrate's Court Lawyers room at 11.15 a.m.

In the District
Court

Prosecution
Evidence

No.19

L.A. Gunawardene
7th August 1962
Examination
(Contd.)

I satisfied myself that there was no access to the public. S.I. Ghanendran and P.C. 5751 Ekanayake were in charge of the parade. Mr. Balasuriya, Proctor appeared on behalf of 1st suspect A.H. Fernando who is the 6th accused in this case and 7th accused Jayawardene Hemenddanath. The accused in this case were in fiscal's custody. The parade consisted of 13 male persons. They were requested to change their costumes and to take any place in the parade. They took different places in the parade. I asked the Court Peon Punchi Banda to go to the A.S.P's office which is about 400 yards away from the Court house, and bring the witnesses to the shed of the Magistrate's Court. First witness Upali Bandula Dias was asked to identify any of the persons whom he saw on 6.2.61 coming in a Morris van and in a car to Hiriwadunna, and forcibly removing the Morris Minor car from K.M. Punchi Banda. He failed to make any identification. The suspects were asked to change their costumes and places, but they elected to be in the same costumes and in the same places. The second witness T.G. Gamage was then brought in by the Peon, and he was asked to identify any of the persons that he saw on 6.2.61. He was also unable to identify any of them. Suspects were again asked to change their places and clothes, but they elected to be as they were. The third witness M.R. Gunaratne was brought in, and he was asked to identify any one of those people who blocked the car No. EL 5241 on 6.2.61 in which he was travelling, and anyone who removed the car from the possession of K.M. Punchibanda. He said that none of them was present in the parade. Suspects were again asked to change their places and costumes. But they elected to be in the same costumes and in the same places. I then sent for the 4th witness, whose name on the list appears as A.R. Wickrema Singho, but

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who stated that his proper name is A.R. Wickramapala. He was asked to identify any one of those persons who blocked the car No. EL 5241 in which he was travelling, and any person who removed that car from the possession of K.M. Punched Banda. He was also unable to identify any person. The suspects were asked to change their clothes and their places. But they wished to remain as they were. 5th witness A. Suwendrahany was sent for and he was asked to identify the people who came to Hiriwadunna on 6.2.61 and forcibly removed car No. EL 5241 from the possession of K.M. Punched Banda. Witness pointed out to the 3rd person from the left who was suspect B.A. Jayawardene Dewendranath. The suspects were asked to change their places and costumes, and B.A. Jayawardene Dewendranath changed his clothes. I then sent for witness No. 6 Wickrame Singho who was asked to identify any person who removed the car No. EL 5241 from the possession of K.M. Punched Banda. He was unable to point out any person. Suspects were asked to change their clothes and places, but they elected to be in the same costumes and in the same places. I then sent for the 8th witness K.M. Punched Banda who was asked to identify those who came with Hendrick Appuhamy in a van in a car on 6.2.61 and forcibly removed the car No. EL 5241 from his possession, and also the person who removed the cash from his possession. He pointed to the 11th person who was the 6th accused Hendry Fernando, and 2nd suspect B.A. Jayawardene Dewendranath 7th accused. I then asked him to point out the persons who removed the cash from his possession. The witness stated that the person who removed the cash was not in the parade. Then the parade was concluded. The Proctor who appeared for the suspects stated that he was satisfied with the manner

In the District Court

Prosecution Evidence

No.19

L.A. Gunawardene
7th August 1962
Examination
(Contd.)

In the District
Court

Prosecution
Evidence

No. 19

L.A. Gunawardene
7th August 1962
Examination
(Contd.)

in which the parade was held. Witnesses
were in the custody of the Fiscal.

Cross-examined by Mr. Adv. Sunil Rodrigo.

S.I. Ghanendram and P.C. Ekanayake were
in charge of the parade. He is F.A.
Chanendran.

Cross-examined by Mr. Balasuriya. Nil.

Re-examined - Nil.

Sgd. T.J. Rajaratnam.

7.8.62.

16

No. 20

Samarakoon
7th August 1962
Examination

NO. 20

SAMARAKOON

Samarakoon, Affd., 39 yrs., Sinhalese,
Buddhist, P.S. 3207 of Kegalla Police.

I know Diulapitiya area and Negombo
area fairly well. I was stationed at
Minuwangoda for one year. On 9.2.61
on orders of Inspector of Crimes I went
to Diulapitiya area in search of car
No. EL 5241. Till late I searched for
that car and for the 1st accused. I
went to the places usually where the
1st accused was alleged to be residing.
I was not able to trace him or the car.
I thereafter went to the Minuwangoda
Police station and informed them. On
15.2.61 I went again for further
inquiries. On that day I have visited
Diulapitiya, Negombo, Seeduwa and
Minuwangoda. At all those places I was
making inquiries for the 1st accused
and the car. I was not able to meet the
1st accused, or that car. On 16.2.61 I
visited the house of 1st accused at 10
p.m. The house was closed. The 1st
accused was not present. I found P13
the car No.EL 5241 in the garden. I

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examined that car. I found that the engine of the car was warm. I formed the impression that someone had brought the car before my arrival and I left it there. I sounded the horn of the car, but no one came there I found the switch key of the car in the key hole. As it was the car which was wanted in this car, I took the car into my custody and brought it to Kegalla. On the following day Punchi Banda examined the car. He informed me that battery had been changed, and certain tools were missing. He also told me that tyres have been changed. On that day at 9.30 a.m. on receipt of a telephone message I went to Salgoda Bakery. That bakery is about a mile from the Police Station on the Colombo-Kandy road, and it is within the U.C. Limits of Kegalla. I went with Punchi Banda. Punchi Banda pointed out to me the 1st accused, 3rd accused and the 4th accused as three of the persons who had taken part in the robbery. It is not correct to say that these three accused came to the Police Station and surrendered. After they were pointed out to me by Punchi Banda I arrested them in the Bakery and I recorded their statements. 1st accused made a statement to me which I recorded. Thereafter I handed over these three accused to P.C. Nanaratne as identification parade was going to be held. D.I.B. office is situated separate from the charge room. When the door is closed, no outsider can see inside the office from outside.

40 Cross-examined by Mr. Adv. Sunil Rodrigo

I did not bring that book on that day.

Cross-examined by Mr. Balasuriya.

The day I arrested the three accused in the Salgoda Bakery was the day on which

In the District Court

Prosecution Evidence

No. 20

Samarakoon
7th August 1962
Examination
(Contd.)

Cross-Examination

In the District
Court

Prosecution
Evidence

No. 20

Samarakoon
7th August 1962

Cross-
Examination
(Contd.)

Re-examination

this case was called. That morning I do not know where Punchi Banda was. I accompanied Punchi Banda to the Salgoda Bakery. It is not true that the three accused came to surrender to Court. I know 1st, 2nd, 3rd and 4th and the last accused.

Re-examination.

As far as I remember it was a day that this case was called on that day. Magistrate's Court, Kegalla sits at about 9.30 a.m. and persons are expected to be in Court at about that time. When I arrested those accused, it was about 9.30 a.m.

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Sgd. T.J. Rajaratnam

A.D.J. 7.8.62.

No. 21

D.M. Nanaratne
7th August 1962
Examination.

NO. 21

D.M. NAMARATNE

D.M. Nanaratne, Affd., Sinhalese, Buddhist, 32 years, P.C. 3019, of Traffic Police, Colombo.

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On 17.2.61 I was attached to the Kegalla Police Station. On that day P.S. Samarakoon handed over to me three suspects. I was instructed to keep the three suspects in the D.I.B. room closed without anyone being able to see them, as there was going to be an identification parade. I kept them in my custody till 12.45 p.m. I took all necessary precautions to see that no one would be able to see the suspects. No outsider was allowed to see them while they were in my custody. At 12.45 p.m. Fiscal Escort Peon Punchirala came and took the suspects away. Fiscal Escort Peon Punchirala took them away covered with rain coats. They were 1st, 3rd and 4th suspects.

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Cross-examined by Mr. Adv. Sunil Rodrigo
nil.

Cross-examined by Mr. Balasuriya.

The suspects were handed over to me at 9.45 a.m. I have no notes with me now. I am speaking from memory. According to the notes I made, the suspects were handed over to me at 9.45 a.m.

Re-examined. Nil.

T.J. Rajaratnam

A.D.J. 7.8.62.

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NO. 22

D.P. DISSANAYAKE

D.P. Dissanayake, Affd., 33 years, Sinhalese, Buddhist, P.C. 4251, presently of Police Training School, Katukurunda.

On 7.2.61 I was attached to the Kegalla Police Station. On that day at 12.45 p.m. last witness handed over to me the three suspects. They are 1st, 3rd and 4th accused. I was to bring them to Court for an identification parade. I took charge of them from the D.I.B. Office. I brought them covered with rain coats along with Fiscal Escort Peon Punchirala, and I handed the suspects to Court. When they were brought from the D.I.B. Office, there was no opportunity for anyone to see them.

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Cross-examined by Mr. Adv. Sunil Rodrigo - nil.

Cross-examined by Mr. Balasuriya - Nil.

Sgd. T.J. Rajaratnam

A.D.J. 7.8.62.

In the District Court

Prosecution Evidence

No. 21

D.M. Nanaratne
7th August 1962

Cross-Examination
(Contd.)

No. 22

D.P. Dissanayake
7th August 1962
Examination

In the District
Court

NO. 23

B.M.P. BANDA

Prosecution
Evidence

B.M. Punchi Banda, Affd., 34 years,
Sinhalese, Buddhist, Peon, Magistrate's
Court, Kegalla.

No.23

B.M.P. Banda
7th August 1962
Examination

On 24.3.61 at about 11.15 a.m. on
orders of Court I brought witnesses from
the Police Office to the Court house.
They were in charge of P.C. Pathmanathan
Pillai. I brought the witnesses and kept
them in the witness shed between the
Kachcheri and the Court house. When their
names were called out I sent them one by
one. While they were travelling from the
witness shed to the Court house, they
were within my sight. Before they gave
evidence and while they were in the
witness shed, they were in my custody. No
one had any opportunity to speak to them.
They were not able to speak while going
to the Court house. K.M. Punchi Banda
was one of the witnesses.

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Cross-examined by Mr. Adv. Sunil Rodrigo -
Nil.

Cross-examined by Mr. Balsuriya - Nil.

Sgd. T.J. Rajaratnan
A.D.J. 7.8.62.

No. 24

NO. 24

S.R. SIRIWARDENE

S.R. Siriwardene
7th August 1962
Examination

S.R. Siriwardene, affd., 45 years, Sinhalese,
Buddhist, Peon, Magistrate's Court, Kegalla.

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On 17.2.61 at about 12.35 p.m. on orders
of Court I went to the Police Office and
brought the witnesses to the Court house. They
were in charge of P.C. Kularatne. I kept
then in my custody and sent each of the
witness as their names were called, one by one.

While they were going to the Court house, they were within my sight, and no one spoke to them. While they were in my custody, no one was able to speak to them.

In the District Court

Prosecution Evidence

Cross-examined by Mr. Adv. Sunil Rodrigo - Nil.

No. 24

Cross-examined by Mr. Balasuriya - nil.

S.R. Siriwardene
7th August 1962
Examination
(Contd.)

Sgd. T.J. Rajaratnam
A.D.J. 7/6/62.

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NO. 25

E.R. SAMARAKOON

E.R. Samarakoon, Affd., 39 yrs., Sinhalese, Buddhist, Fiscal Escort, Peon, Prison Lock up, Kegalla.

No. 25

E.R. Samarakoon
7th August 1962
Examination

On 24.3.61 at about 11.15 a.m. on orders of Court I brought accused H. Fernando the 6th accused and 7th accused Devendranath to the Office. I brought them covered with blankets. When they were being brought, no one was able to speak to them, and no one was able to see their faces.

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Cross-examined by Mr. Adv. Sunil Rodrigo Nil.

Cross-examined by Mr. Balasuriya - Nil.

T.J. Rajaratnam
A.D.J. 7.8.62.

In the District
Court

NO. 26

N.B.K. PUNCHIRALA

Prosecution
Evidence

No. 26

N.B.K. Punchirala
7th August 1962
Examination

N.B.K. Punchirala, Affd., 61 years,
Sinhalese, Buddhist, retired Fiscal
Escort Peon, residing at Pussella,
Kegalla.

On 17.2.61 I was Fiscal Escort Peon
attached to Kegalla Prison Lock up. On
that day at about 12.30 p.m. on orders
of Court I brought the 2nd accused Sapin
Singho from the Fiscal lock up. He was
brought covered. During the time he was
brought, no one was able to see him, and
no one was able to speak to him.

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Cross-examined by Mr. Adv. Sunil Rodrigo
Nil.

Cross-examined by Mr. Balasuriya - Nil.

Sgd. T.J. Rajaratnam
A.D.J. 7.8.62

No. 27

M.P. Pillai
7th August 1962
Examination

NO. 27

M.P. PILLAI

M.Pathmanathan Pillai, Affd., 27 years,
Ceylon Tamil, Hindu, B.C. 7877 of Kegalla
Police.

On 24.3.61 at about 6.30 a.m. I
guarded the witnesses in this case at the
A.S.P's Office till the Court sent for them.
The A.S.P.'s office is about 400 yards
away from the Magistrate's Court, Kegalla.
That place is not visible from the
Magistrate's Court, Kegalla. They were in
my charge till 11.15 a.m. When Court Peon
Banda came and removed them to the Magistrate's
Court. While they were in my custody no
one spoke to them.

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Cross-examined by Mr. Adv. Sunil Rodrigo - nil.
Cross-examined by Mr. Balasuriya - nil.

Sgd. T.J. Rajaratnam
A.D.J. 7.8.62.

NO. 28
J.J. WELLS

In the District
Court

Prosecution
Evidence

Jacob John Wells Sworn, Ceylon
Tamil, Anglican, 30 years,
businessman, Residing at Mattakkuliya.

No. 28

J.J. Wells
7th August 1962
Examination

10 On 8.9.61 I was attached to the
Office of the Registrar of Motor
Vehicles. I represented the
Registrar of Motor Vehicles in
giving evidence. I had the file in
my custody when giving evidence. I
have not brought that relevant file
now regarding car No. EL 5241.

