THE ATTORNEY-GENERAL
v.
RUBEROE AND OTHERS

SUPREME COURT
DHEERARATNE, J.,
WADUGODAPITIYA, J. and
BANDARANAYAKE, J.
S.C. APPEAL 82/97
C.A. (H.C.A.) 559/85
H.C. COLOMBO EXTRADITION 2/94
NOVEMBER 7 AND DECEMBER 18, 1997.

Extradition – Extradition Law, No. 8 of 1977 ss. 3 (1), (2), 4, 8 (2), 8 (3), 9, 10, 11, 14 (1) & (2) – Exrtadition Treaty on 22.12.1931 – Exchange of Notes to revive Treaty – Order published in Gazette Extraordinary No. 773/20 dated 1st July, 1993 – Certificate of Conviction – Fugitive Persons Act, No. 29 of 1969 s. 20 – External Affairs Agreement of 11.11.1947, Article 6 – First Republican Constitution of 1972, Article 14 – Second Republican Constitution, Article 167.

One Priya Channa Ruberoe (2nd respondent) was convicted in the Municipal Court of Ventura County, California (U.S.A) of having committed a lewd act on his ten-year old step daughter – an offence punishable under section 288 (a) of the California Penal Code. This offence was a serious felony within the meaning of section 197.7 (c) (6) of the said Code. Identification and sentence were for August 31, 1993 and the 2nd respondent was enlarged on bail pending sentence. He however failed to appear in Court on August 31, 1993 and a warrant was issued for his arrest. On November 26, 1993, the Embassy of the United States of America intimated the Ministry of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka, of the request for the provisional arrest of the 2nd respondent who had absconded to Sri Lanka by that time for the purpose of his

extradition to the United States of America. The request for extradition was formally made by the Embassy of the U.S.A to the Foreign Ministry of Sri Lanka, by the requisition dated December 07, 1993. In pursuance of this requisition His Excellency the President of Sri Lanka, who was the Minister in charge of Extradition, in terms of section 8 (3) of the Extradition Law, No. 8 of 1977 issued to the High Court of Colombo an "authority to proceed". Thereupon the High Court issued a warrant of arrest under section 9 of that Law and the 2nd respondent was arrested and produced before the High Court of Colombo where proceedings were held under section 10 of the Extradition Law. At the conclusion of the proceedings, where several defences submitted on his behalf were considered, the 2nd respondent was committed to custody to await his extradition to the U.S.A.

The order of the High Court was challenged by way of an application for a writ of Habeas Corpus. It was admitted that – (1) There was an Extradition Treaty, between Her Majesty in respect of the United Kingdom and the President of the U.S.A signed on December 22, 1931, which came into force on June 24, 1935, as per article 18 of that Agreement. (2) There was an "Exchange of Notes" between the Embassy of the U.S.A and the Ministry of Foreign Affairs of Sri Lanka dated March 23 and 30, 1993, purporting to "revive" the Extradition Treaty. (3) By *Gazette Extraordinary* No. 773/20 dated July 01, 1993, an order was made in terms of section 3 of the Extradition Law, by His Excellency the President as Minister of Defence, declaring that the provisions of the Law shall apply to the U.S.A (a "foreign" state as opposed to a "designated Commonwealth country" within the meaning of the Law).

It was argued for the defence that there was no Extradition Treaty subsisting between the U.S.A and Sri Lanka as at March which could be revived by the Exchange of notes as section 1 of the Ceylon Independence Act, 1947, declared that the United Kingdom had no responsibility for Ceylon after the date of Independence, viz 04. 02.1948 and in any event on the promulgation of the first Republican Consitiution of 1972, the Treaty between the U.S.A and the U.K ceased to have any binding effect on the Republic of Sri Lanka.

