

22, 1969

IN THE PRIVY COUNCIL

P.C. Appeal  
No. 27 of 1968

O N A P P E A L

FROM THE SUPREME COURT OF THE ISLAND OF  
CEYLON (COURT OF CRIMINAL APPEAL)

B E T W E E N :

RAJAPAKSE PATHIRANAGE DON JAYASENA  
Appellant

- and -

10 THE QUEEN Respondent

UNIVERSITY OF LONDON  
INS TITUTE ADVANCED  
LEC...  
- 0 MAR 1969  
25 RUSSELL SQUARE  
LONDON, W.C.1.

CASE FOR THE RESPONDENT

- 1. This is an Appeal by Special Leave against an Order of the Supreme Court of the Island of Ceylon (Court of Criminal Appeal) dated the 13th day of May 1966 whereby the said Court dismissed an appeal by the Appellant against his conviction by the Supreme Court (Eastern Circuit) on the 3rd day of March 1966 on a charge of murder. p.139  
p.138
- 20 2. The Appellant was charged jointly with one Kalawilage Don Piyadasa (2nd accused) and one Yapa Mudiyanseelage Dissanayaka (3rd accused) with the murder of Podiappuhamy Konara Herath on or about the 7th day of August 1965 at Unit 34, Rajagala Junction, Gonagolla in the division of Batticaloa. p. 2  
pp.1 - 2

30 Herath died as a result of various wounds inflicted on him on the 7th August 1965. The Appellant's case was that he had inflicted these wounds on Herath but had done so in self-defence.

3. The principal question raised in this Appeal is whether the learned trial Judge (the Honourable Sri Skanda Rajah, Puisne Justice) was right in directing the Jury that it was for the Appellant to show on the balance of probability or on the balance of evidence that he was acting in self-defence and that if the matter was left in reasonable doubt the defence failed.

This direction was in accordance with what has been settled practice in Ceylon ever since the decision by a majority (by 6 to 1) of a Full Bench of the Court of Criminal Appeal in 1942 in the case of The King v. James Chandrasekera (44 N.L.R. 97). It was there decided that, having regard to the provisions of the Evidence Ordinance as to where the burden of proof lies in such a case and as to what constitutes proof, where any general or special exception under the Penal Code is pleaded by an accused and the evidence relied upon by him fails to satisfy the Jury affirmatively of the existence of circumstances bringing the case within the exception, he is not entitled to be acquitted if, upon a consideration of the evidence as a whole, a reasonable doubt is created in the minds of the Jury as to whether he is entitled to the benefit of the exception.

This Appeal therefore necessarily raises the question of whether Chandrasekera's case was correctly decided. In the Respondent's submission it was and the learned trial Judge's summing-up to the Jury in the instant case was in accordance with the law.

4. The principal statutory provisions which are relevant to this Appeal are set out in the Appendix hereto.

5. At the trial the principal witness for the prosecution was one Yapa Bandara, whose evidence was that he had been an eye-witness of the crime.

pp.14-62

He said that he lived at Bakiella, Amparai and knew the Appellant, who was a carpenter. The Appellant's carpentry shed was on the Uhana tarred road and was a short distance away from a place called Wilson's boutique.

pp.15-16

10 On the 7th August 1965 the witness went to Wilson's boutique at about 10.15 in the morning and had a cup of tea there. While he was there the 2nd accused came in and, about 15 minutes later, the deceased also. Later the Appellant and the 3rd accused arrived and all three accused made a concerted and unprovoked attack on the deceased. The attack started when the Appellant said to the 2nd accused "Why can't this fellow be stabbed? Stab him", whereupon the 2nd accused pulled out a knife from underneath his shirt and stabbed the deceased "on the back of the chest". The deceased tried to get away, but 20 his path was blocked by the Appellant and the 3rd accused, both of whom also attacked the deceased, the Appellant with a sword and the 3rd accused with a pointed weapon. The Appellant dealt the deceased a blow on the head with the sword, as he was turning to get away, and the deceased was stabbed again by the 2nd accused and stabbed also by the 3rd accused. He made off down the road but was 30 pursued and caught by the 3 accused who continued the attack. The deceased fell down on the road, but the 3rd accused said "He is not dead, cut him", whereupon the Appellant cut him again.

pp.18-23

6. The deceased was taken to hospital later that morning but died soon after.

p.5  
p.7

40 He was found to have 20 external injuries of which 18 were incised wounds which could have been caused by a sharp-cutting weapon. These wounds were on the head, neck, arms, hands, right shoulder and chest.