At this stage Mr. Suraweera moves
that R.M.V. be asked to produce or
caused to be produced the relevant
file as regards car No. EL 5241.

It is already 4 p.m. now.

20 Further trial is postponed for
7.9.62.

Accused are warned.

Sgd. T.J. Rajaratnan.
A.D.J. 7.8.62.

No. D.C.Cr.2839.

12th October 1962

Accused 1 to 7 present.

Part heard.

Same appearances as before

Prosecuting Officer calls:

30 J.J. Wells, Ceylon Tamil, Anglican
Sworn, 30 years, Businessman Residing
at Colombo.

On the 8th of September last year
I was a Clerk attached to Registrar of
Motor Vehicles, Colombo. I am now
retired. I gave evidence in this

In the District
Court

Prosecution
Evidence

No. 28

J.J. Wells
12th October 1962
Examination
(Contd.)

connection in the Lower Court. I now represent the Registrar of Motor Vehicles. When a Motor Vehicle is sold the Registered owner of that vehicle must notify the Registrar of Motor Vehicles on form No. M.T.A.6. That form must be signed by the Registered owners and acknowledged by the new owner. The new owner must thereafter make an application for the registration of that vehicle in his name on form M.T.A. A8. Sometimes when these forms are sent to the office of the R.M.V. there is a delay in the attending to them because of the volume of work. When the Registrar is satisfied as regards the particulars on M.T.A. form 6 and M.T.A. 8 the vehicles are registered in the name of the new owner. After the two forms have been sent to the R.M.V. it is not necessary for the new owner or the old owner to notify the R.M.V. I have before me the file as regards Morris Minor car EL 5241. On 20.12.60., the owner of that car was Kuruppu Mudiyanseelage Punchi Banda. The actual registration was effected on 2.1.61. According to the file Punchi Banda was in possession from 20.12.60. The previous owner was H.D. Wilbert Appuhany of Katana. Shown P3. This is the registration certificate for that car. I have also the file relating to the car EL 8241. It is a Ford Prefect car. The registered owner of that car was B. Carolis Silva.

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Shown P5. P5 is the registration certificate of that car. I have the file in respect of Morris Minor Station wagon 1 Sri 4350. The present owner of the car is P.A. Dharmasona of Wellawatta.

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He is the registered owner of that car from 17.9.60. Carolis Silva is a man from Divulapitiya. The vehicle No. 1 Sri 4350 came into possession of Dharmasena on 17.9.60. The actual registration was effected on 25.7.61. The present owner of that vehicle is J.M. Junaideen, of Akurana. Shown P12.

This is a certified copy of the registration of that vehicle I produce P3, P5 and P12.

In the District
Court

Prosecution
Evidence

No.28

J.J. Wells
12th October 1962
Examination
(Contd.)

Cross-
Examination

10 Cross-examined by Mr. S. Rodrigo.
The application for registration of vehicle No. EL 5241 was received in the office on 22.12.60 according to the date stamp. Normally the R.M.V. delays the registration of vehicles for above two or three days, due to the volume of work. If a staff Officer is interested in a case he can effect a transfer in quick time. The original application of Punchi Banda which was received in the Office was short of five rupees stamps. There is a minute filed calling for balance stamps. According to the file the transfer has taken place on 2.1.61.

20 Q. If one has to transfer a second hand car what are the documents that should be sent to Registrar Motor Vehicles?

30 A. A Notice of change of possession on form M.T.A.6 and application for registration in the name of new owner on form M.T.A. A8, Insurance Certificate in the name of new owner, Revenue Licence for the year and certificate of registration.

I produce letter marked 4D9 sent by Punchi Banda of Eriyaula dated 22.12.60 received at the Commissioner of Motor Transport on 23.12.60.

Cross-examined by Mr. Balasuriya. No questions. Re-
Examination
Re-examined.

Q. Did you receive a telegram to withhold the registration?

A. No.

40 There is no such telegram in the file except asking to send the licence of car No. EL5241.

In the District
Court

Cross-examined by Mr. Rodrigo with
permission of Court:

Prosecution
Evidence

Q. Although there is no telegram in the
file there is a letter?

No. 28

A. Yes.

J.J. Wells
12th October 1962
(Contd.)
Cross-
Examination

Sgd. T.J. Rajaratnam
12.10.62.

A.D.J.

No. 29

NO. 29

10

F.A. Ghanedran
12th October 1962
Examination

F.A. GHANEDRAN

F.A. Ghanedran, Ceylon Tamil, Roman
Catholic, Sworn, 23 years, Student,
Jaffna.

On 6.2.61 I was a Sub Inspector of
Police attached to the Kegalla Station.
I am not in the Police service now.
On that day at about 12.30 p.m. one
K.M. Punchi Banda made a complaint at the
Police Station. I recorded that complaint
and I produce a certified copy of same
marked P9. After having recorded his
statement I took charge of his shirt which
he was wearing at the time. I produce
shirt marked P10. I found the pocket of
the shirt at the time was torn. I
informed H.Q.I. for necessary action.

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Cross-examined by Mr. Rodrigo. No
questions.

Cross-examined by Mr. Balasuriya: No
questions.

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Sgd. T.J. Rajaratnam

A.D.J. 12.10.62.

NO. 30W.A.T. APPUHAMY

W.A. Thegis Appuhamy, Sinhalese, Buddhist, Affd. 45 years, Trader, residing at Aluthapana.

In the District
Court

Prosecution
Evidence

No. 30

W.A.T. Appuhamy
12th October 1962
Examination

10 In February 1961, I was in possession of a Morris Minor Wagon 1 Sri 4350. I purchased same from Ariyadasa. I purchased same in August 1960. Although I bought in August 1960, I did not register it as I did not get the Finance transferred in my name. I used it for about two weeks. I sold it to the 3rd accused. I handed over all the documents to him. I gave evidence in Magistrate's Court on 8th September 1961. At that time the vehicle was in possession of the 3rd accused.

20 Cross-examined by Mr. Rodrigo. No questions.

Cross-examined by Mr. Balasuriya. No questions.

Sgd. T.J. Rajaratnam

A.D.J. 12.10.62

NO. 31B.M. KULARATNA

30 B.M. Kularatna, Sinhalese, Buddhist, Affd. 31 years, P.C. 4928 of Kegalla Police.

No. 31

B.M. Kularatna
12th October
1962
Examination

On 11.2.61 I visited Hathpokuna in Maho in search of these accused but I was unable to find them. On 17.2.61 there was an identification parade in this Court. On that day from 6.30 a.m. I guarded the witness V.B. Dias, T.G. Gamage, M.P. Gunaratne and A.P. Wickramapala at the Police Office, Kegalla. That place is about 250 yards

In the District
Court

Prosecution
Evidence

No.31

B.M. Kularatna
12th October
1962

Examination
(Contd.)

from the Court house and is not within the sight of the Court House. at 12.30 p.m. the Court peon brought these witnesses to the Court house. During the time they were in my custody they had no opportunity of talking to anybody. They did not talk to anybody.

Cross-examined by Mr. Rodrigo. No questions.

Cross-examined by Mr. Balasuriya. No questions.

10

Sgd. T.J. Rajaratnam

A.D.J. 12.10.62

No.32

C.H. Udulagama
2nd November 1962
Examination

2.11.62

NO. 32

C.H. UDULAGAMA

D.C.K. Case No.2839

Accd. Pt.

Same appearances as before.

Mr. Suraweera for Attorney
General calls:

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C.H. Udulagama, Affd., 56 years, Sinhalese, Buddhist, J.P.U.M. Crown Proctor, Kegalla.

I am a J.P.U.M. and Additional Magistrate, Kegalla. On 17.2.61, an identification parade was held by me. I produce marked P11 the notes I made. I took all the necessary precautions to ensure a fair parade. One of the witnesses who came before me was Gunaratne and he pointed out Siripala Pereera and Dharmasena as persons who removed the car from the possession of Punchi Banda. Siripala Perera and Dharmasena are the 4th and 5th accused.

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Cross-examined. Nil.

Sgd. T.J. Rajaratnam.

A.D.J. 2.11.62.

NO. 33COURT NOTE

Mr. Surawcera moves to tender witness
Dias who is in the indictment for
Cross examination.

Upali Bandula Dias, Affd., 22 years,
Sinhalese, Buddhist, Private, Ceylon
Army, residing at Panagoda.

Cross-examined by Mr. Adv. Rodrigo, Nil.

10 Cross-examined by Mr. Balasuriya. Nil.

Sgd. T.J. Rajaratnam.

A.D.J. 2.11.62.

In the District
Court

Prosecution
Evidence

No. 33

Court Note
2nd November 1962

NO. 34COURT NOTE

Mr. Surawcera states that there is one
more witness on the indictment on whom
summons had not been served. Namely
T. Mahatun. He moves to read the
deposition of the accused when they were
charged after the non-summary inquiry was
completed.

1st accused stated "I am not guilty"

2nd accused stated "I am not guilty"

3rd accused Dharmasena stated "I am
not guilty",

4th accused Siripala Perera stated "I
am not guilty".

5th accused Dharmasena alias Lany
stated "I am not guilty".

30 6th accused Henry Fernando stated "I
am not guilty"

7th accused Jayawardene Hemendranath stated
"I am not guilty".

No. 34

Court Note and
Direction
2nd November
1962

In the District
Court

Prosecution
Evidence

No.34

Court Note and
Direction
2nd November
1962
(Contd.)

Prosecution closed reading in evidence
from P1 to P13.

I call upon the accused for their
defence. Mr. Adv. Rodrigo addresses Court
and states that he has no case to meet.

He refers to section 210 of the
Criminal Procedure Code.

Mr. Balasuriya addresses Court and also
refers to section 210 of the Criminal
Procedure Code.

10

Mr. Adv. Rodrigo states that he was
addressing Court on section 210 C.P.C. and
at that stage he had not considered to call
evidence or not.

Mr. Balasuriya states that he is
addressing Court on section 210 of the
Criminal Procedure Code.

At this stage Mr. Surawera for
prosecution states that Court had called
for a defence, and that Learned Counsel for
the accused were addressing Court and
stated that there was no case to meet. They
should either call evidence for the defence
or address Court without calling evidence.

20

I indicate to Counsel that I called
for a defence after considering the provisions
of Section 210 (1) of the C.P.C.

Sgd. T.J. Rajaratnam

A.D.J. 2.11.62.

NO. 35H.A.H. APPUHAMYIn the District
CourtDefence EvidenceNo.35Mr. Adv. Rodrigo calls the 1st
accused.H.A. Hendrick Appuhamy, affd., 39
yrs., Sinhalese, Buddhist,
Businessman, residing at Wellawatta.H.A.H. Appuhamy
2nd November 1962
Examination.

10 I am the 1st accused in this
case. I remember witness Punchi Banda
who gave evidence in this case. I
knew him for the last 4 or 5 years.
I have done business with him.
Punchi Banda knows 4th accused
Siripala Perera. Punchi Banda had
taken cars from Siripala Perera.
I remember September 1960. Punchi
Banda bought a car from me for Rs.4000/-
The number of that car is EY 1840.
20 I remember 16.10.60. On 16.10.60 I
bought car No. EL 5241 from Wilbert
Appuhamy. That receipt I obtained
from Wilbert Appuhamy. Wilbert Appuhamy
delivered the car to me. I owed Punchi
Banda a sum of Rs.500/-. Punchi Banda
came a number of times to ask for that
money. At that time I did not have
money. I said that I had no money and
after that he insisted on my.....
and I had asked him to take the car.
30 Apart from the receipt of the car,
Wilbert Appuhamy gave me the
registration card also. After Punchi
Banda came and met me a number of times,
I had no money to give him. I gave him
the car No. EL 5241 to keep it with him.
Punchi Banda when he came to meet me,
regarding the earlier car, told me that
he met with an accident. He said that
he had written to the Finance Company
40 to get the damages. I remember the day
as December 1960. Punchi Banda told
me that Austin car was seized by the
Finance Company. No, he did not say that
the car was taken but I got information.
Thereafter I went to the Finance

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Company I had to give some money to the Finance Company, and I got that car. Shown 4D10. This is the receipt. I had given Morris minor car No. EL 5241 to one Silva of Negombo to run it for hire. Punchi Banda with others had gone to Negombo saying that he wanted the car, and took the car away. Thereafter, I did not meet Punchi Banda. I did not meet Punchi Banda between February and this incident. I brought back the car from Punchi Banda. I sent a message and he said that he would come and give the car. But he never came. I made an entry at the Negombo Police Station on the day of the incident. We went to meet Punchi Banda. On our way we met him going away. We overtook his car and asked him to slow down and I asked him to give my car back and he gave the car to me. He said that he would come on the following morning to adjust the transaction. On my way back I made an entry at the Divlapitiya Police Station that I was taking back the car belonging to me. The correct date that Punchi Banda removed the car was on 21.12.60. Shown 4D6. I did not write 4D6. Wilbert Appuhany gave me the post card. I produce 4D2 and 4D6. On any day I did not have any intention of selling this car to Punchi Banda. That car is mine. That Morris minor car belonged to me. 4th accused is a relation of mine. He lives at Horagasmulla, at Diulapitiya, near the hospital. I have sent Siripala in search of this car. Siripala had written letters to Punchi Banda on my behalf.

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Cross-
Examination

Cross-examined by Mr. Balasuriya.

At the time I bought the Morris Minor car, Punchi Banda came to my car sale to demand for the money. As he was troubling me I gave the transfer book to Punchi Banda. I had no intention of selling this car to Punchi Banda, when I gave him the transfer books. When Punchi Banda came I had no money with me to pay him. Punchi Banda stole my car

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while it was being used by one Silva. Silva complained to me that Punchi Banda had stolen the car. I made a complaint against Punchi Banda at the Negombo Police Station. In this case I have summoned the Negombo Police to give that evidence. An Inspector of Police, Negombo gave me a letter to be given to the Kegalla Police. I gave that letter to Inspector Ratnayake of the Kegalla Police. The Police did not take any action regarding my complaint. I was not satisfied with the treatment meted out to me by the Kegalla Police regarding this case. I sold the A40 car to Punchi Banda.

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Cross-
Examination
(Cont.)

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Q. Is it not a fact that this car met with an accident on 6.11.60?