The Extradition Acts of 1870 and 1873 of the United Kingdom were imported into the local law by the Extradition Ordinance No. 10 of 1877 and by the proclamation of the Governor of Ceylon dated April 03, 1878, the Order-in-Council passed by Her Majesty in Council on February 04, 1878 and published in the *Ceylon Government Gazette* of April 12, 1878. The 1870 Act of the U.K continued to apply to Ceylon until the Fugitive Persons Act, No. 29 of 1969 was passed section 20 of which provided that the enactments specified in the Third Schedule including the Extradition Acts 1870 to 1932 were repealed. From this it would be seen that the application of the Extradition Acts of the United Kingdom to Ceylon survived the Islands attainment of Independence in 1948. The 1969 Act was replaced by the Extradition Law, No. 8 of 1977.

Held:

1. The principles of International Law recognize no right to extradition apart from treaty.

2. A Government may, however, if agreeable to its own constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he fled.

3. Simultaneously, with the coming into force of the Independence Act, the External Affairs Agreement between the U.K and Ceylon signed on November 11, 1947, came into force and by Article 6 of this Agreement the obligations of the Government of the U.K under the extradition agreement with U.S.A devolved on the Government of Ceylon.

4. A newly independent State must choose its option early regarding its attitude towards treaties of its former colonial power. Ceylon did not denounce the agreement but obtained registration of the External Affairs Agreement with U.K with the United Nations in 1951. So long as an agreement is not denounced, it is certainly the duty of the Government and the Courts to sanction performance of its obligations due under the agreement.

5. The obligations of the Government of Ceylon thus accruing after attaining Independence did not lapse after the first Republican Constitution of 1972 because Article 14 made all rights, duties and obligations howsoever arising and subsisting immediately prior to the commencement of the Constitution, rights, duties and obligations of the Government of the Republic of Sri Lanka under the Constitution. The 1978 Constitution by Article 167 kept alive all rights, duties and obligations of the Government of Sri Lanka subsisting immediately prior to the commencement of the new Constitution.

6. At the time the Minister made the Order in terms of subsection 3 (1) of the Extradition Law, there was in existence and in force an Extradition Agreement between the U.S.A and Sri Lanka quite independent of the Exchange of Notes. The Notes themselves serve to acknowledge the fact of the existence of an Agreement between the two States containing an extradition agreement.

7. Failure to recite or embody the arrangement in the Minister's order does not invalidate. The omission cannot be equated to a technical requirement in criminal procedure. The 2nd respondent has not in any way been prejudiced by the omission. The order made by His Excellency under section 3 (1) of the Extradition Law is not invalid.

8. Copies of verdict of the jury convicting the 2nd respondent dated July 22, 1993, signed by the foreperson duly certified by the Deputy Clerk under the seal of the Court had been filed. The certified copies of the certificates of conviction are properly authenticated.

9. The extradition arrangement is valid in law.

Cases referred to:

1. *Factor v. Laubenheimer United Sates Marshal,* et al (1933) Supreme Court Reporter 290 - 292 US 191.
2. In the matter of the extradition of Zwagendaba Jere, United States District Court of Columbia of 29.3.1966.
3. *Bull v. The State Minutes* of 11.11.1966 of the Supreme Court of South Affrica Transvaal Provincial Division.
4. *Le Ministere Public v. Sabbe* Minutes of July 08, 1966, of the Cour d' Appeal de Leopoldville (Role No. 7995).
5. *In re Arton* (1896) 1 QB 108, 111.

APPEAL from judgment of the Court of Appeal.

K. C. Kamalasabayson P.C. A.S.G with *U. Egalahewa* S.C and *Harsha Fernando* S.C for appellant.

Dr. Ranjit Fernando with *G. L. Mendis, M. Balalla* and *Seneth Karunaratne* for 1st respondent Chandradasa Ruberoe (applicant in *Habeas Corpus* application).

Cur. adv. vult.

January 16, 1998.

DHEERARATNE, J.