p.6

p.8

7. The Appellant gave evidence in his own defence.

pp.67-113

pp.67-68

He said that on the 5th August 1965 (2 days before the incident which led to the death of the deceased) there had been an incident in Wilson's boutique involving the 3rd accused, the deceased and the deceased's brother, Marasinghe. A fight had taken place between Marasingne and the 2nd accused, and the Appellant and the 3rd accused had intervened to separate the combatants.

pp.69-70

Subsequently, the deceased had accused the Appellant of aiding an assault on Marasinghe and threatened to shoot the Appellant and set fire to his shed. After this, the Appellant went to the police station with the 2nd and 3rd accused and made a complaint about what had happened. However, so far as he knew, the police had not conducted any inquiry in respect of the complaint.

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pp.70-73

8. The Appellant's account of what happened on the morning of the 7th August was that he was working in his carpentry shed when the deceased arrived and attacked him with a sword. The 2nd accused, who was the Appellant's assistant or apprentice, had been working with him, but at that moment was absent, having gone out to relieve himself.

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The Appellant had a mallet in his hand and held it up to ward off the blow that the deceased aimed at him with the sword. The sword struck the mallet and got embedded in it. Then the Appellant turned and stabbed the deceased with a chisel which he had in his hand. The deceased fell down, the appellant "trampled" his hand and took the sword, whereupon the deceased ran. The Appellant said that, having removed the mallet which had got embedded in the sword, he threw it away and pursued the deceased. While the deceased was running, the Appellant saw him put his hand to his waist and feared that he had a pistol with him, so the Appellant chased after him and cut him with the sword. The Appellant struck him again and he raised both his hands.

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"The second blow also struck him. He then kicked me. But I did not fall. Neither did the sword fall. He then started running. I thought that he would enter Wilson's boutique. I thought that he would get into Wilson's boutique and shoot me from inside. I chased after him and cut him two or three times. He did not go to the boutique but went in the direction of the Nawagiri Aru bund. He ran a short distance and fell down. I turned and came towards the junction. Then I ran in the direction of the forest. In the direction of the Maya Oya".

p.73, 11.  
5-19

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9. The learned trial Judge, in summing-up to the Jury, directed them that there was a burden upon the prosecution to prove its case beyond reasonable doubt, but there was a burden upon the Appellant to establish that he was acting in self-defence upon a balance of probability.

pp.114-132

The principal passages in which he directed them as to the onus upon the Appellant were as follows :-

"(a) When the accused sets up a defence he need not prove his defence beyond reasonable doubt. It should be on the balance of evidence. Is it more probably true than not that it is on a balance of evidence or balance of probability? Then is it likely that a man who went armed with a sword got cut with his sword, whereas the man whom he tried to attack went unscathed?

p.128, 11.  
23-31

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(b) A person is entitled to defend himself against an attack by another and if he has reasonable apprehension that if he does not act in that manner he is likely to be killed or grievous hurt is likely to be caused to him, he is even entitled to kill the person who attacks him.

p.129, 1.  
46 -  
p.130, 1.8

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He says here that he had reasonable apprehension. The circumstances on which he relies must be proved to your satisfaction on the balance of probability. If he leaves it in a reasonable doubt, then he would not have succeeded in the defence that he raises.

p.131,  
11.21-36

(c) Then has the prosecution established its case beyond reasonable doubt? 10  
Has the defence evidence thrown a reasonable doubt on the evidence for the prosecution? Has the first accused on the balance of probability or on the balance of evidence succeeded in saying that he acted in the exercise of the right of private defence of his own person? If what he says is true on the balance of evidence, then he is entitled to an acquittal. But, if you are not satisfied with that, if you think that he has not established the circumstances and leaves you in reasonable doubt with regard to the circumstances, then the defence of acting in the exercise of the right of private defence of his person would fail." 20

p. 2 10. On the 3rd March 1966 the Jury brought in verdicts of guilty against the Appellant and his 2 co-accused, all of whom were thereupon sentenced to death. 30

pp.133-138 11. The Appellant appealed against his conviction to the Supreme Court of the Island of Ceylon (Court of Criminal Appeal), which by Order dated the 13th day of May 1966 dismissed his said appeal.

p. 138

p. 139 12. By Order in Council dated the 22nd day of March 1968 the Appellant was granted Special Leave to Appeal in forma pauperis against the said Order of the Supreme Court. 40

13. It is respectfully submitted that the learned trial Judge's directions to the Jury as to the burden of proof resting upon the Appellant to establish that he was acting in self-defence were in accordance with the law of Ceylon, which in this respect differs from the law of England by reason of the express provisions of the Evidence Ordinance. Section 105 of that Ordinance puts a burden of proof in such a case upon an accused, and section 3 defines the nature and weight of such burden. It is submitted that in Ceylon the incidence and weight of the burden of proof where self-defence is raised are exactly the same as where insanity is raised, that is to say, that it is for the accused to establish the defence by proving the facts relied on to the degree required by the definition of proof contained in section 3. This, in the submission of the Respondent, is, at the least, proof upon a balance of probability.