A. I cannot say.

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I bought the Morris Minor car on 16.10.60. That car met with an accident before I got the receipt. The accident was before the money was paid to the Finance Company. On that day the 2nd accused was nowhere. 7th accused was not there on that day.

Cross-examined by Prosecution.

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I buy cars and sell cars. That is the business I do. My home is at Wellawatta. I have my car sale in Negombo. We all are not from Negombo. 3rd accused is not from Negombo. Others are from Negombo. I know them very well. They do not help me in my car sale. Siripala helps me in my business. 3rd accused is residing at Wellawatta. He lives about $\frac{1}{2}$ a mile away from my house. 3rd accused is my brother. The Rs. 500/- I owed Punchi Banda I had not paid. I know that the certificate of registration has no value at all. That certificate was not registered in my name. I had given similar certificates to other people and taken money. Punchi Banda agreed to keep the book till his Rs.500/- was paid. I handed over the transfer forms to Punchi

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Banda. The transfer forms regarding car No. EL.5241 were not signed by me. The transfer forms given to me by Wilbert Appuhany when I bought the car from him, I handed over to Punchi Banda. If he suspected me, I asked him to keep those forms with him. I did not register the car in my name. When I buy a car I get a receipt and when a purchaser comes I register the car in his name. I obtained the receipts in my name, because I pay for it. They were blank forms signed by Wilbert Appuhany. I did not get the registration in my name. If I did not sell the car, then I would register the car in my name. I do not know anything about the robbery that took place in Negombo except what Silva told me. Silva has not come today. I did not see Silva today. I have instructed my Proctor to summon Silva and Piyaratne. I know Silva of Negombo. I cannot remember as to how many times I had seen Silva in Court. I had seen him 3 or 4 times in Court. I did not see Silva today. Today Silva is not giving evidence for me. Piyaratne had come to court 3 or 4 times. I have spoken to Piyaratne. It is not correct that the car was not stolen on 31.12.61. If I had stated so to the Police, it is not correct. There was no dispute with Punchi Banda regarding some money. Punchi Banda was a friend of mine. I met him on the day in question. I asked him to return my car. He asked me to take the car away and he said that he would come on the next day to finalise the transaction. He did not create any trouble. He gave me the car. I took it away. I know that he had done a wrong. We acted in a friendly way. Negombo Police had asked me to inform them if the car was found. I did not go to the Negombo Police Station. I went to the Diulapitiya Police Station. When I made the complaint I did not expect any trouble. I admit having told the Diulapitiya Police that I came to make that complaint in order to prevent further troubles. I know that Punchi Banda was angry with me. Siripala Perera came with

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me on that day. Dharmasena also came.
 Lany also came. Henry Fernando did not
 come on that day. I did not tell the
 Police Henry Fernando came with me that
 day. 7th accused did not come on that
 day. In all 4 persons came with me. We
 came in two vehicles. One car is Ford
 No. EL 8229. 5th accused drove that car.
 10 The number of the other car is 1 Sri 4350
 and it was driven by me. Two persons
 travelled in that car, and two persons
 travelled in the other car. Dharmasena
 came from Nuwara Eliya and we met him at
 Kegalla. I told him that I had come to
 take my car and he also joined up. I do
 not know that Punchi Banda had registered
 the car in his name. I do not know
 whether the car was in the name of any
 one else. We came to the Police
 20 Station. I deny that I was arrested by
 P.S. Sanarakoon at the Salgado Bakery. If
 Sergeant Sanarakoon says that, it is not
 correct. It is not correct that I was in
 the Salgado Bakery. Sergeant Sanarakoon
 went there. I came to the Police Station
 on my own, and I made a statement to the
 Police station on my own, and I made a
 statement to the Police. I signalled Punchi
 Banda to stop the car. I deny that I told
 30 the Police that as Punchi Banda did not
 stop the car, I overtook his car and stopped
 the car. I asked Punchi Banda as to why
 he did not return the car. Punchi Banda did
 not try to assault me, with the starting
 handle. I did not tell the Police that
 Punchi Banda tried to hit me with the
 starting handle. When I took the Morris
 Minor car, the starting handle was in the
 car. I am not aware that the Police Officer
 40 who went to inquire into this case found the
 starting handle in a Morris Wagon. The
 starting handle was in the Morris Minor car.
 When the police took charge of the car
 from me, the starting handle was in the car.
 If the Inspector says that the starting
 handle was found in another car, it is not
 correct. The Police told me that the car
 had been transferred in the name of Punchi
 Banda. That was before we were arrested.
 50 The Police came to my house in February.
 I was not at home on that day. I came to

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Examination
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know that the Police had come to my house. But I did not go to the Police station to find out as to why the Police had come to my house. About 2 weeks later the Police came to my house. At that time I knew that the car had been transferred in the name of Punchi Banda. Certificate of registration is a most important thing regarding a car. Punchi Banda promised to bring it on the next day. We parted as best friends, but Punchi Banda did not come on the next day. Punchi Banda came the same night to the Police Station and also on the following day. Thinking that the Police would harass me, I went to the Police Station. I knew that Punchi Banda was not angry with me. The Police had assaulted my watcher who watched my house. He had been assaulted by the Police. I had not made a complaint regarding that assault. The Police had no reason to assault him. 2nd accused had seen Punchi Banda. I do not know why the 2nd accused was implicated in this case. I did not go in search of Punchi Banda, when he did not come back. I have asked for the Certificate of registration. After I made the complaint at the Divulapitiya Police Station, the car was in the house of the owner of the sales. The name of that person is Karunaratne. I kept the car at the house of Karunaratne. The Police found the car in the house of Karunaratne. I was not there when the Police recovered the car. I did not go to show the car to the Police. I hear that there was a case and we came and surrendered. The Police told me that we had stolen a car. Although I knew that I was implicated in the robbery of a car, I came to the Police Station about 14 days later. I knew that an innocent man had been assaulted in a robbery case. I did not come to see him. I did not come to retain a lawyer. I gave my address as Horagasnulla. That is the place where 2nd accused is residing. It is about 14 miles away from the place of Karunaratne. It is not

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correct to say that the car was found in my garden. The car was not used by anyone when it was in the house of the owner. It is not correct that engine of the car was warm when the Police found it. The Police found it about 14 miles away from my house. P.S. Sanarakoon who gave evidence is not angry with me. When he went, the doors of my house were closed. I cannot remember when I came and surrendered at the Police Station. I cannot remember when the Police found the car. The car No. EL 1840 was not registered in my name. One Albert Fernando was the owner of that car. I had bought that car also on a receipt. It was not transferred in my name.

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It is 4.05 p.m. now.

Trial adjourned till 19.11.62.

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Accused warned.

T.J. Rajaratnam

A.D.J. 2.11.62

19.11.62

D.C. Kegalla Case 19th November
No. 2839. 1962

Accd. Pt.

Same appearances as before.

Mr. Adv. Rodrigo for 1st accused
calls:

H.P. Hendrick Appuhany, affd., recalled.

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Cross-examined (Contd)

I am a married man. I have children. The name of my wife is Asilin. She lives at Wellawatta at No. 61/7 High Street. She does not live at Horagasmulla. On the day of the incident I was living at Horagasmulla. When I made a statement to the Police I cannot remember where I was residing. I cannot remember whether I stated to the Police that I was residing at Wellawatte. There is a

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Cross-
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(Contd.)

house at Horagasmulla. The car P13 was found in that land. I do not know P.S. Samarakoon earlier. Horagasmulla is in Diulapitiya Police area. Until I came to the Police Station to make a statement I did not know P.S. Samarakoon. I had not even seen him earlier. They had taken the car from Horagasmulla land. I with 3rd, 4th and 5th accused took the car and kept it there. 4th accused took the car to the land in which we live and thereafter the car was being used by me. The 3rd and 4th accused did not travel in this car with me. They travelled in the car on the day it was taken from Punchi Banda. On the day the Police came to this land I had used the car. I went in the car to Colombo till it was recovered by the Police. When the Police recovered the car I was not present. 2nd accused is my watcher. About 8 hours after I left the car, the Police had removed the car. During that 8 hours no one used the car. Therefore, the engine could not have been warm at the time the Police recovered the car. I cannot remember what I stated on the last date. I know the 7th accused. He is called "Kangetaralahany". He did not come with me to take the car from Punchi Banda on that day. I made a statement to the Police. I did not say to the Police that on that day Siripala Perera, Dharmasena Lany, Henry Fernando and Kangetaralahany came in a Ford Prefect car, and in a Morris Wagon to Hiriwadunna to meet Punchi Banda. Siripala Perera is the 4th accused. Dharmasena is the 3rd accused. Lany is the 5th accused. Henry Fernando is the 6th accused. Kangetaralahany is the 7th accused. I am not producing the complaint I made to the Negombo Police alleging that Punchi Banda had stolen the car. I have not summoned the Negombo Police to produce that complaint. The other car met with an accident somewhere in November. I cannot remember the date. According to me I came to Kegalla in search of Punchi Banda. Before that I

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had gone and asked Punchi Banda to give back the car to me. When I came to take the car from Punchi Banda, Punchi Banda told me that the car was in a garage. He promised to give the car to me. On that day also I came with Siripala Perera and one Sisil Jayasinghe. It is not correct that Punchi Banda refused to give the car to me and asked me to go away. I did not say so to the Police. When I came that day I do not know whether the car was registered in the name of Punchi Banda. I went back to Negombo. I sent a telegram and a letter signed by the owner of the car to the C.M.T. asking him not to register the car in the name of Punchi Banda. Punchi Banda promised to give the car, and as he did not come I sent a telegram to the C.M.T. Before I came to Kegalla I have sent that telegram. I have not sent that telegram to the C.M.T. I sent a registered letter to the C.M.T. I told Silva to send a telegram to the C.M.T. asking him not to register the car in the name of Punchi Banda. It was after my first trip to Kegalla. I also sent a registered letter to the C.M.T. because I thought that Punchi Banda would get the car registered in his name. I cannot remember the date. The telegram was sent by Silva. The letter was sent by Wilbert Appuhany. As Punchi Banda did not come I did so. Thereafter I sent him a telegram but he did not come. Therefore I believed that he would not try to cause injuries to me. I did not have to take the starting handle of the car. The transaction at Hiriwadunna was a very peaceful one. I was surprised when I heard that Punchi Banda had made a complaint against me to the Police. Punchi Banda was wearing a shirt that time. I did not use any force on Punchi Banda to cause any damage to that shirt. If the shirt was torn, I do not know as to how it was torn. I do not

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(Contd.)

know why Punchi Banda went and complained to the Police. I came to know that Punchi Banda was the registered owner of the car after I removed the car from Punchi Banda. It was found in licence. The licence was in the car. That is the tax licence. I asked Punchi Banda for the registration certificate of the car. He said that he would come with the registration card. This transaction took place on the road. There was one person in the car at the time. That was one of the persons who gave evidence against me in Court. I was not angry with that person. I cannot say why that person says that I used force on Punchi Banda to remove the car. I do not know why I was implicated in this case. I came in a Ford Consul car to meet Punchi Banda. I who drove that car. The number of that car was EN 3536. I was the owner of that car at that time. Siripala Perera and Susil Jayasinghe came in that car. Jayasinghe is not here today. On the 2nd occasion I came in a Morris Wagon. The number of that wagon is 1 Sri 4350. I and 3rd accused travelled in that car. One Carolis Silva was the owner of that Ford Prefect car which also came on that day. That Ford Prefect car is kept at Horagasmulla. The two cars did not start together from Diulapitiya. I with Siripala, Dharmasena and Lany came in the Ford Prefect car. The number of that Ford Prefect Car is EL 8629. Lany was driving that car. I was going to take that car from Punchi Banda. We met the Morris wagon at Kegalla. Dharmasena was the owner of the Morris Wagon at that time. He had told us that he would be coming to Kegalla from Kandy to sell that Morris Wagon. I met him near Nilwakka hotel, Kegalla, Diulapitiya is about 35 miles away from Kegalla. He came to sell that Morris Wagon to

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me. I had seen the Wagon before this. 3rd accused came from Kandy on that day. I looked at the wagon. That took place in the heart of the town, I tested the car on our way. I who drove the car. I was going to Hiriwadunna. I told the Police that 4 of us came in 2 vehicles to meet Punchi Banda at Hiriwadunna. That road was a short cut to us. I cannot say what the distance from Rambukkana to Diulapitiya is. I cannot remember having travelled along that road earlier. Others told me that this road was shorter. Therefore I wanted to go along that road. The transaction took place about 2 or 3 miles away from the house of Punchi Banda. We went along Kegalla Ramukkana Road. I knew that the Insurance Certificate and the registration certificate were with Punchi Banda. I could not do any transaction without these two certificates. Punchi Banda and I were acting as best friends. Punchi Banda said that he would come on the next morning. I deny that I came and removed the car forcibly. I say that it was a friendly transaction. I cannot say why Punchi Banda implicated me in this false case.

Re-examined.

I brought Morris Minor car No. EL 5241 from one Wilbert Appuhamy. He gave me the transfer forms, transfer books, Insurance certificate and a receipt. I had no intention of selling this car to Punchi Banda. When I asked for my car, he gave this car to me.

Sgd. T.J. Rajaratnam.

A.D.J. 19.11.62

Further trial on 30.11.62
Accused warned.

Sgd. T.J. Rajaratnam
A.D.J. 19.11.62

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Cross-
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Re-
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NO. 36

M.T.S. PERERA

Defence Evidence

30.11.62

D.C.K. Case No. 2839

No. 36

M.T.S. Perera
30th November 1962
Examination

Accd. pt.

Same appearances as before.

Mr. Adv. Sunil Rodrigo calls:

M.T. Siripala Perera, Affd., 22 yrs.,
Sinhalese, Buddhist Businessman,
residing at Horagasmulla.