Introductory facts:

On 16th September, 92 on a complaint filed in the Municipal Court of Ventura County, California, the District Attorney of Ventura County, charged Channa Priya Ruberoe (the second respondent) on three counts of committing a lewd and lascivious act upon a child under the age of fourteen years. The victim of the alleged sexual assault, was the then ten-year old daughter of the 2nd respondent's wife Niki Ruberoe (formerly Niki Hatch), to whom the 2nd respondent stood in a position of special trust, namely that of stepfather. The 2nd respondent waived his right to a preliminary examination in the Municipal Court and the case was certified to the Superior Court. On information filed on 11th November, 92, the 2nd respondent was charged with three counts of the aforesaid offence and was arraigned on those charges in the Superior Court on 11th December, 92 and a jury trial was fixed. The jury trial commenced on 21st January, 93, but subsequently a mistrial was declared and the jury was discharged. On 13th July a fresh trial commenced before a new jury and on 22nd July the 2nd respondent was convicted by the jury on all three counts

of having committed a lewd act upon a child, an offence punishable under section 288 (*a*) of the California Penal Code; which offence is a serious felony within the meaning of section 1197.7 (*c*) (6) of the said Code. Identification and sentence was set for 31st August, 93 and the 2nd respondent was enlarged on bail pending sentence. On 31st August the 2nd respondent failed to appear in Court for sentencing and a warrant for his arrest was issued by the clerk of Court pursuant to the order made by the Judge of the Superior Court.

On 26th November, 93, the Embassy of the United States of America, intimated the Ministry of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka, of the request for the provisional arrest of the 2nd respondent, who had absconded to Sri Lanka by that time, for the purpose of his extradition to the United States of America. The request for extradition was formally made by the Embassy of the U.S.A to the Foreign Ministry of Sri Lanka, by the requisition dated 7th December, 93. In pursuance of this requisition, His Excellency the President of Sri Lanka, who was the minister in charge of extradition, through the Secretary of the Ministry of Defence, in terms of section 8 (3) of the Extradition Law, No. 8 of 1977, issued to the High Court of Colombo an "authority to proceed". Thereupon, the High Court issued a warrant of arrest of the 2nd respondent under section 9 of that Law. The 2nd respondent was arrested and produced before the High Court, where proceedings were held under section 10 of the Extradition Law. At the conclusion of the proceedings, where several defences submitted on behalf of the 2nd respondent were considered, he was committed to custody to await his extradition to the U.S.A.

Application for a writ of Habeas Corpus in the Court of Appeal and issues for determination by this Court:

In terms of section 11 of the Extradition Law, the order of committal of the 2nd respondent made by the High Court, was challenged by way of an application for a mandate in the nature of a writ of habeas corpus, in the Court of Appeal, made by the 1st respondent, the father of the 2nd respondent. I may briefly state here, that in the course of those the Habeas Corpus proceedings there was no dispute that (1) there was an Extradition Treaty between Her Majesty in respect of the United Kingdom and the President of the United States of

America signed on 22nd December, 1931, which came into force on 24th June, 1935, as per article 18 of that agreement; (2) that there was an "Exchange of Notes" between the Embassy of the U.S.A and the Ministry of Foreign Affairs of Sri Lanka dated 23rd March and 30th March, 93, purporting to "revive" the said Extradition Treaty; and (3) that by *Gazette Extraordinary* No. 773/20 dated 1st July, 1993, an order was made in terms of section 3 of the Extradition Law, by His Excellency the President as Minister of Defence, declaring that the provisions of the Law shall apply to the U.S.A (a "foreign state" as opposed to a "designated commonwealth country" within the meaning of the Law). The principal contention of petitioner was that there was no extradition treaty subsisting between the U.S.A and Sri Lanka as at March, 93, to be revived by an exchange of notes, as section 1 of the Ceylon Independence Act, 1947 declared that the United Kingdom had no responsibility for Ceylon after the date of Independence, viz. 4.2.1948 and in any event on the promulgation of the 1st Republican Constitution of 1972, the Treaty between the USA and the UK ceased to have any binding effect on the Republic of Sri Lanka.