14. In Chandrasekera's case, where the defence raised was also self-defence, it was contended by the Appellant that the burden of proof resting on an accused in such a case was not a legal or persuasive burden but only an evidential burden, i.e. in the sense of there being a duty or necessity of introducing evidence. The Court rejected this view, holding that the burden of proof upon the accused was a legal burden of proving the facts which established the exception and that, there being a statutory definition of proof, the proof that had to be tendered was the proof as defined by the legislature, whose definition was not to be superseded by principles developed in English case law. It is submitted that the Court correctly so held and that there is no room for the application of the English law as to where the onus lies when self-defence is raised, since the Evidence Ordinance makes express and comprehensive provision as to the incidence and weight of the burden of proof in such a case.

15. The Respondent humbly submits that this

Appeal should be dismissed and the said Order of the Supreme Court of the Island of Ceylon (Court of Criminal Appeal) dated the 13th day of May 1966 should be affirmed for the following among other

R E A S O N S

- (1) BECAUSE the learned trial Judge correctly directed the Jury as to the onus resting upon the Appellant to show that he was acting in self-defence. 10
- (2) BECAUSE the incidence and weight of the burden of proof where a plea of self-defence is raised are as provided in the Evidence Ordinance.
- (3) BECAUSE the burden of proving the existence of circumstances bringing the case within Exception 2 of Section 294 of the Penal Code is upon an accused, and the Court is to presume the absence of such circumstances. 20
- (4) BECAUSE it could not be said that the Appellant had proved the facts on which he relied unless he had satisfied the Jury that such facts existed or that their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they existed.
- (5) BECAUSE the English law which would apply where a plea of self-defence is raised, has no application to such a case in Ceylon. 30
- (6) BECAUSE the Evidence Ordinance is a complete code of the law relating to evidence in Ceylon.
- (7) BECAUSE if and where the Evidence Ordinance differs from English case law, it is the former which must prevail.



- (8) BECAUSE Chandrasekera's case was rightly decided for the reasons stated in the majority Judgments therein and the like reasoning applies to the present case.
- (9) BECAUSE the conviction of the Appellant did not occasion a miscarriage of justice.

E.F.N. GRATIAEN

MONTAGUE SOLOMON

A P P E N D I X

COURTS ORDINANCE (CAP.6)

Section 51

(1) It shall be lawful for the Chief Justice to make order in writing in respect of any case brought before the Supreme Court by way of appeal, review or revision, that is shall be heard by and before all the Judges of such Court or by and before any five or more of such Judges named in the order, but so that the Chief Justice shall always be one of such five or more Judges. The decision of such Judges when unanimous, or of the majority of them in case of any difference of opinion, shall in all cases be deemed and taken to be the judgment of the Supreme Court. 10

(2) Where an order has been made under subsection (1) that any case shall be heard by and before an even number of Judges and where such Judges are equally divided in their opinions, the decision of the Chief Justice or decision of any Judge with whom the Chief Justice concurs shall be deemed and taken to be the judgment of the Supreme Court. 20

PENAL CODE (CAP.19)

Section 294

Except in the cases hereinafter excepted, culpable homicide is murder -

Firstly - If the act by which the death is caused is done with the intention of causing death; or 30

Secondly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

Thirdly - If it is done with the intention of causing bodily injury to any person, and the

bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

10 Fourthly - If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid

#### Illustrations

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- 20 (b) A knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, now knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he
- 30 did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.
- (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.
- 40 (d) A, without any excuse, fires a loaded gun into a crowd of persons and kills one of them. A is guilty of murder,

although he may not have had a premeditated design to kill any particular individual.

Exception 1. -- Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :- 10

Firstly - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant.

Thirdly - That the provocation is not given by anything done in the lawful exercise of the right of private defence. 20

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

#### Illustrations

- (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation. 30
- (b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has

not committed murder, but merely culpable homicide.