I am the 4th accused in this case. 10
I am a relation of the 1st accused.
We do business together I know the
complainant Punchi Banda in this case.
Punchi Banda had car transactions with
me for the last 4 years. Punchi Banda is
a friend of mine. As 1st accused is with
me, Punchi Banda came to know the 1st
accused through me. On 29.12.61 I sent a
telegram to Punchi Banda. Shown Pl.
I sent this telegram to Punchi Banda. 20
Punchi Banda lives at Hiriwadunna. I sent
the telegram to him asking him to bring
the transfer papers of the Morris Minor
car. I cannot remember the date on which
I sent him the telegram. It was a Morris
Minor car. I received a reply to the
telegram. I received a post card. Shown
4Dl. I identify the signature of Punchi
Banda on 4Dl. He had sent the post card
from Hiriwadunna. I am sure that post 30
card was sent by Punchi Banda. In that
post card he says "Please bring papers
regarding my car as he was sick". I
cannot remember in which month I received
the post card. 1st accused had given
a Devon Car to Punchi Banda, and Punchi
Banda has asked in that post card to bring
the papers regarding that car. 1st
accused, another person and I took those
papers to Punchi Banda. I remember 6.2.61. 40
That is the day on which I went to bring
the Morris minor from Punchi Banda. I went
with 1st accused on that day. Punchi Banda
had brought that car by force. The owner
of the Morris minor was the 1st accused.

We did not bring that car forcibly.

Cross-examined by Mr. Balasuriya.
Punchi Banda came to know the 1st
accused through me.

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Q. Did Punchi Banda write several
letters to you prior to your
receipt of this postcard?

A. Yes.

10 Whenever we sell a car, Punchi
Banda had signed as a witness.

Cross-
Examination

Q. Did you identify the signature of
Punchi Banda?

A. Yes.

The postcard was sent in reply to
my telegram. I know that the post-
card is from Punchi Banda because
I had sent him the telegram on the
previous day.

20 Q. Was that telegram sent by you in
December 1960?

A. Yes.

Q. Do you remember the time the 1st
accused lost his car? Was
that in December 1960?

A. I cannot remember the date. I was
aware that the 1st accused lost the
Morris Minor car.

30 Q. You sent the telegram to Punchi Banda
to get back the documents, as Punchi
Banda and 1st accused both are your
friends?

A. Yes.

Cross-examined by prosecution.

Punchi Banda had car No. OL 940. I

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cannot give the numbers of the cars of the other transactions. Punchi Banda had brought an A40 car from me. I was not the registered owner of that car. Punchi Banda gave evidence in Court. I did not instruct my lawyer to ask any questions from Punchi Banda on these transactions. Punchi Banda had signed as a witness to the transaction regarding the A40 car.

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I cannot remember as to who the owner of that car was. I have not summoned the owner of that car to produce the documents regarding that car. As I am well known to Punchi Banda, Punchi Banda had written to me. Because of me Punchi Banda had transactions with the 1st accused. It was I who introduced Punchi Banda to the 1st accused. There was no reason to examine the signature of Punchi Banda. Punchi Banda had sent letters to me earlier and his signature is similar to this. Punchi Banda signs like this. Any other person can send a post card like 4D1. I cannot remember whether Punchi Banda denied having sent that postcard to me. We did not send the postcard to E.Q.D. The postcard was received after the telegram was sent. I cannot remember the date when I received the postcard. I cannot remember the date on which the telegram was sent. I do business in cars. I have nothing to do with Government hospitals. I live close to the hospital. The Police had gone in search of me. I was not at home when the Police came in search of me. The Police came in search of me on the day the car was lost. I came to know that the Police were in search of me about 4 days later. I was present in Court when the 1st accused gave evidence in Court. On 17.2.61 at 9.30 a.m. we came to the Police Station. Earlier I did not know Sergeant Samarakoon. He is not angry with me. On that day I did not go to Salgado Bakery to have tea. I was not in the Salgado Bakery at about 9 a.m. on that

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day. If Sergeant Samarakoon says so, it is not correct. I did not meet Sergeant Samarakoon and Punchi Banda at the Salgado Bakery. It is not correct that Punchi Banda showed us to Sergeant Samarakoon on that day at the Salgado bakery. Sergeant Samarakoon recorded the statement of the 1st accused at the Police Station. I have not made a statement to the Police up to date. I surrendered at the Police Station with the 1st accused and another. Sergeant Samarakoon recorded the statement of the 1st accused and we were kept there for a parade. It is not correct that Sergeant Samarakoon recorded my statement. If my name appears in the Police books, I do not know how it had come there. I told the Police that Hendrick Appuhamy alias Sekera is a relation of mine. I stated that Punchi Banda of Hiriwadunna is known to me. I told the Police that I came on this trip at the instigation of the 1st accused. I came in car No. EL 8229. It was driven by Lany. Lany is the 5th accused. In the car Dharmasena did not come. Kangetaralahamy also did not come in that car. 1st accused came in the car. No one else came in the car. I did not tell the Police that Dharmasena and Kangetaralahamy came in the car. Dharmasena did not get into that car at any stage. Thereafter the two cars went towards Hiriwadunna. One is a wagon No.4350. When we were going, we saw Punchi Banda's car going ahead. That car was EL 5241. We tried to overtake that car, but Punchi Banda went and stopped the car at Hiriwadunna, junction. 1st accused and Dharmasena went up to the car and requested Punchi Banda to give the car. No money was demanded. The 1st accused had demanded the car from Punchi Banda. 1st accused is called Sekera: 1st accused did not demand money from Punchi Banda for the car. I did not tell Sergeant Samarakoon

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Examination
(Contd.)

that we all got down from the car and went up to Punchi Banda's car. I did not tell the Police that 1st accused demanded neither the car nor the money from Punchi Banda. Punchi Banda did not try to assault the 1st accused with the starting handle. I cannot say whether 1st accused took the starting handle from Punchi Banda. I did not say so to the Police. I did not say that thereafter Kangataralahamy and I got into the car No. EL 5241 and went away. Sergeant Samarakoon did not question me. I did not say a word to the Police. Only today I am telling what happened on that day. I had no opportunity to tell anything about this case to the Police. I did not inform any Police Officer about this, incident. I did not tell the Magistrate about this incident when I was charged. I can drive cars. I have seen starting handles of Morris Minor cars. Sergeant Samarakoon is not angry with me. If he has recorded a statement purported to be from me, I do not know as to how he had recorded it. Sergeant Samarakoon questioned me about my name and the age and the occupation. He also questioned me about my residence. While asking them he noted them down in a book. He did not ask me as to what happened. Even I did not volunteer to say as to how this happened. As the Police had gone in search of me I went to the Police Station. I did not ask the Police Officers as to how they went in search of us. We were kept at the Police Station saying that there was a parade to be held. I cannot remember when Punchi Banda's car was stopped, whether there were two other persons in his car. There was only one person in his car. 1st accused went up to Punchi Banda and said that he had written letters to Punchi Banda to come, and he asked Punchi Banda to come with the papers as regards the Morris Minor to return his Devon car. 1st accused did not speak to Punchi Banda in a threatening manner. As 1st accused went, he asked for

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the car. Punchi Banda said that he would come with the car later. 1st accused then went and took the car and went away. Punchi Banda was inside the car, and the 1st accused was near the door of the car. They were talking while the door was opened. 1st accused did not open the door. Punchi Banda opened the door.

In the District
Court

Defence Evidence

No.36

M.T.S. Perera
30th November 1962
Cross-
Examination
(Contd.)

- 10 Punchi Banda was seated, and while talking he tried to get down from the car. The other person who was in the car got down from the car while the talk was going on. At that time there was one person in the car. Then Dharmasena went up and asked Punchi Banda to get down saying "Bahinawa, Bahinawa". 1st accused and Dharmasena were near the car. I also went up to the car and told Punchi
- 20 Banda to return the Morris Minor in order to bring the Devon car. Then Punchi Banda got down from the car. Both of us told him at the same time to return the Morris Minor car, so that he could remove the Devon car. The wagon was stopped there. Dharmasena and the 1st accused went in the wagon. 5th accused and I went in the Ford car. 5th accused drove the car.
- 30 5th accused got down from the car and then Dharmasena got into the car and started driving. I know the place where Punchi Banda lives. It is some distance away from the place. Punchi Banda did not ask me to drop him near his house. 3rd accused got into the driving seat and started driving the car. I got into the car in which I came. We did not turn the car. 1st accused was driving the wagon. All 3 cars went in the same
- 40 direction. Punchi Banda is a friend of 1st accused and myself. Punchi Banda did not inform us to go to his place. We took the car and went away. A car has only one starting handle. Shown P7. It must be a starting handle of a Morris Minor car. I do not know as to how P7 got into another car. At no stage did we use

In the District
Court

Defence Evidence

No.36

M.T.S. Perera
30th November 1962
Cross-Examination
(Contd.)

force on Punchi Banda. Shown a shirt. I cannot say whether Punchi Banda was wearing a shirt like this on that day. I cannot remember what Punchi Banda was wearing at that time. As I went to settle this transaction, Punchi Banda might have implicated me in this case. Punchi Banda did not come to remove the Devon car.

It was a friendly dealing. I cannot say why Punchi Banda implicated me in this case. I also cannot say as to why Sergeant Samarakoon says that he recorded my statement, and took me into custody at Salgado Bakery.

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Re-Examination

Re-examined.

I had dealings in cars with Punchi Banda. Punchi Banda had transactions in cars with the 1st accused.

Shown 4D11.

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Mr. Adv. Rodrigo moves to mark the document as 4D11. This is a receipt of a car Punchi Banda sold to us. Punchi Banda has signed 4D11 as a witness. I cannot read the signature of the other witnesses. Punchi Banda had sold this car to the 1st accused.

Cross-Examination

Cross-examined with permission.

Punchi Banda signs in Sinhalese and as well as in English. The signature in 4D1 is in English. The signature in 4D11 is in Sinhalese, I cannot say with whom 4D11 was till I saw it for the first time today.

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Sgd. T.J. Rajaratnam

A.D.J. 30.11.62

Further trial on 19.12.62

Sgd. T.J. Rajaratnam

A.D.J. 30.11.62.

19.12.62

D.C.C.No.2839

In the District
Court

Accd. pt.

Defence Evidence

Same appearances as before.

No. 37

Mr. Adv. Sunil Rodrigo calls:

V.D.C. Batepola
19th December 1962
ExaminationNO. 37V.D.C. BATEPOLAV.D.C. Batepola, Affd., 32 years,
Sinhalese, Buddhist, Inspector of Police
Warakapola.

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On 6.11.60 I was attached to the
Kegalla Police Station. On that day K.M.
Punchi Banda made a complaint to me in
respect of a motor vehicle. I recorded
that statement. I produce a certified
copy of that statement marked 4D11.

Cross-examined by Mr. Balasuriya - Nil.

Cross-examined by prosecution - Nil.

Sgd. T.J. Rajaratnam

A.D.J. 19.12.62.

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NO. 38M. WIJERATNE

No. 38

M. Wijeratne
13th June 1962
ExaminationM. Wijeratne, Affd., 26 years, Sinhalese,
Buddhist, Interpreter Budaliyar,
Magistrate's Court, Kegalla.

I am also the Interpreter Mudaliyar
of the Additional District Court, Kegalla.
I have before me the record in M.C. Kegalla
Case No. 35332 and D.C. Criminal No. 2839.

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On 21.4.61 the evidence of Punchi Banda
there is the passage beginning "I was not
able to bring the Morris Minor car that
day as I was told that it had gone on a trip."

In the District
Court

Defence Evidence

No. 38

M. Wijeratne
13th June 1962
Examination
(Contd.)
Cross-
Examination

The passage is marked 4D7.

"I handed over the Devon about a month and 7 days after I took charge of it." This passage is marked 4D8.

Cross-examined by Mr. Balasuriya

The date 17.2.61 was a day the case was called on a B report.

Cross-examined by prosecution - Nil.

Sgd. T.J. Rajaratnam

A.D.J. 19.12.62.

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Mr. Adv. Sunil Rodrigo closes his case. Leading in evidence P1, 4D1, 4D2, 4D6, 4D7, 4D8, 4D9, 4D10, and 4D11.

No. 39

D.A.H.
Jayawardene
19th December
1962
Examination

NO. 39

D.A.H. JAYAWARDENE

Mr. Balasuriya calls the 7th accused. D.A.Hemandranath Jayawardene, affd., 39 years, Sinhalese, Buddhist, Cultivator, residing at Mabodale.

I am the 7th accused in this case. I remember 6.2.60. I was at Andirimada on that day. My uncle Jinadasa Jayawardene was at Andirimada and I went to see him. He is my father's brother. My uncle's house is about 50 fathoms away from the boutiques at the junction. I came to the junction at about 10 a.m. on that day. I saw the 1st accused and 4th accused at the junction. 1st accused spoke to me and asked me where I was going. I told him that I came to the house of my uncle. I asked the 1st accused as to why he came there. He said that he came to remove his car. I bought a packet of cigarettes and went back to my uncle's house. I heard the evidence given in this case. I did not take part in the robbery of a car.

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Cross-examined by Mr. Adv. Sunil
Rodrigo. Nil.

In the District
Court

Cross-examined by prosecution.

Defence Evidence

No.39

D.A.H.
Jayawardene
19th December
1962

(Contd.)

Cross-
Examination

10 I did not make a statement to the
Police in this connection. The Police
had gone in search of me to my house.
Sergeant Samarakoon had gone in
search of me about 2 or 3 days after
the alleged incident. When I came home
I came to know about it. I cultivate
my lands. I have rubber and coconuts
lands, at Mabodale. Mabodale is about
13 miles from Negombo. I have 5 acres
of rubber and 25 acres of coconut.
They are in the name of my brother and
myself. I have $\frac{1}{2}$ share of these lands.
I came to know about that time that the
Police had come in search of me about
20 a week after the incident. We have a
farm at Kumbukgate. That is about 13
miles from Kurunegala. I earn about
Rs. 200/- to Rs. 300/- per month. I
stay with my brother. I came to know
that the Police had come in search of me
from my brother. Thereafter I
informed my Proctor Mr. Balasuriya. That
was about 2 or 3 weeks after I got the
information. Thereafter I came to
30 Court with my Proctor. I cannot say
the exact date on which I came to
Court with my proctor. It may be about
a month and 2 or 3 weeks later. Punchi
Banda is not angry with me. The
prosecution witnesses are also not angry
with me. I am not aware as to why the
witnesses pointed out to me as one of
the persons who took part in the robbery
of the car from the possession of Punchi
Banda. Accused are not my enemies. I
40 saw the 1st accused having a talk with
Punchi Banda. I was about 10 fathoms
away from them at that time. They were
talking like friends. I knew the 1st
accused earlier. 1st accused is not a
friend of mine. I am not friendly with
the 2nd accused too. I had seen the 4th
accused earlier. I had spoken to them

In the District
Court

Defence Evidence

No.39

D.A.H.
Jayawardene
19th December
1962
Cross-
Examination
(Contd.)

earlier. The accused are from my area. When I meet them I speak to them. 1st accused Hendrick Appuhamy and the 4th accused Siripala were talking with Punchi Banda. People in those boutiques were not talking to Punchi Banda. People were not watching the talk of 1st and 4th accused and Punchi Banda. Boutique people had not gathered there. I had no need to go near them. When they were about to go, they spoke to me. They were talking for about 15 minutes. I did not know what the conversation was about. There was no trouble there. I was not interested with the conversation. There were about two cars there. I now know that those cars were from my area. I did not ask the 1st accused as to why he came there. I also asked them as to why they came. 1st accused told me that he had come there to remove his car. My uncle lives about 40 to 50 fathoms away from this spot. My uncle has come to Court to see this case. When I come for the case I have no time to go and see my uncle. I go to see him on other days. I did not ask my uncle whether he received summons in this case. I listened to the evidence given by the other accused. I deny that I give evidence in line with their evidence.