That submission commended itself to the Court of Appeal, which, while holding that the Treaty and the Exchange of Notes were of no legal effect or validity in law, concluded that therefore the Authority to Proceed was also invalid in Law. The Attorney-General has appealed to this Court, with special leave obtained on the question whether the extradition arrangement referred to in A3 (*Gazette* No. 773/20 of 1st July, 1993) is valid in law. In view of the conclusion reached by the Court of Appeal, two other matters of Law argued before it were left undecided. They were: (1) Was the Order made by HE under subsection 3 (1) of the Extradition Law invalid for the reason that it failed to "recite or embody" the terms of the Extradition Treaty?; and (2) Was there a valid "certificate of conviction" furnished with the Authority to Proceed as required by subsection 8 (2) of the Extradition Law, the absence of which made the proceedings a nullity? Ordinarily, in the event of our holding with the appellant on the question of law on which leave to appeal was granted, we will have to send the case back to the Court of Appeal to determine those undecided questions. We were of the opinion, that such an eventuality should be avoided, in view of the time already taken by these proceedings after the request was made for extradition of the 2nd respondent. Therefore, when this matter came up for argument before us, we indicated to Learned Counsel for the parties, that in order to obviate such unnecessary delay, it was desirable for us to hear and determine

those questions as well, which appeared to us to be pure questions of Law. Learned Counsel for both parties, in the best traditions of the profession, agreed with that course we proposed to take.

Legislation on Extradition:

In order to appreciate some of the submissions presented to us in the course of argument in this case, it would be necessary to briefly consider the legislative history of the law of extradition in this Island. The scope of that exercise would, of course, exclude reference to the law pertaining to extradition of Fugitive Offenders from one part of the British Empire to another part. Extradition Act, 1870, of the United Kingdom (as amended in 1873), by its section 17 provided, that the Act when applied by an Order-in-Council, shall unless it is otherwise provided by such Order, extended to every British Possession in the same manner as if throughout that Act the British Possession were substituted for the United Kingdom with certain modifications; those modifications are irrelevant for the purpose of this judgement. Section 26 defined the term "British Possession" to mean "any colony, plantation, island, territory, or settlement within Her Majesty's Dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one Legislature, as hereinafter defined, are deemed to be one British Possession". The same section proceeded to define the term "Legislature" to mean "any person or persons who can exercise legislative authority in a British Possession, and where there are Local Legislatures as well as a Central Legislature, means the Central Legislature only".

The Legislature of Ceylon passed the brief Extradition Ordinance No. 10 of 1877, making provision for the Local Magistrates to perform all functions vested with their counterparts and Justices of the Peace in the United Kingdom, under the Extradition Acts of 1870 and 1873. By proclamation of the Governor of Ceylon dated 3rd April, 1878, the Order-in-Council passed by Her Majesty in Council on 4th February, 1878, was published in the *Ceylon Government Gazette* of 12th April, 1878. It is relevant to set out verbatim the material portions of that Order-in-Council, in order to show how the entirety of the Extradition Act of the United Kingdom was imported to Ceylon.

"Whereas by section 18 of the Extradition Act, 1870, it is among other things enacted, that if any law made after the passing of

the said Act by the Legislature of any British Possession provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in, or suspected of being in, such British Possession, Her Majesty may, by the Order-in-Council, applying the said Act in the case of any Foreign State, of by any subsequent order, either–

Suspend the operation within any such British Possession of the said Act, or any part thereof, so far as it relates to such Foreign State, and so long as such law continues in force there and no longer;

Or direct that such law or Ordinance or any part thereof shall have effect in such British Possession, with or without modifications and alterations, as it were part of the Act;

And whereas by an Ordinance enacted by the Legislature of Ceylon the short title of which is "The Extradition Ordinance 1877', it is provided that 'all powers vested in and acts authorized or required to be done by a Police Magistrate or any Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom under the Exrtradition Acts, 1870 and 1873, are thereby vested in and may in the Colony be exercised and done by, any Police Magistrate, in relation to the surrender of fugitive criminals under the said Acts;

And whereas it is further provided by the said Ordinance that the said Ordinance shall not come into operation until Her Majesty shall, by Order-in-Council, direct that the said Ordinance shall have effect within the Colony, as if it were part of the Extradition Act, 1870, but that the said Ordinance shall thereafter come into operation as soon as such Order-in-Council shall have been publicly made known in the Colony;

Now therefore, Her Majesty, in pursuance of the Extradition Act, 1870, and in exercise of the power in that behalf in the said Act contained, doth by this present order, by and with the advice of Her Majesty's Privy Council, direct that the said Ordinance shall have effect in the Colony of Ceylon, without modification or alteration, as if it were part of the Extradition Act of 1870".