- (c) A is lawfully arrested by Z, a Fiscal's officer. A is excited to sudden and violent passion by the arrest and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.
- 10 (d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words and kills Z. This is murder.
- (e) A attempts to pull Z's nose, A, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent  
20 passion in consequence and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.
- (f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have  
30 committed culpable homicide, but A is guilty of murder.

Exception 2. - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the  
40 purpose of such defence.

Illustration

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3. - Culpable homicide is not murder 10  
if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4. - Culpable homicide is not murder 20  
if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. - Culpable homicide is not murder 30  
if the offender, being the mother of a child under the age of twelve months, causes its death whilst the balance of her mind is disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.

Section 316

Whoever, except in the case provided for by section 326, voluntarily causes grievous hurt shall be punished with imprisonment of 40

either description for a term which may extend to seven years, and shall also be liable to fine; and if the person to whom the grievous hurt is caused shall be a woman or child, may in addition be punished with whipping.

Section 325

10           Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Section 326

20           Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation - Sections 325 and 326 are subject to the same provisos as exception 1, section 294.

EVIDENCE ORDINANCE (CAP.14)

30           An Ordinance to Consolidate, Define and amend the Law of Evidence.

P A R T I  
RELEVANCY OF FACTS

Section 2

(1) This Ordinance shall apply to all judicial proceedings in or before any court other than courts - martial, but not to

proceedings before an arbitrator.

(2) All rules of evidence not contained in any written law so far as such rules are inconsistent with any of the provisions of this Ordinance, are hereby repealed.

### Section 3

In this Ordinance the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

10

"court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

"Fact" means and includes -

- (a) any thing, state of things, or relation of things capable of being perceived by the senses;
- (b) any mental condition of which any person is conscious.

#### Illustrations

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- (a) That there are certain objects arranged in a certain order in a certain place is a fact.
- (b) That a man heard or saw something is a fact.
- (c) That a man said certain words is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

30



(e) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Ordinance relating to the relevancy of facts.

10 "Facts in issue" means and includes -  
any fact from which, either by itself  
or in connection with other facts,  
the existence, non-existence, nature,  
or extent of any right, liability,  
or disability, asserted or denied  
in any suit or proceeding, necessarily  
follows.

20 Explanation. - Whenever, under the provisions  
of the law for the time being in force  
relating to Civil Procedure, any court  
records an issue of fact, the fact to be  
asserted or denied, in the answer to such  
issue, is a fact in issue.

#### Illustrations

A is accused of the murder of B. At his trial the following facts may be in issue :-

That A caused B's death.

That A intended to cause B's death.

That A had received grave and sudden provocation from B.

30 That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

. . . . .  
. . . . .

A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. 10

A fact is said not to be proved when it is neither proved nor disproved.

Section 4

(1) Whenever it is provided by this Ordinance that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it. May presume. 20

(2) Whenever it is directed by this Ordinance that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. Shall presume

(3) When one fact is declared by this Ordinance to be conclusive proof of another, the court shall on proof of the one fact regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. Conclusive proof. 30

P A R T II  
ON PROOF

Section 100

Whenever in a judicial proceeding a question of evidence arises not provided for by this Ordinance or by any other law in force in

Ceylon, such question shall be determined in accordance with the English Law of Evidence for the time being.

### P A R T III

#### PRODUCTION AND EFFECT OF EVIDENCE

##### Section 101

10           Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

          When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

##### Illustrations

(a) A desires a court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

20           (b) A desires a court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

##### Section 102

          The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

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##### Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on ..

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B. 10

### Section 103

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

#### Illustrations

A prosecutes B for theft, and wishes the court to believe that B admitted the theft to C. 20

A must prove the admission.

B wishes the court to believe that, at the time in question, he was elsewhere. He must prove it.

### Section 105

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances. 30

### Illustrations

- (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of the proof is on A.

- (b) A, accused of murder, alleges that by grave and sudden provocation, he was deprived of the power of self-control.

10 The burden of proof is on A.

- (c) Section 316 of the Penal Code, provides that whoever, except in the case provided for by section 326, voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt section 316.

20 The burden of proving the circumstances bringing the case under Section 326 lies on A.

### Section 106

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

### Illustrations

- 30 (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

- (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Section 114

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume -

- (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession; 10

. . . . .

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it - 20

as to illustration (a) - a shop-keeper has in his till a marked dollar, soon after it was stolen and cannot account for its possession specifically but is continually receiving dollars in the course of his business;

. . . . .

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B E T W E E N

RAJAPAKSE PATHIRANAGE DON  
JAYASENA Appellant

- and -

T H E Q U E E N Respondent

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CASE FOR THE RESPONDENT

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