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Re-examined - nil.

Sgd. T.J. Rajaratnam

A.D.J. 19.12.62

NO. 40
COURT NOTE AND ORDER

In the District
Court

~~Defence Evidence~~

Mr. Balasuriya closes his case.

No. 40

At this stage Mr. Suraweera moves to lead evidence in rebuttal under Section 212 to prove the statements of 1st and 4th accused.

Court Note and
Order 19th
December 1962

O R D E R

I disallow the application.

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Sgd. T.J. Rajaratnam

It is already 3.30 p.m.

Mr. Adv. Rodrigo wishes to have a date for addresses.

Addresses on 4.1.63.

Sgd. T.J. Rajaratnam

A.D.J. 19.12.62.

NO. 41
REASONS

No. 41

Reasons
5th January
1963

5.1.63

No. D.C.2839

20

R E A S O N S

The charges in the indictment against the accused are as follows:-

1. That on or about 6th February 1961, at Andirimada in the division of Kegalla within the jurisdiction of this court they with others unknown were members of an unlawful assembly the common object of which was to commit robbery of Motor car bearing registered No. EL 5241 from the possession of K.M. Punchi Banda - an offence punishable under section 140 of the Penal Code.

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In the District
Court

~~Defence Evidence~~

'No. 41

Reasons
5th January
1963
(Contd.)

2. At the same time and place aforesaid and in the course of the same transaction the 1st accused being a member of the said unlawful assembly was armed with a deadly weapon to wit. a revolver - an offence punishable under Section 141 of the Penal Code.

3. At the same time and place aforesaid one or more members of the unlawful assembly did commit robbery of the said Motor car valued at Rs. 4000/- which offence was committed in the prosecution of the common object of the said unlawful assembly and therefore guilty of an offence punishable under section 380 of the Penal Code read with Section 146 of the same code.

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4. At the same time and place aforesaid the above named accused did commit robbery of the said motor car belonging to K.M. Punchibanda an offence punishable under Section 380 read with Section 32 of the Penal Code.

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According to K.M. Punchi Banda on the day in question he was driving his car Morris Minor No. EL 5241 from Kegalla to Rambukkana at about 9 a.m. in the morning. On the way he gave a lift to Messrs. M.R. Gunaratne and Wickramapala. As they were approaching Hiriwadunna a Ford Prefect car overtook them and tried to stop his car. He recognised the 1st accused driving the Ford Prefect Car. Almost at the same time there was a Morris Wagon following his car. At a certain stage the Ford Prefect blocked his passage and he stopped his car. Then about 10 to 12 persons got out from the Ford Prefect car and the Morris Wagon and came towards him. Among them he recognised the 1st, 3rd and 4th accused. The 3rd accused pulled him out of the car. The two passengers who accompanied him got out of the car. He recognised the 1st accused having a revolver in his hand. The others had iron rods and clubs. Then the 3rd accused got into the driving seat and turned the car and went off. The other two

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vehicles followed his Morris Minor car. He immediately went to the Kegalla Police and made a complaint. During the course of the inquiry he pointed out the 2nd accused to the Inspector R.W. Amarasinghe as one of these who took part in the robbery of his car. At an identification parade held in the Magistrate's Court he identified the 6th, and the 7th accused as two of the persons who came with the 1st accused on the day in question.

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Punchi Banda stated that he had known the 1st accused for some time. He was a car broker. In 1959 he the witness was in possession of a Ford car. In 1960 the 1st accused promised to sell his car and get him another car. In the meanwhile he had asked him to use an A40 car. Some time later the 1st accused said that he could give him a Morris Minor Car No. EL 5241 in exchange for his Ford Prefect car. The 1st accused also said that in addition he could have cash Rs. 500/-. This transaction was entered upon on 16.10.60 but he did not take the Morris Minor car as he had to return the Austin Car to the 1st accused. The 1st accused came to his house a few days later and stated that the payment of Rs.500/- in addition to the exchange was too much for a Ford Prefect car and he wanted him to return the money. Before this the 1st accused had sent him the Morris Minor car along with the transfer forms and the registration certificate. He refused to give back the Rs.500/-. The 1st accused thereupon uttered a threat that he would remove this car before long.

However he perfected the transfer forms and sent them to the Registrar of Motor Vehicles. He produced the certificate of registration which was marked P3. According to P3 the Morris Minor car No. EL 5241 was transferred to Punchi Banda on 20.12.60.

In the District
Court

~~Defence Evidence~~

No.41

Reasons
5th January
1963
(Contd.)

In the District
Court

~~Defence Evidence~~

No. 41

Reasons
5th January
1963
(Contd.)

The witness stated that on the day in question he was in possession of car No. EL 5241 and those accused robbed him of this car. Witness Gunaratne stated that he was travelling with Punchi Banda on the day in question. Two cars blocked the car driven by Punchi Banda and a number of persons got out of the car armed with deadly weapons. Among them one person had a revolver. At the identification parade he identified the 3rd and the 4th accused as two of the persons who stopped the car driven by Punchi Banda. Witness Wickramapala also described how the two vehicles stopped the car driven by Punchi Banda. He said that a number of persons rushed up and some of them pulled out Punchi Banda from the car and took away the car. On the evidence placed by the prosecution I am satisfied that car No. EL 5241 was in the possession of Punchi Banda and this car was removed by force on the day in question.

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The 1st accused 4th accused and the 7th accused gave evidence for the defence. According to the 1st accused car No. EL 5241 belonged to him. He had not sold it to Punchi Banda. In support of his contention he referred to receipt P4 given to him by Wilbert Appuhamy on 16.10.60. But this document was in the possession of Punchi Banda. According to Punchi Banda the 1st accused gave him this document along with the transfer forms. According to document 4D6 Hendrick Appuhamy the 1st accused had sent a Postcard to Don Wilbert Appuhamy asking him to inform the Office of the Commissioner of Motor Transport to effect the transfer of Morris Minor car No. EL.5241 belonging to him in favour of K.M. Punchi Banda. Wilbert Appuhamy in his evidence stated that he sold car No. EL 5241 to the 1st accused. At the same time he said that the sale was on behalf of Punchi Banda.

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I reject the evidence of the 1st accused that he was the owner of car No. EL.5241. According to the 1st accused Punchi Banda had removed this car from one Silva of Negombo. He had asked Punchi Banda to return the car but as he had failed to do so, he went on this day to take peaceful possession of the car from Punchi Banda. However there is ample evidence placed by the prosecution that Punchi Banda was forced to part with this car. One Peeris Singho a waiter in a hotel on this road stated that he saw two vehicles chasing the vehicle driven by Punchi Banda on the day in question.

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The 4th accused gave evidence and stated that he was a relation of the 1st accused. He went along with the 1st accused to take delivery of this car from Punchi Banda. He stated that Punchi Banda offered no resistance and handed the car to the 1st accused. I am unable to accept his evidence in the light of what took place according to prosecution witnesses Wickramapala and Gunaratne on the day in question.

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The 7th accused also gave evidence. He took up the position that he had come to Hiriwadunna to visit a relation of his on the day in question. Quite accidentally he was on the road when some of those accused came in two cars. He spoke to them. He saw Punchi Banda handing over the Morris Minor quite peacefully to the 1st accused. He denied any participation in the events of that day. According to Punchi Banda the 7th accused was one of those who took part in the robbery. I reject the evidence of the 7th accused. I am satisfied that he was one of those who took part in the robbery of the car.

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As regards the 5th accused witness Carolis Silva stated that on the day in question 5th accused was his temporary driver.

In the District
Court

~~Defence Evidence~~

No. 41

Reasons
5th January
1963
(Contd.)

In the District
Court

~~Defence Evidence~~

No.41

Reasons
5th January
1963
(Contd.)

He had asked him for his Ford Prefect car stating that he was going on a hire to Rambukkana. He brought back the car late in the evening. This clearly shows that the 5th accused did accompany the other accused on the day in question. The 1st and 4th accused also referred to the presence of the 5th accused on the day in question.

If the intention of the 1st accused merely to take back car No. EL. 5241 peacefully from Punchi Banda one would have not expected him to visit this place with a number of persons in two vehicles. Besides the Police found it difficult to trace this car. According to P.S. Samarakoon car No. EL. 5241 was found in the house of the 1st accused parked in the garden, at about 10 p.m. There ~~was~~ no one in the house. The engine of the car was warm and it appeared that someone had just left the car there. I also accept sergeant Samarakoon's evidence that he found the 1st, 3rd and 4th accused at Salgado Bakery having tea. According to the 1st accused the three of them were on their way to the Police Station when they were arrested. The 1st and 7th accused gave evidence but have not explained as to why they were found missing from their respective homes at the relevant period. I disbelieve the 1st accused as regards his being arrested by the Police on the way to the Police Station along with the 3rd and 4th accused.

As regards the 1st charge the crown has proved that these accused along with others had set out on this day with the object of committing robbery of Car No. EL. 5241. I find all the accused guilty.

As regards the 2nd charge witness Punchi Banda stated that the 1st accused had a revolver. Witness Gunaratne

stated that one of those who stopped the car of Punchi Banda had a revolver I accept the evidence of Punchi Banda about 1st accused having a revolver and I find him guilty on count No. 2.

10 As regards the charges 3 and 4 I am satisfied that the witness Punchi Banda was in possession of car No. EL 5241. The prosecution has led evidence that this car was removed by the 1st accused and his party. The 1st accused himself had made a statement at the Divulapitiya Police Station after removing this car of the fact that he had removed the car. I hold that this car was removed by force by the 1st accused and the other accused in the
20 indictment. I find all the accused guilty on count 3 and also guilty on count 4.

Sgd. T.J. Rajaratnam
A.D.J. 5.1.63.

NO. 42

VERDICT AND SENTENCES

D.C. 2839. (52) 5.1.63.

- 30 Accd. (1) H.D. Hendrick Appuhany
(2) J.P. Sapin Singho.
(3) P.A. Dharnasena
(4) M.T. Siripala Perera
(5) D. Dharnasena alias Lany.
(6) A. Henry Fernando (O/R)
(7) D.A.J. Hemendranath.

In the District
Court

~~Defence Evidence~~

No. 41

Reasons
5th January
1963
(Contd.)

No. 42

Verdict and
Sentences 5th
January 1963

In the District
Court

~~Defence Evidence~~

No. 42

Verdict and
Sentences
5th January
1963
(Contd.)

1 - 5 accd. on bail. 6th accused
on remand in default of bail.

Verdict.

Mr. A.N.D. Balasuriya for all accused.

Mr. Suraweera for the Crown.

Verdict. I find all the accused guilty
on count No. 1.

I find the 1st accused guilty on
count (2).

I find all the accused guilty on
count (3).

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I find all the accused guilty on
Count (4).

Reasons pronounced in open Court in
the presence of the accused and their
Proctor Vide Typed proceedings filed.

The 2nd accused admits a previous
conviction for House breaking and theft
in M.C. Gampaha 20471. Finger print
slips of all accused filed.

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I convict 1st accused on Count (1)
and sentence him to 3 months R.I.

I convict 1st accused on count (4)
and sentence him to 1 month R.I.

I convict 1st accused on Count (3)
and sentence him to 3 months R.I.

I convict 1st accused on count (4)
and sentence him to 3 months R.I. The
sentence on counts 1 & 2 to run consecutively
and sentence on Counts 3 & 4 to run
concurrently. In all 1st accused will
serve 7 months R.I.

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I convict 2nd accused on Count (1) and
sentence him to 3 months R.I.

I convict 2nd accused on Count (3) and sentence him to 3 months R.I.

In the District Court

~~Defence Evidence~~

10 I convict 2nd accused on Count (4) and sentence him to 3 months R.I. Sentence on Counts 3 & 4 will be concurrently. In all the 2nd accused will serve 6 months R.I. The sentence on Counts 3 & 4 to run concurrently. In all he will serve 6 months R.I.

No. 42

Verdict and Sentences
5th January
1963
(Contd.)

20 I convict 6th accused on Count (1) and sentence him to 3 months R.I. I convict the 6th accused on Count (3) and sentence him to 3 months R.I. I convict the 6th accused on count (4) and sentence him to 3 months R.I. Sentence on Counts 3 & 4 to run concurrently. In all he will serve six months R.I.

I convict the 7th accused on Count (1) and sentence him to 3 months R.I.

30 I convict the 7th accused on Count (3) and sentence him to 3 months R.I. I convict the 7th accused on count (4) and sentence him to 3 months R.I. Sentence on Counts 3 & 4 to run concurrently. In all he will serve 6 months R.I.

40 I convict the 3rd accused and sentence him to 3 months R.I. on Count (1). I convict the 3rd accused and sentence him to 3 months R.I. on Count (3). I convict 3rd accused and sentence him to 3 months R.I. on Count (4). Sentence on counts 3 & 4 to run concurrently. In all he will serve 6 months R.I.

I convict the 4th accused and sentence him to 3 months R.I. on Count (1). I convict the 4th accused and sentence him to 3 months R.I. on Count 3.

In the District
Court

~~Defence Evidence~~

No. 42

Verdict and
Sentences
5th January
1963
(Contd.)