The 1870 Act of the U.K continued to apply to Ceylon until the Fugitive Persons Act, No. 29 of 1969 was passed. Section 20 of the latter Act provides, subject to certain exceptional circumstances which need not concern us here, that the enactments specified in the third schedule "are repealed as respects Ceylon, and accordingly shall cease to operate as part of the law of Ceylon". The first item in that schedule is "The Extradition Acts, 1870 to 1932, of the United Kingdom". It could thus be seen that the application of the Extradition Acts of the United Kingdom to Ceylon survived the Island's attainment of Independence in 1948. The 1969 Act was replaced by the Extradition Law, No. 8 of 1977 (1980 LE Chapter 60) which is the law on that subject currently in force.

Subsection 3 (1) of that Law provides that "where any extradition arrangement has been made by the Government of Sri Lanka with any foreign State, whether before or after the commencement of this Law, then subject to the provisions of section 4, the Minister may by Order published in the *Gazette* declare that the provisions of this Law shall apply in respect of such Foreign State, subject to such modifications, limitations or conditions as the Minister, having due regard to the terms of such arrangement, may deem expedient to specify in the Order for the purpose, and the purpose only, of implementing such terms". Section 23 of the Law defines a "foreign State" to mean any State outside Sri Lanka, other than a country within the Commonwealth. "Extradition arrangement" is defined to "include any treaty or agreement relating to the extradition of fugitive offenders made prior to 4th February, 1948, which extends to, and is binding on, the Government of Sri Lanka".

The Extradition Treaty between the U.K and the U.S.A dated 22nd December, 1931 and the Minister's Order of 13th May, 1993, under section 3 of the Extradition Law.

"The principles of International Law recognize no right to extradition apart from treaty. While a government may, if agreeable to its own constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he fled . . . the legal right to demand his extradition and the correlative duty to surrender him to the demanding state exist only when created by treaty" Vide *Factor v. Laubenheimer, United States Marshal, et al*[1].

The material portion of the relevant *Gazette* Notification reads:

THE EXTRADITION LAW, NO. 8 OF 1977:

By virtue of the powers vested in me by section 3 of the Extradition Law, No. 8 of 1977, read with Article 44 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka, I, Dingiri Banda Wijetunga, Minister of Defence, do, by this Order, declare that the provisions of the aforesaid law shall apply in respect of the United States of America.

The terms of the extradition arrangement between the Government of Sri Lanka and the Government of the United States of America shall for the purpose of implementation of such terms be as set out in the Schedule hereto, subject to such restrictions as are contained in the Extradition Law, No. 8 of 1977.

D. B. Wijetunge
Minister of Defence.

Colombo
13 May, 1993.

SCHEDULE

Extradition Treaty between His Majesty in respect of the United Kingdom and the President of the United States of America signed at London on December 22, 1931 and made applicable to Ceylon by virtue of the provisions of Article 2 of the Treaty on June 24, 1935, published in the U.K Treaty Series No. 18 (1935) (printed and published by His Majesty's Stationery Office) (Cmd. 4928) and revived between the Democratic Socialist Republic of Sri Lanka and the United States of America by the Exchange of Notes between the Embassy of the United States of America and the Ministry of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka, dated 23rd March and 30th March, 1993, respectively.