I convict the 4th accused and sentence him to 3 months R.I. on Count (4). The sentence on Counts 3 & 4 to run concurrently. In all he will serve 6 months R.I.

I convict the 5th accused on Count (1) and sentence him to 3 months R.I. I convict the 5th accused and sentence him to 3 months R.I. on Count (3). I convict the 5th accused and sentence him to 3 months on Count (4). In the event of appeal all accused will furnish Bail in 1500/1500.

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Return P13 to witness Punchi Banda after Appealable period.

Sgd. T.J. Rajaratnam

A.D.J. 5.1.63.

1 - 3 and 5 & 6 committed. intd.

NO. 43
PETITION OF APPEAL OF
3rd ACCUSED

In the Supreme
Court

No.43

IN THE HONOURABLE THE SUPREME COURT OF
THE ISLAND OF CEYLON

Petition of
Appeal of 3rd
Accused
7th January 1963

Inspector of Police,
Kegalla, Complainant

Vs.

No. 2839 Criminal

10 District Court, Kegalla.
3, Panditha Appuhamilago
Dharmasena,
Accused Appellant.

On this 7th day of January 1963.

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

20 The humble petition of appeal of the
3rd accused above named respectfully states
as follows :-

1. This accused along with six others
was indicted before the District Court of
Kegalla in Criminal Case No. 2839 on the
following charges:-

30 (a) with having on or about the 6th
day of February 1961 at Andiramedo being
members of an unlawful assenbly the common
object of which was to commit robbery of
Car No. EL 5241 belonging to K. Punchi Banda
and having committed an offence punishable
under Section 140 of the Penal Code,

(b) that at the same time and place
aforesaid that the first accused above named

In the Supreme
Court

No. 43

Petition of
Appeal of 3rd
Accused
7th January 1963
(Contd.)

being a member of an unlawful assembly was armed with a deadly weapon to wit: a revolver and committed an offence punishable under Section 141 of the Penal Code

(c) that at the same time and place aforesaid one or more members of the said unlawful assembly did commit the robbery of car No. EL. 5241 from K. Punchi Banda in prosecution of a common object and did commit an offence punishable under Section 380 read with Section 146 of the Penal Code

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(d) that at the same time and place aforesaid the accused did commit robbery of Motor Car No. EL 5241 valued at RS. 4000/- and committed an offence punishable under Section 380 read with Section 32 of the Penal Code.

20

2. The Case went to trial on several dates and on the 21st of December it was postponed for the 3rd January for addresses of Counsel.

3. The accused were on the 5th of January 1963 convicted and this accused was sentenced to 3 months imprisonment on count one and 3 months R.I. on Count 3 and 3 months R.I. on Count 4 and to serve in all 7 months R.I.

30

4. Being aggrieved with the said conviction and sentence this accused appeals to Your Lordships' Court on the following among other grounds that will be urged by counsel at the hearing of this appeal.

5. It is respectfully submitted that (a) the prosecution in this case has failed to substantiate the charges and has failed to prove in law the respective charges against the respective accused.

40

(b) The learned District Judge has failed to consider either adequately or properly or at all the defence of the respective accused individually and separately

In the Supreme
Court

No. 43

Petition of
Appeal of 3rd
Accused
7th January 1963
(Contd.)

10 (c) the learned District Judge has failed to address his mind adequately and properly to the evidence placed by the respective accused in support of their respective cases

(d) the learned District Judge has failed to give reasons for his judgment.

6. The prosecution led in evidence a statement made by the 1st accused to the Divulapitiya Police Station marked P6 which is a confession and in any event inadmissible.

20 7. The prosecution cross examined the 1st and 4th accused on statements alleged to have been made to the Police; It is respectfully submitted that these statements were confessions and the leading of this evidence was contrary to law, in any event the prosecution failed to prove those statements by calling the Police Officer who recorded the statements or producing certified copies. This it is respectfully submitted (a) caused grave prejudice to the
30 accused (b) did not give an opportunity to the defence to cross examine the Police Officers who recorded these statements, (c) the defence had no opportunity of knowing what statements the accused had made to the Police as they were not available to them.

40 8. The learned District Judge has not in his order in any way rejected this inadmissible evidence hence and in any event the Learned District Judge it is respectfully submitted has acted on evidence which was either inadmissible or had not been proved at the trial.

In the Supreme
Court

No. 43

Petition of
Appeal of 3rd
Accused
7th January 1963
(Contd.)

9. The prosecution in its address at the conclusion of the trial read in open Court purporting to be called LD3 which was not placed in evidence in the Court. This document was read by the Prosecution interpreted and commented upon although the defence objected to it and wanted the objection recorded. This conduct of the prosecution it is submitted was contrary to law, the acceptance of this evidence illegal and prejudicial to the accused.

10

10. The Learned District Judge it is respectfully submitted in allowing the prosecution to amend the indictment to include a production P13 after the commencement of the trial did so illegally.

11. The Learned District Judge acted contrary to law in refusing an application by the defence at an early stage of the trial to send 2 documents to the examiner of questioned documents whose findings would have been material to both the prosecution and defence.

20

12. The prosecution indirectly led evidence of a confession when it drew attention of the District Judge to the statement made by an accused while leading the evidence of Sergeant Samarakoon who has recorded same, although the Court ultimately over-ruled the admissibility of this evidence.

30

13. The depositions of the accused before the Magistrate were not legally produced in evidence before the District Judge.

14. It is respectfully submitted that the said judgment is contrary to law and against the weight of evidence.

15. As a result of the foregoing grave prejudice was caused to the accused and it resulted in an unreasonable verdict.

40

16. It is respectfully submitted that the District Judge has failed to consider the material contradictions and glaring discrepancies in the evidence of the complainant Punchi Banda.

In the Supreme Court

No.43

Petition of
Appeal of 3rd
Accused
7th January 1963
(Contd.)

10 17. It is respectfully submitted that the Learned District Judge has misdirected himself in analysing the weight of evidence in regard to the documents placed in evidence by the defence.

Wherefore this appellant prays that Your Lordships' Court be pleased to reverse and set aside the order and sentence of the Learned District Judge and to acquit the accused appellant and grant relief that Your Lordships Court see meet.

Sgd. (Sinhalese)
P.A. Dharmasena

20

3rd Accused Appellant.

Read and explained to Prisoner
No. R 3017 P.A. Dharmasena who signed
in my presence.

Sgd. (Sinhalese) Illegibly

O.I.C. Boganbara Prisons,
Kandy.

7th January 1963.

In the Supreme Court

NO. 44

No. 44

PETITION OF APPEAL OF
4TH ACCUSED

Petition of Appeal
of 4th Accused
Undated.

12.10 p.n. on 5.1.63

Sgd.....

Secretary.

IN THE HONOURABLE THE SUPREME COURT
OF THE ISLAND OF CEYLON.

INSPECTOR OF POLICE, KEGALLA,

Vs.

10

MALLAWATHANTHRIGE SIRIPALA PERERA

4th Accused - appellant.

No. 2839 Cr.

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

The Humble Petition of Appeal of the
4th accused above named respectfully
states as follows :-

1. This accused was charged on indictment
along with six other accused in D.C. Kegalla
2839 under sections 140, 141, 380 read with
sections 146 and 380 read with section 32
of the Ceylon Penal Code.

20

2. The case went to trial on several
dates and this accused along with the others
was convicted on 5.1.63.

3. Being aggrieved with the said
conviction and sentence this accused
appeals to Your Lordship's court on the
following grounds among others that will

30

be urged at the hearing of the appeal by counsel.

In the Supreme Court

No. 44

Petition of
Appeal of 4th
Accused
Undated.
(Contd.)

4. It is respectfully submitted (a) that the said Judgment is contrary to law and against the weight of evidence led in this case.

10 (b) That the Learned District Judge has failed to address his mind adequately and properly on (1) the burden of proof (2) the question of inadmissible evidence that was led by the prosecution.

20 5. The Learned District Judge it is respectfully submitted has not taken into consideration the evidence placed by the defence as to the 1st accused having acted under the Bona fide belief that the accused had a right to remove the car which is a production P13 in this case.

6. It is respectfully submitted that the District Judge failed to consider the material contradictions and the glaring discrepancies in the evidence of the complainant Punchi Banda.

30 7. It is respectfully submitted that the Learned District Judge has misdirected himself in analysing the weight of evidence in regard to the documents placed in evidence by the defence.

40 Wherefore this appellant prays that your Lordship's Court be pleased to reverse and set aside the order and sentence of the Learned District Judge and to acquit the accused appellant and grant relief that your Lordship's Court seem meet.

Sgd. (Sinhalese) M. Siripala
Perera.

4th accused - appellant.

Identify to the signature of 4th accused
M. Siripala Perera.

Sgd. Illegibly.

Proctor for accused.

In the Supreme
Court

NO. 45
JUDGMENT

No.45
Judgment
25th January 1965

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

THE QUEEN

Complainant-Respondent

Vs.

S.C.31-37/63
D.C. (Criminal)
Kegalla case
No. 2839/35332

Stamp Rs.1
(L.S.)
5 FEB.1965

1. HEERALUPATHIRANNEHELAGE HENDRICK
APPUHAMY of Divulapitiya
2. JAYASINGHE PATHIRANNEHELAGE SARPIN
SINGHO of Mabodale, Divulapitiya 10
3. PANDITHA APPUHAMILAGE DHARMASENA of
Divulapitiya
4. MALLAWATHANTHRIGE SIRIPALA PERERA
of Horagasmulla, Divulapitiya
5. BULATHSINHALAGE DHARMASENA alias
LANY of Horagasmulla, Divulapitiya
6. ARACHCHIGE HENRY FERNANDO of
Kudagammana
7. DAMUNUPOLA APPUHAMILAGE JAYAWARDENE
HEMENDRANATH of Mabodale 20

Accused-Appellants

Before: Sri Skanda Rajah J. & Alles J.

Counsel: M.L. de Silva for Accused-
Appellants.

P. Colin Thome, C.C. for Crown.

Argued and
decided on: 25th January, 1965

Sri Skanda Rajah, J.

As regards the appeal of the first
accused it has been already abated
because we are informed that he has since
died.

30

In the Supreme
Court

No. 45

Judgment
25th January 1965
(Contd.)

10 The accused were charged on four counts, the 4th being alternative to the 3rd. The 1st count was in respect of unlawful assembly, the common object of which was to commit robbery of a car. The 2nd count was in respect of being armed with a deadly weapon, viz., a revolver, while being members of an unlawful assembly. The third was for robbery of a motor car valued at Rs.4000/- while being members of an unlawful assembly. The 4th count is on the basis of common intention, which will be alternative to count 3. The Judge purported to convict the accused on all four counts. The accused could be found guilty either of the 3rd count or the 4th count and not on both counts. We would, therefore, set aside the conviction and sentence in
20 respect of count 4.

30 In our view the sentence passed in this case are manifestly inadequate. The accused were armed to the teeth - with revolver, iron rods, etc. On count 1 the learned District Judge purported to pass a sentence of three months' rigorous imprisonment and he purported to pass a sentence of one month's rigorous imprisonment in respect of count 2 (section 141) which is a more serious offence than count 1 and punishable with two years' imprisonment. We would alter the sentences in respect of counts 2 and 3. In respect of count 2 we pass a sentence of 6 months' rigorous imprisonment and in respect of count 3 two years' rigorous imprisonment. The sentences will run concurrently.

Sgd: P. Sri Skanda Rajah

40

PUISNE JUSTICE

ALLES J.

I agree.

Sgd: A.C.A. Alles

PUISNE JUSTICE

In the Privy
Council

NO. 46

No. 46

ORDER ALLOWING FINAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL

Order allowing
final leave
to appeal to
Her Majesty
in Council
3rd August
1965.

AT THE COURT AT BUCKINGHAM PALACE

The 3rd day of August 1965

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. FRASER
LORD RITCHIE OF DUNDEE	MISS HERBISON
LORD SHEPHERD	

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 28th day of July 1965 in the words following, viz:-

"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 (1) Panditha Appuhanilage Dharmasena and (2) Mallawathanthrige Siripala Perera in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioners and Inspector of Police, Kegalla (Respondent) setting forth that the Petitioners are desirous of obtaining special leave to appeal to Your Majesty in Council from the Judgment of the Supreme Court of Ceylon dated the 25th January 1965 whereby the Court enhanced the sentence passed by the Trial Court in respect of one offence and convicted the Petitioners of an offence with which they were not charged: that the Petitioners and other persons (one of whom was the 1st accused in the indictment) were jointly tried by the District Judge of Kegalla on three

20

30

charges (counts 1, 3 and 4 in the indictment): that the 1st accused was in addition charged with a fourth offence (count 2 in the indictment): that the District Judge found the Petitioners and the said 1st accused guilty of counts 1, 3 and 4 of the indictment and sentenced them to three months rigorous imprisonment on each count and the 1st accused was sentenced to one months rigorous imprisonment on account 2: that the Petitioners appealed to the Supreme Court which by its Judgment dated the 25th January 1965 (a) acquitted the Petitioners on count 4 on the ground that this count was alternative to count 3 (b) convicted the Petitioners on count 2 and (c) enhanced the sentence on count 3 from 3 months to 2 years rigorous imprisonment: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Supreme Court of Ceylon dated the 25th day of January, 1965 or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Ceylon dated the 25th day of January 1965:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by

In the Privy
Council

No. 46

Order allowing
final leave
to appeal to
Her Majesty
in Council
3rd August
1965
(Contd.)

In the Privy
Council

No. 46

Order allowing
final leave
to appeal to
Her Majesty
in Council
3rd August
1965
(Contd.)

the Respondent) as the Record proper
to be laid before Your Majesty on the
hearing of the Appeal."

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
observed obeyed and carried into execution.

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

10

W.G. Agnew.

Exhibits

P.1.

Telegram
Undated

EXHIBITS

P.1.

C E Y L O N T E L E G R A P H S
T E L E G R A M

Office of Origin Office Stamp 20
Divulapitiya Hiriwadunna

ADDRESS { K.M. Punchi Banda
 { Eriyaula.
 { Hiriwadunna

Come to Divulapitiya with the transfer
forms of Minor.

Siripala.

Translated by me.

(Q. Ranaweera) Interpreter 30
M.C. Kegalla.