(This Order was presented to the Parliament on 7. 2. 95 and approved on 24. 2. 95)

Learned Counsel for the 1st respondent assailed the subsistence of an extradition agreement between the U.S.A and Sri Lanka on several fronts. It is only if there is a subsisting agreement/arrangement binding on the Government of Sri Lanka, that subsection 3 (1) could be invoked by the Minister to make an appropriate Order. Learned Counsel for the 1st respondent submitted that Ceylon Independence Act, 1947 (Chapter 276 LE 1956; 11712 Geo Vi, C. 7) by article one, declared that the U.K Government has no responsibilities for Ceylon with effect from the 4th February, 1948, the date of the grant of Independence; that if one were to give recognition, weight and meaning to the Declaration made in 1947, both in the House of Commons and the Ceylon State Council to confer upon Ceylon fully responsible status, depriving the Government of the U.K of responsibility for the Government of Ceylon, and making Ceylon an autonomous Community in the Commonwealth, to say that a treaty entered into by the President of the U.S.A and His Majesty of the U.K made applicable to Ceylon whilst a colony, was still applicable to Ceylon, would completely defeat the spirit and effect of the said declaration. The argument was taken further by the contention of learned Counsel for the 1st respondent, that even if the extradition agreement survived the Ceylon Independence Act, it could not have survived the first and second Republican Constitutions of 1972 and 1978.

Learned A.S.G for the State met this line of argument, by pointing to the fact that simultaneously with the coming into force of the Independence Act, the External Affairs Agreement between the U.K and Ceylon, signed on the 11th November, 1947, came into force, and by article 6 of which the obligations of the Government of the U.K under the extradition agreement with the U.S.A devolved on the Government of Ceylon.

Article (6) of that agreement reads:

"All obligations and responsibilities heretofore devolving on the Government of the United Kingdom of which arise from any valid international instrument shall henceforth insofar as such instrument may be held to have application to Ceylon devolve upon the Government of Ceylon. The reciprocal rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Ceylon shall henceforth be enjoyed by the Government of Ceylon".

There is no doubt that in terms of this agreement the obligations and responsibilities of the Government of the U.K in relation to the extradition agreement with the U.S.A devolved on the Government of Ceylon. It is unfortunate that the existence of this agreement appears not to have been brought to the notice of Court of Appeal. However, learned Counsel for the 1st respondent contended that this being an agreement reached not between two equals but beween a colonial servant and a colonial master, it lacks the force of law. This argument of learned counsel will receive my consideration later, when I deal with his argument based on International Law.

Learned Counsel for the 1st respondent then contended that, the position in International Law on the validity of a treaty when a colonial territory attains Independence, is that certain treaties creating obligations pass with the change of sovereignty; but however, he contended (quoting Starke – Introduction to International Law; 9th edition p. 316) that treaties such as those dealing with extradition, do not pass unless strong considerations require it to pass and it would generally be unreasonable to bind the successor State under it for various practical reasons. The practical reason given by Starke is that "normally such a treaty relates to special offences and the procedure under the municipal criminal law of the predecessor state, and a different penal code may be in force in the case of the successor state". This consideration has the least application to the Sri Lankan situation, as our criminal law is basically modelled on English Law principles. Starke too briefly refers to three "exceptional" decisions (unreported) upholding the continued application of an extradition treaty found in the Report of the 53rd Conference of the International Law Association, 1968, p. 628. That part of the report reads :

RECENT JUDICIAL DECISIONS RELATING TO SUCCESSION TO EXTRADITION TREATIES:

"1. *In the Matter of the extradition of Zwagendaba Jere,* decided in the United States District Court of Columbia on 29th March, 1966 (unpublished).[2]

This decision upheld the continued application of the Extradition Agreement of 1931 between the United Kingdom and the United States to the Republic of Zambia.

2. *Bull v. The State,* decided in the Supreme Court of South Africa (Transvaal Provincial Division), on 11th November, 1966 (unpublished).[3]

This decision upheld the continued application of the Extradition Agreement of 1962 between the Republic of South Africa and the Federation of Rhodesia and Nyasaland to the Republic of Malawi.

3. *Le Ministere Public v. Sabbe,* decided in the Cour d' Appel de Leopoldville, on 8th July, 1966 (Role No. 7995). (unpublished).[4]

This decision upheld the continued application to the Congo (Kinshasa) of the Extradition Agreement between the Independent State of the Congo and Liberia of 1894 to the Democratic Republic of the Congo".

Newly Independent States, which were former colonies, appear to have taken different attitudes regarding the devolution of obligations and responsibilities of the agreements entered into by their erstwhile colonial masters and no general customary principle of International Law could be formulated. The problem is perhaps best summarized by D. P O'Connel, in "Independence and Problems of State Succession" quoted in the work – International Law in a Changing World – Edward Collins Jr. p. 106. "Five possible attitudes towards continuity of treaties might be taken by successor states. They might deny continuity, or succession, altogether with respect to the treaties of their predecessor (an attitude taken by Algeria, Israel, and, with inconsistencies, Upper Volta); they might, in the absence of a devolution agreement, declare their continued application of such treaties (Congo-Brazzaville, Malagasy Republic, Congo – Leopoldville); they might enter into devolution agreements and base positive action upon them (most of the former British countries); they might take a reserved attitude (Tanganyika, Uganda Zanzibar); or they might, without any commitment to principle, in fact continue to apply. treaties (most of the former French countries)". See also Halsbury's Laws of England 4th edition vol. 18 para 1444 p. 742.

So, the only principle which could be gathered from the conduct of the States is that a newly Independent State must choose its option early regarding its attitude towards treaties of its former colonial power. Ceylon, far from denouncing the devolution agreement as

unacceptable when rejoicing in the springtime of its freedom, obtained registration of the External Affairs agreement with the U.K, with the United Nations in 1951. (see United Nations Treaty Series volume 86). So long as an agreement is not denounced, it is certainly the duty of the Government and the Courts to sanction performance of obligations due under the agreement. Up to the 4th of February this year, half a century would have elapsed, without any such act of denunciation by the State.

The obligations thus accruing to the Government of Ceylon after attaining Independence, in relation to the Extradition Agreement did not lapse after the 1st Republican Constitution came into force. For, Article 14 of the 1972 Constitution provided that "All rights and all duties or obligations, howsoever arising, of the Government of Ceylon and subsisting immediately prior to the commencement of the Constitution shall be rights, duties and obligations of the Government of the Republic of Sri Lanka under the Constitution". (See also Sri Lanka Republic Act, 1972, section 1 (1) referred to in Halsbury's Laws of England 4th Edition Vol. 18 para 241 Note 2, p. 100). The 1978 Constitution too made similar provision by Article 167 thereto, keeping alive all rights, duties and obligations of the Government of Sri Lanka subsisting immediately prior to the commencement of the new Constitution.

For the above reasons, I hold that at the time the Minister made the Order in terms of subsection 3 (1) of the Extradition Law, there was in existence and in force an extradition agreement between the U.S.A and Sri Lanka, quite independent from the Exchange of Notes. In view of this conclusion, I need not venture to find that independent of that agreement, an extradition arrangement had sprung up by virtue of the exchange of diplomatic Notes. Whatever might be the meaning attached to the word "revived" in those Notes, the Notes themselves serve to acknowledge the fact of the existence of an agreement between the two States containing an extradition arrangement. It is merely incidental that reference is made to that agreement, as one in force as at 1st June, 1996, in the book titled "Treaties in Force" published by the U.S.A Department of State.

Is the Order made by the minister in terms of subsection 3 (1) of the Extradition Law valid?:

Learned Counsel for the 1st respondent drew our attention to subsection 3 (2) which reads:

> "Every Order made under this section shall recite or embody the terms of the extradition arrangement in consequence of which such Order was made, and shall come into force on the date of publication of such Order, or on any such later date as may be specified therein, and shall remain in force for so long, and so long only, as the extradition arrangement in consequence of which such Order was made remain in force."