(Original attached)

Exhibits

EXHIBIT

1D1

1D1

Memorandum of
Agreement to sell
Passenger Wagon
11th December 1960

MEMORANDUM OF AGREEMENT TO
SELL PASSENGER WAGON

Negonbo 11.12.60

10 I, the undersigned L.A. de Silva of
Thinbirigaskatuwa, Negonbo having agreed to
sell "Anles" Passenger wagon No. 2 Sri
8600 belonging to me to P.A. Dharnasena of
Divulapitiya for a sum of Rupees Six
thousand and having received a sum of
Rupees Three thousand seven hundred today,
handed over the vehicle.

The purchaser having agreed to pay the
balance rupees two thousand three hundred
(2300/-) to "The Finance Company" I placed
my usual signature below on a stamp.

Sgd. L.A. de Silva on a
-/10 cts. stamp.
11.12.60.

20

Witnesses. 1. Sgd. K. Cyril Fernando.
2. Sgd. Illegibly.

Translated by me. Sgd. Q. Ranaweera.

Interpreter
M.C. Kegalla.

Exhibits

P4

Receipt
H.D.W. Appuhamy
16th October
1960.

EXHIBIT

P4

RECEIPT

H.D.W. APPUHAMY

Receipt signed and delivered at Negombo
on 16.10.60.

I the undersigned H.D. Wilbert Appuhamy
of Kandawala, Katana sold Morris Minor Car
No. EL. 5241 belonging to me to H.P.
Hendrick Appuhamy of Horagasmulla,
Divulapitiya for a sun of Rs.4000/- (Four
thousand) and having received this sun in
full surrender all ny rights in respect of
this vehicle and placed ny signature in
the presence of the two witnesses.

10

Sgd. Illegibly on a 10 cts
stamp.

Witnesses:

1. Sgd. T. Martin Perera
2. Sgd. H.K. Sainon.

20

Translated by me. Sgd. (Q. Ranaweera)

Interpreter
M.C. Kegalla.

1D2

Memorandum of
Agreement to
purchase
Morris Minor
11th December
1960

EXHIBIT

1D2

MEMORANDUM OF AGREEMENT TO
PURCHASE MORRIS MINOR

177, Colombo Road,
Negombo.

11.12.60.

30

I, the undersigned L.A. de Silva of

Thinbirigaskotuwa, Nagonbo, having agreed to purchase Morris Minor Car No. EL 5241 (of Divulapitiya) for rupees four thousand (Rs.4000/-) paid three thousand five hundred and received the car today.

1D2
Memorandum of Agreement to purchase Morris Minor 11th December 1960
(Contd.)

10 Having agreed to pay the balance rupees five hundred within one month from today and to get the ownership of car transferred, placed my usual signature on a stamp below.

Sgd. L.A. de Silva
11.12.60.

Witnesses.

1. Sgd. K. Cyril Fernando.
2. Sgd. Illegibly.

Translated by me.

(Q. Ranaweera)

Interpreter. M.C. Kegalla

20

EXHIBIT

4D1

POST CARD

4D1

Postcard
21st December
1960.

P O S T C A R D

Address:

Mr. Siripala Perera
Govt. Hospital,
Divulapitiya.

Gentleman,

30

K.M. Punchi Banda,
Eriyaula. 21.12.1960

Received the telegram.

4D1
Postcard
21st December
1960.
(Contd.)

I am unable to come owing to illness.
I will bring documents in respect of Minor.
Please bring my car with all documents.

To this effect,

Sgd. Illegibly.
21.12.60.

Note:

The writing of 4D1 cannot be read
clearly and the ink was smudged.

Translated by me.

10

Sgd. Q. Ranaweera
Interpreter. M.C. Kegalla.

EXHIBIT

4D6

LETTER

4D6
Letter
21st December
1960

Divulapitiya
21.12.60.

Gentleman,

Please inform the Office of the Commissioner,
to effect the transfer of Morris Minor Car No.
EL 5241 belonging to you in favour of K.M.
Punchi Banda of Eriyaulla.

20

To this effect.

Faithfully,
Sgd. H.P. Hendrick Appuhamy

P O S T C A R D

Address.
Don Wilbert Appuhamy

EXHIBITP.6

CERTIFIED COPY STATEMENT
MADE BY H.P.H. APPUHAMY.

P6

Certified copy
Statement made
by H.P.H.
Appuhany
6th February
1961.

Extract of Information Book of Divulapitiya
Police,

Complaint for future guidance.

Date 6.2.61. Time 4.15 p.n. Page 266.
Para. 78.

10 Heeralu Pathirannehelage Hendrick Appuhany
Age 38 years, Driver, D/L No. 90445/4582,
Buddhist, residing at Horagasmulla appears
at station and states thus:-

20 "I am the owner of car No. EL 5241.
On 31.12.60, K.M. Punchi Banda removed this
car from me over a dispute regarding cash
transactions which he had with me. Today I
received this car from him. Therefore, I
came to make this complaint for my future
safety as I expect troubles later. This
K.M. Punchi Banda is a friend of mine. His
residence is Eriyaula in the Village of
Hiriwadunna. This is all I have to say.

Read over and explained. Signed in Sinhala
and admitted to be correct.

Sgd. P.C. 1098. Sgd. Siripala.

I certify that the foregoing extract is
correctly compiled from the Information Book
of Divulapitiya Police Station.

30 Sgd. Illegibly.
P.C. 4098.

Correct.

Sgd. Illegibly.
S.I. Divulapitiya.

Translated by me.
Sgd. Q. Ranaweera
Interpreter. M.C. Kegalla.

P.9

Certified copy
of Statement
of K.M.P.
Banda
6th February
1961.

EXHIBITP.9

CERTIFIED COPY OF STATEMENT
OF K.M.P. BANDA

Extract from the C.I.B. of Kegalla
Police

Date 6.2.61. Time 12.30 p.m. Page 33.
Para 69.

KURUPPU MUDIYANSELAGE PUNCHI BANDA, age 39 years, cultivator, residing at Eriyauulla in Pitiyagama Wasana, appears at the station and states: I own car No. EL. 5241 which is a green coloured Morris Minor. Today at about 10 a.m. I was driving car No. EL.5241 along Hiriwadunna Road towards Ranbukkana. One Nilane of Dunukewela and another boy whom I do not know also travelling with me. When we approached the boutique of N.D.S. Mudalalie at Andiranado, I noticed a Ford Prefect Car following me and a Morris Minor Waggon immediately behind it. The Ford Prefect car which was about five fathoms behind mine, suddenly overtook my car and having cut across the road halted on the middle of the road at an angle. I swerved my car to avoid an accident and finally halted my car behind this. At this stage the Morris Minor Waggon came on the right side of the road facing Halpitiya. Having stopped my car I attempted to get down. Immediately then a man whom I can identify came out of the Ford car and held me by my neck. Another man also could be identified came from the side where Nilane was seated and pulled out the switch key. The man who pulled out the switch key and the man who held my neck were both armed with pieces of iron. Several other people about five in number got down from the Ford car and surrounded my car. All these persons were armed with knives and one person was armed

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20
30
40

with a revolver. The person who was armed with the revolver is known to me and he is one Hendrick Appuhamy of Divulapitiya. I had cash about Rs.400/- in my left shirt pocket. This money was taken by the person who removed the switch key. I was later pulled out of the car by the person who held my neck. I then went into N.D.S. Mudalalie's boutique.

10 As I left the car three persons got into my car and drove off followed by the Morris Minor Waggon. The Ford Prefect car went towards Hiriwadunna. I waited in N.D.S. Mudalalie's boutique and later after about four or five minutes I saw the Ford Prefect car going towards Polgahawela the direction in which my car and the Morris Minor wagon were driven. I did not shout for

20 help. Several persons gathered but none came to my assistance. I do not know at what stage Nilame and the boy got down from the car but when I was in the boutique of N.D.S. Mudalalie they too came there. I did not make any attempts to shout through fear. The Ford Prefect car is white in colour and had the number EL. 8229. The Morris Minor wagon is also white

30 in colour and is a I Sri Model. I do not know the exact number. EL 5241 was bought by me about three months ago from a person who is not known to me at Divulapitiya. Previous to this I owned car No. EL 3111. Ford Prefect. I gave this car to the person who sold me EL.5241 and obtained cash Rs.500/- and this car. All transfer forms duly signed were obtained on this date. The

40 car EL.5241 is now registered in my name, and I have obtained the revenue licence for the year 1961, in respect of EL 5241 from the Kegalla Kachcheri. The certificate of registration is at home. The persons who took the car from me have no right what-so-ever over this car. The person who held my neck is short, well built, fair, had a pointed moustache, hair

P.9

Certified copy
of Statement
of K.M.P.
Banda
6th February
1961
(Contd.)

P.9

Certified copy
of Statement
of K.M.P.
Banda
6th February
1961
(Contd.)

combed back dressed in a white short
sleeved shirt and white checked sarong.
The person who removed the switch key and
cash Rs.400/- is dark, medium, height, thin,
wears a moustache, dishevelled hair,
dressed in a white striped shirt and a white
checked sarong. The person who was armed
with a revolver is one Hendrick Appuhany
of Divulapitiya. This person is always
near the Divulapitiya Hospital and he is a
car broker. He was present on the day I
bought this car and he took brokerage fees
for the transfer. The description of the
other persons cannot be given in detail but
could be identified if seen. The money I
had with me was in two fifty rupee notes
and the balance in ten rupee notes. I have
no injuries. My witnesses are Nilane and
the boy who travelled in my car and several
others who were present at the scene. This
is all. Read over and explained in
Sinhalese. Sgd. Punchi Banda in Sinhalese.
Admitted correct. Sgd. F.A. Ganananderan
S.I. The shirt worn by the complainant
is taken charge as productions. I find
the pocket torn at the opening and a few
of the stitches broken, same entered in
P.R. No. 95. and handed to the Reserve I.P.
Crines informed and he is attending Courts.

10

20

H.Q.I. also informed. Sgd. F.A. Ganananderan
S.I.

30

I certify the above is a true copy of
the extract taken by me from the Information
Book of Kegalla, the original of which is
in my custody.

Sgd. Illegibly.

S.I. Police 8.9.61.

EXHIBITP.11IDENTIFICATION PARADE NOTESP.11

Identification
Parade Notes
17th February
1961.

Inspector Ratnayake moves for an identification parade for the witnesses to identify the suspects.

It is 12.35 p.n. The Court house is cleared up.

10 17 people are lined up. 9 wear shirts.
4 wear national banians.
4 wear bush shirts.
All of them are wearing sarongs.

P.S. 437 Tennakoon is in charge of the parade. The suspects are said to be in the remand jail and the witnesses are said to be in the A.S.P.'s Office guarded by P.C. Kularatne.

20 Mr. Abeynayake watches the interest of the suspect. I send Fiscal Escort Punchirale to bring the suspect covered. I also send peon Siriwardene to go and bring witnesses from the A.S.P.'s office and keep them in the Magistrate's Court office and to send them one by one when they are called for.

The 4 suspects are brought in covered. I ask them to take any place in the parade and to wear any costumes they like.

30 Suspect Hendrick Appuhany takes the 6th place in the parade. Suspect Sarpin Singho takes the 10th place in the parade. Suspect Dharmasena takes the 13th place in the parade and suspect Siripala Perera takes the 17th place in the parade. They prefer to wear the same costumes. I send for witness Upali Bandula Dias and he is brought

P.11
 Identification
 Parade Notes
 17th February
 1961
 (Contd.)

in and he is asked to identify any one of those persons whom he saw on 6.2.61. at about 10 a.m. coming in a Morris Van and a car to Hiriwadunna and forcibly remove the Morris Minor car of K.M. Punchi Banda. He goes round the parade up and down, and says that he cannot identify them. The witness is sent to the Probation Room in charge of Fiscal Escort Punchirala.

I ask the suspects to change their places and costumes. They prefer to be in the same place and to wear the same costumes. 10

I send for witness T.G. Gamage. Witness Gamage is brought in and he is asked to identify any one of those who came in a Van and a Ford car to Hiriwadunna on 6.2.61 at about 10 a.m. and forcibly removed the car belonging to Punchi Banda. He goes round the parade up and down thrice and states that he cannot identify. He is sent to the Probation room in charge of Fiscal Escort Punchirala. 20

I ask the suspects to change their places or costumes. They prefer to be in the same places and to wear the same costumes. I now send for witness M.R. Gunaratne. Witness M.R. Gunaratne is brought in and he is asked to identify any one of those who blocked car No. 5241 on 6.2.61 in which he was travelling and those who removed the said car from the possession of Punchi Banda. He goes round the parade and points out to the 8th person and the 17th person and the 13th person. 8th is not a suspect. 17th person is suspect Siripala Perera and 13th person is suspect Dharnasena. Witness is questioned and he states that 13th person Dharnasena drove the car and suspect Siripala Perera got down from the car and came near the car. Witness is sent to the Probation Room in charge of Fiscal Escort Punchirala. 30 40

Witness Wickramapala is not present.

I dismiss the parade with thanks.

Mr. Abeynayake states that he is satisfied with the manner in which the parade is held.

Sgd. C.H. Udalagana

Actg. Mag. 17.2.61.

P.11.

Identification
Parade Notes
17th February
1961
(Contd.)

APPLICATION FOR IDENTIFICATION
PARADE AND REPORT THEREON

Application for
Identification
Parade and
Report thereon
17th February
1961.

10 M.C. Kegalla B.320/61

IN THE MAGISTRATE'S COURT OF KEGALLA

This 17th day of February 1961.

I, A.M. Ratnayake, Inspector of Police (Crimes) Kegalla beg to move Court that an identification parade be held in the above case to enable the undermentioned witnesses to identify the suspect J.P.S. Sarpin Singho as follows :-

20 Upali Bandula Dias: to identify any one of the persons whom he saw on 6.2.61 at about 10 a.m. coming in a Morris Van and a car to Hiriwadunna and forcibly remove the Morris Minor car of K.M. Punchi Banda.

T.G. Ganage: to identify any one of those who came in a van and a Ford car to Hiriwadunna on 6.2.61 at about 10 a.m. and forcibly removed the car belonging to Punchi Banda.

30 M.R. Gunaratne: to identify any one of those who blocked car No. EL 5241 on 6.2.61 in which he was travelling

Application for
Identification
Parade and
Report thereon
17th February
1961.
(Contd.)

and those who removed the said car
from the possession of Punchi Banda.

A.R. Wickranapala: to identify as
above.

The suspect Sarpin Singho is in
fiscal's custody and the O.I.C. of the
Prison Lockup has been instructed to
take precautions to conceal the suspect.
The witnesses are being guarded by P.C.
4928 Kularatne at the Office of the Asst.
Supdt. of Police, Kegalla.

10

Sgd.

Inspector of Police,
Kegalla.

P.8

Identification
Parade Notes
24th March
1961.

EXHIBIT

P.8

IDENTIFICATION PARADE
NOTES

P.8. Magistrates Court Lawyers Room,
Kegalla.

20

24th March 1961.

On instructions from The Magistrate,
Kegalla I am holding an Identification
Parade at the above premises at 11.15 a.m.

S.I. Gnanendran of Kegalla Police
and P.C. 5751 Ekanayake, Court Officer
are in charge of the Parade.

Mr. D. Balasuriya, Proctor Negombo
is present on behalf of the suspects (1)
Arachcige Hendry Fernando of Kudagammana
and (2) Danunupola Appuhanillage
Jayawardene Hemendranath of Mobadale who
are brought from Fiscal's Renand Gaol

30

by P.R. Samarakoon Fiscal's Peon. The faces of the suspects were covered when brought in.

Thirteen male persons have been lined up, Eleven wear sarongs two wear vettis five wear National Banians eleven wear shirts one wears a coat two have shawls round the neck.

10 When suspects were brought in the door was closed and they are asked to (1) change the clothing they are wearing if required and to take up any position in the line of men. The suspects do not desire to change their clothes.

The 1st suspect A. Hendry Fernando takes up the 11th place from the left. The 2nd suspect D.A.J. Hemendranath takes up the 3rd place from the left.

20 Inspector A.M. Ratnayake has filed a motion dated 24th March 1961 as to what the witnesses will be asked at the Parade.

The Court Peon B.R.P. Banda is now despatched to the A.S.P's office to bring all the seven witnesses and keep them in the witness shed of the Magistrate's Court. The door is locked again.

30 I send for the 1st witness Upali Bandula Dias. He is asked to identify any one of those persons whom he saw on 6th February 1961 at about 10 a.m. coming in a Morris Van and a car to Hiriwadunna and forcibly remove the Morris Minor car of K.M. Punchi Banda.

The witness is unable to identify any person from those in the parade. The witness is sent to the Magistrate's Court premises.

The suspects elect to remain in the same places.

P.8
Identification
Parade Notes
24th March
1961.
(Contd.)

P.8.

Identification
Parade Notes
24th March
1961.
(Contd.)

I send for 2nd witness T.G. Ganage. He is asked to identify any one of those who came in a van and Ford Car to Hiriwadunna on 6th February 1961 at about 10 a.m. and forcibly removed the car from the possession of K.M. Punchi Banda.

The witness is unable to identify any person from those in the Parade. The witness is sent to the Magistrate's Court premises.

10

The suspects elect to remain in the same places.

I send for 3rd witness M.R. Gunaratne. He is asked to identify any one of those who blocked car EL 5241 on 6th February 1961 in which he was travelling and any one who removed the said car from the possession of K.M. Punchi Banda.

The Witness states that none of those persons are in the Parade and he is sent to the Magistrate's Court premises.

20

The suspects elect to remain in the same places.

I send for 4th witness whose name appears as A.R. Wickranasinghe but he states that his name is A.R. Wickramapala. He is asked to identify any one of those who blocked car EL 5241 on 6th February, 1961 in which he was travelling and any one who removed the said car from the possession of K.M. Punchi Banda.

30

The witness is unable to identify any person from the Parade.

The suspects elect to remain in the same places. The witness is sent to the Magistrate's Court premises.

I send for 5th witness A. Sanudrahamy. He is asked to identify those who came to

Hiriwadunna on 6th February, 1961 at about 10 a.m. and forcibly removed Car No. 5241 from the possession of K.M. Punchi Banda. The witness points out to the 3rd person from the left who is the 2nd suspect D.A. Jayawardene Henendranath.

P.8
Identification
Parade Notes
24th March
1961.
(Contd.)

The witness is sent to the Magistrate's Court premises.

10 The suspects are asked whether they want to change clothing or places. The suspect D.A. Jayawardene Henendranath removes his blue bush coat and wears the white bush shirt of one of those on the Parade who in turn puts on the blue bush shirt. The suspects do not want to change their places.

20 I send for witness No. 6 M. Wickramanayake. He is asked to identify those who came to Hiriwadunna on 6th February 1961 at about 10 a.m. and forcibly removed car No. 5241 from the possession of K.M. Punchi Banda. The witness is unable to point out any person from those on the parade. The witness is sent to the Magistrate's Court premises.

The suspects elect to remain in the same places.

30 I send for 8th witness K.M. Punchi Banda. He is asked to identify those who came with Hendrick Appuhany in Van and car on 6th February 1961 at about 10 a.m. and forcibly removed his car EL.5241 from his possession and also the person who removed cash from his possession. The witness points first to the 11th person the 1st suspect A. Hendry Fernando and then to the 2nd suspect D.A. Jayawardene Henendranath. The witness is asked of those two persons who removed the cash from his possession and the witness states that the person who removed the cash is not in the Parade.

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P.8
Identification
Parade Notes
24th March
1961
(Contd.)

The witness is sent to the Magistrate's Court premises.

Mr. Balasiriya, Proctor states that he is quite satisfied with the conduct of the Identification Parade. I dismiss the Parade after thanking them.

The two suspects will be produced before the Magistrate, Kegalla, today.

I close proceedings at 12 noon.

All the witnesses were sent back after the parade in charge of another Fiscal's Escort peon Tennekoon. All the witnesses stated that the place was Andiramade not Hiriwadunna.

10

Sgd. Illegibly.

J.P. & U.M.

24th March, 1960.

P.2A
Envelope
21st April
1961

EXHIBIT
P2A
ENVELOPE

20

21.4. 61.

Mr. K.M. Punchi Banda

Eriyaula,
Hiriwadunna.

M. Siripala Perera,
Horagasnulla,
Divulapitiya.

(Translated by me. Sgd.
Q. Ranaweera)

Interpreter, M.C. Kegalla.

30

EXHIBIT

P.2

LETTER WRITTEN BY M.S. PERERA
OF HORAGASMULLA

P.2

Letter written
by M.S. Perera
of Horagasmulla
16th June 1961

Horagasmulla,
Divulapitiya.

16. 1. 1961.

Wishing a Happy New Year.

Dear Gentleman,

10 It is very sorrowful that I did
not come to know any news since my visit
on that day. I was waiting up to date
thinking that even a letter would be
sent. I did not receive the Transfer
Book (Registration Certificate) of CL 949.
Please see that it is sent to me.

20 Do not put me into difficulties
regarding transactions between brother
and you. I had no connection with any of
brother's transactions. You may do what
you could regarding that. I have fallen
into great difficulties now. Therefore
please obtain transfer book (Registration
Certificate) of C.L. 940 and send it to
me, and finalise that transaction. We all
fell into difficulties as we trusted too
much. Is it not.

To this effect.

Faithfully,

30 Sgd. M. Siripala Perera.

16.6.61.

4D5

Receipt
22nd August
1961

EXHIBIT

4D5

RECEIPT

Receipt signed and delivered at Nagonbo
on 16.10.60.

I, the undersigned K.M. Punchi Banda of
Eriyaulla Hiriwadunna having sold Ford
Prefect car No. EN 3111 belonging to me on
(an informal writing) a receipt, to H.D.
Wilbert Appuhamy of Kandawala, Katana for a
sun of Rupees Four thousand four hundred and
fifty (Rs.4450/-) and having received this
amount in full and transferring all my rights
in respect of this vehicle placed my
signature in the presence of the undersigned
two witnesses.

10

Sgd. Punchi Banda
on a 10 cts stamp.

16.10.60.

Witnesses:

20

1. Sgd. T. Martin Perera
2.
Translated by me.

(Q. Ranaweera)

Interpreter, M.C. Kegalla.

P.12

Extract from
Register of
Motor vehicles
7th September
1961.

EXHIBIT

P.12

EXTRACT FROM REGISTER OF MOTOR
VEHICLES

Distinctive Number:	1 Sri 4350
Date of first registration:	17.7.57
Class of vehicle:	Motor car.
Type and colour of body:	Station Wagon Birch gray.

30

Make or Manufacturer's name : Morris P.12
 Chassis No. FLB. 21/465836 Extract from Register of Motor Vehicles
 Engine No. APJM-L-7162 7th September 1961.
 Tare 16 - 0 - 0. (Contd.)
 Seating capacity excluding driver: Four (4)

	Full name & address of registered owner.	Date of owner-ship.	Purpose for which vehicle was/is to be used.	Place of garage and licensing authority.
10	Udago Arachchige Ariyaratne, Hettimulla, Kegalla.	24.3.60.	Private	At address G.A. Kegalla
20	Panditha Appuhanillage Dharmasena, 34, Galle Road, Wellawatte.	17.9.60.	Private	At address R.M.V.

30 I, C.O. Quvn, Supervising Officer being an officer duly authorised in writing by the Registrar of Motor Vehicles under Section 17(2) read with Section 206 (4) of the Motor Traffic Act No. 14 of 1951 as Amended by the Motor Traffic (Amendment) Act No. 1 of 1952 to exercise the powers, functions and duties vested in the Registrar of Motor Vehicles under Section 17 (2) of the said Act, hereby certify that the above is a true extract from the Registrar of Motor Vehicles maintained under the Motor Traffic Act No. 14 of 1951 between 24.3.60 and 7.9.61.

40 Sgd.....
 Supervising Officer.
 For Registrar of Motor Vehicles.

140.

4D2

Memorandum of Agreement to sell Ford Car No. EM 3111 19th September 1960.

EXHIBIT

4D2

MEMORANDUM OF AGREEMENT TO SELL FORD CAR NO.EM3111

Divulapitiya,
19.9.60.

Certificate signed and delivered.

I, K.M. Punchi Banda of Eriyaula having agreed to sell Ford Car No. EN 3111 belonging to me on a receipt (informal writing) to H.P. Hendrick Appuhany of Divulapitiya for a sum of Rupees four thousand (Rs.4000/-) and having received Rupees two thousand seven hundred (Rs.2700/-) as advance handed over the said vehicle on the promise that balance rupees One thousand three hundred (Rs.1300/-) be paid on 26.9.60.

10

Sgd. Punchi Banda on a -/10 cts stamp.

Sgd. Illegibly.

20

Sgd. Illegibly.

Translated by me.

(Q. Ranaweera)

Interpreter, M.C. Kegalla.

4D4

Receipt 16th October 1961

EXHIBIT

4D4

RECEIPT

Receipt signed and delivered at Negombo on 16.10.60.

I, the undersigned H.P. Hendrick Appuhany of Horagasnulla, Divulapitiya paid a sum of Rupees Four thousand (Rs.4000/-) to H.D. Wilbert Appuhany of Kandawala Katana and

30

received Morris Minor Car No. EL 5241 belonging to him. Further I certify that I am responsible for all liabilities in respect of this car today.

4D4
Receipt
16th October
1961
(Contd.)

Sgd. H.P. Hendrick Appuhamy
On a ten cents stamps.

Witnesses:

1. Sgd. T. Martin Perera.
2.

10

Translated by me.
(Q. Ranaweera)
Interpreter, M.C. Kegalla)

EXHIBIT

1D3

1D3

EXTRACTED STATEMENT OF N.A.
DE SILVA

Extracted
Statement of
N.A. De Silva
20th December
1961.

Extract from the C.I.B. 1 of Negombo
Police.

20

Date: 20.12.61. Time 10.30 p.m. page 211.
Para. 444.

Civil Dispute

30

N..... Ariyaratne de Silva, age 34 years, Trader, residing at Dematagahawtte, Dunegaha Negombo, appears with his driver Piyaratne and states: On 11.12.60., I gave my Van No. 2 Sri 80600 to one H.P. Hendrick Appuhamy of Divulapitiya and exchanged to his car Morris Minor CL. 5241 having taken Rs.500/- in advance to the car with an undertaking to transfer effect within a month time. Today at about 7.30 p.m. my driver Piyaratne came and informed me that the driver hired by.....

1D3
Extracted
Statement of
N.A. De Silva
20th December
1961.
(Contd.)

of Hendrick Appuhamy's people to go to
Minuwangoda and at Base Line Road,
the driver.....pulled out and the car was
taken by them away. This is all I got to say.
Sgd. in English.

.....Sgd. P.C. 292 Kumarasinghe.

I P.C. 4529 Munasinghe certify that the
above extract is taken by me correctly.

Sgd.....P.C. 4529.

Certificate
of True copy
of
Proceedings
14th May 1965

CERTIFICATE OF TRUE COPY
OF PROCEEDINGS.

10

M.C. Kegalla B.320/61.

In the Magistrate Court of Kegalla.

This 17th day of February 1961.

I, A.M. Ratnayake, Inspector of Police
(Crim) Kegalla beg to inform Court with
reference to my previous report of today the
following 3 suspects were taken into custody
and they too be placed for the identification
parade.

20

(1) H. P. Hendrick Appuhamy of
Divulapitiya.

(2) M.T. Siripala Perera - do -.

(3) P.A. Dharmasena - do -.

Inspector of Police,
Kegalla.

True copy of proceedings etc. in D.C.
Criminal Case No. 2839/35332 M.C. Kegalla.

.....
Secretary.

D.C. Kegalla.

30

IN THE PRIVY COUNCIL

No. 23 of 1965

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N:

PANDITHA APPUHAMILAGE DHARMASENA
(3rd Accused)

- and -

MALLAWANTHANTHRIGE SIRIPALA PERERA (4th Accused)
Appellants

- and -

INSPECTOR OF POLICE, KEGALLA
Respondent

RECORD OF PROCEEDINGS

WILKINS NEWMAN & CO.,
27a Sloane Square London
S.W.1. and 10 Adam Street,
Strand, London, W.C.2.

Solicitors for the Appellants.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London S.W.1.

Solicitors for the Respondent.