Learned Counsel for the 1st respondent firstly submitted that the words "recite" or "embody", even if taken separately, do not convey the same meaning as "refer" and the terms of the extradition arrangement, are neither recited nor embodied in that Order. Secondly, he submitted that this inherent defect in the Order cannot be cured by resorting to the preclusive clause contained in subsection 3 (5), because the 2nd proviso to section 22 of the Interpretation Ordinance (chap. 12 LE 1980) enables challenge of such an Order in Habeas Corpus proceedings, in spite of the preclusive clause mentioned in that law.

But the primary question is whether the Order of the minister should be reduced to a nullity because it fails to recite or embody the arrangement. Perhaps the requirement to recite or embody the terms of the arrangement in the Order may have assumed much importance, in case the minister deemed it expedient, having due regard to the terms of that arrangement, that the provisions of the Extradition Law should apply to a foreign state "subject to modifications, limitations or conditions". That is not the case here. As stated by Lord Russell, CJ, in the case of *In re Arton,* (1896)[5] at 111, "The law of extradition, is without doubt, founded upon the broad principle that it is to the interest of civilized communities that crimes, acknowleged as such, should not go unpunished; and it is part of the comity of nations that one state should afford another every assistance towards bringing persons guilty of crimes to justice".

We are unable to equate the omission in the Order to a technical requirement in Criminal procedure and in any event, we find that the 2nd respondent has not in any way been prejudiced by that omission. We hold that the minister's Order is valid in law.

Was there a valid "certificate of conviction" furnished with the Authority to Proceed as required by subsection 8 (2)?:

Subsection 8 (2) provides that together with the request made to the minister for extradition of a person who is convicted in a treaty state, there should be furnished, a "certificate of conviction". This term finds no definition in the Extradition Law. Subsection 14 (1) (*c*) states that in any proceeding under this law, a document "duly authenticated", which certifies that such person was convicted on a date specified in the document, of the offence against the law of such State, shall be admissible as evidence of that fact and the date of conviction. Subsection 14 (2) proceeds to state what is "deemed to be duly authenticated". And that is, as stated in (*c*), in the case of a document which certifies that a person was convicted, if that document as in (*a*) "purports to be certified by a Judge or other officer in or of the . . . State in question, to be the original . . . or true copy of such document".

Learned counsel submitted that the certificate of conviction was defective in that what was submitted to the High Court was certified copy of a copy. Since this submission appeared to be correct even from a perusal of the documents annexed to the Judge's briefs, I called for and examined the original High Court record in order to clarify the matter. At folios 143 to 145 of the High Court record, were copies of the verdict of the jury dated 22nd July, 1993, signed by the foreperson, convicting the 2nd respondent on the three counts each of a violation of section 288 (*a*) of the Penal Code, a lewd act upon a child. On the reverse of each of those three documents appears the original impression (not a photo copy) of the seal of the "Superior Court Ventura County, California" along with the following legend which forms part of the seal (except for what is given within brackets):

> "I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office. SHEILA GONZALEZ, Superior Executive Officer and Clerk, County of Ventura, State of California.

Dated (November 12, 1993)

By (Signed)

Deputy Clerk."

We are confident that the abovementioned impression of the seal formed no part of counsel's briefs like those of the Judges; and learned counsel for the 1st respondent's last submission was based on a *bona fide* belief that the impression formed no part of the original documents filed in the High Court. In the circumstances, this last submission of learned counsel for the 1st respondent must fail.

I hold that,

(i) the extradition arrangement referred to in A3 (*Gazette*) is valid in law;

(ii) the order made by His Excellency under section 3 (1) of the Extradition Law is not invalid; and

(iii) certified copies of the certificates of conviction are properly authenticated.

Conclusion:

For the above reasons, I set aside the judgment of the Court of Appeal and direct the High Court of Colombo to issue a warrant forthwith, for the arrest of the 2nd respondent Channa Priya Ruberoe and commit him to custody, to await his extradition to the U.S.A.

WADUGODAPITIYA, J. – I agree.

BANDARANAYAKA, J. – I agree.

Appeal allowed.