

**SUDU AIYA AND OTHERS**  
v s  
**THE ATTORNEY-GENERAL**

SUPREME COURT,  
YAPA, J.  
WEERASURIYA, J.  
JAYASINGHE, J.  
UDALAGAMA, J. AND  
FERNANDO, J.  
S.C. APPEAL No 17/2003 (TAB)  
H.C. COLOMBO No. 836/2002  
11TH AND 13TH OCTOBER, 2004

*Criminal Law—Conspiracy to commit murder —Section 296 read with sections 102 and 113B of the Penal Code - Commitment of murder by 2nd and 3rd accused — Section 296 read with section 32 of the Penal Code —1st accused indicted with abetment of murder by 2nd and 3rd accused - Section 296 read with section 102 of the Penal Code — Evidence of accomplice —Reliable and corroborated by confession of accused to accomplice and another—Circumstantial evidence.*

The appellants (accused) were indicted with conspiracy to commit the murder of Sujith Prasanna Perera ('Sujith') between 21st and 24th March 2001. The 2nd and 3rd accused were charged with the murder on 24.03.2001. The 1st accused was charged with abetment of murder by each of the 2nd and 3rd accused. The three accused were convicted of the offences with which they were indicted, before the High Court.

The main evidence on which the accused were convicted was given by accomplice Ratnayake who gave convincing evidence which was corroborated by the evidence of many witnesses and the confessions of the 2nd and 3rd accused to Ratnayake, a customs officer and that of the 3rd accused to one Rajakaruna at the Vavuniya Army Camp. Ratnayake had been given a conditional pardon by the Attorney-General.

The motive of the murder had been the fact that there was a customs inquiry by the deceased Sujith against the 1st accused.

According to Ratnayake, on 15th or 16th March, 2001 the 1st accused requested him to find a man who could ride a motorcyclé. Ratnayake found the 2nd accused. On 22nd March the 1st, 2nd and 3rd accused were taken by Ratnayake in his car to a motorcycle trade center, where the 1st accused spoke to the proprietor and his servants and obtained a red Honda motorcycle No. 160 series. Sirisena a workman noted the number 160- 2093 on a piece of paper, later produced as P7.

On 24.03.2001 Sujith deceased was driving his car from the direction of Kandy towards Colombo with his brother-in law Dinesh. According to Dinesh a red Honda motor cycle overtook the car. Then it slowed down and came on the side of the car when a shot rang killing Sujith. Dinesh saw the pillion rider looking back at the car.

The weapon ( the pistol) was brought by the 1st accused and given to Ratnayake who kept it as a parcel and Ratnayake gave it to the 2nd accused who had come with the 3rd accused.

There had been another attempt to kill deceased on 23.03.2001 when the 2nd and 3rd accused went out with the weapon and returned to Ratnayake saying that they were unsuccessful. The 3rd accused returned the weapon. On 24.03.2001 the 2nd and 3rd accused returned and the weapon was returned to the 3rd accused. They returned to (Ratnayake) about 7.30 a.m. and said th at the mission was accomplished. They then left on the motorcycle. Prior to that the 3rd accused gave Ratnayake 2 motor cycle number plates and a jacket all of which Ratnayake burnt in his back yard. The police observations state that evidence of burning was found on being shown the place by Ratnayake. The 3rd accused returned the weapon to Ratnayake.

According to Ratnayake the 1st accused attended Sujith's funeral and later at the 1st accused's request Ratnayake returned the weapon to the 1st accused who collected it and left. On 5th April, 2001 Ratnayake had met the 1st accused at Negombo and with the help of Mansoor and Sisira, the 1st accused left for India, by boat saying that he wished to hide.

On 24.03.2001 the 1st accused took the 3rd accused to Pettah bus stand and sent him off to the Vavuniya camp where he told witness Rajakaruna that he had done a job for the 1st accused. When the news of Sujith's murder appeared in the newspaper, the 3rd accused admitted the murder to Rajakaruna.

On a statement of the 2nd accused police recovered the motorcycle from the house of one Albert, (P2 )

#### HELD :

1. The prosecution has proved the case beyond reasonable doubt, despite the failure of the High Court to specifically advert to the requirement. The defect was in any event, curable under section 334(1) of the Code of Criminal Procedure Act.
2. The evidence of accomplice Ratnayake was credible and the entire transaction is corroborated by many witnesses including at the sale of the motorcycle and the confessions of the 2nd and 3rd accused relevant under sections 17 and 21 of the Evidence Ordinance.
3. The arrangement between Ratnayake and the 1st accused on 15th and 16th March, 2001 for finding a motor cycle man to the 1st accused was not evidence of the conspiracy, but evidence of motive or a state or mind or preparation under sections 8 and 14 of the Evidence Ordinance. The conspiracy was between 21st and 24th March, as alleged.
4. There is no merit in the appeal of the accused.

#### Cases referred to :

1. *King v Jayawardena* 51 NLR 2 5
2. *Queen v Sathasivam* 55 NLR 255
3. *Queen Liyanage* 67 NLR 193 at 203
4. *Mohamed Usman Mohamed Hussain v State of Maharastra* (1981) AIRSC 1062 at 1067
5. *Rex v Baskerville* (1916) 17 AER 38
6. *Somaveera v The Attorney-General* (1990) 1 SLR 256
7. *Francis Appuhamy v The Queen* 68 NLR 437 at 443
8. *Nallarattnam v Singarajah v The Attorney-General* CA No. 208/95 CAM 6.7.99
9. *Nagamani Theivendran c The Attorney-General* SC Appeal No. 65/ 2000 SCM 16.10.2002.
10. *Mannar Mannan v The Republic of Sri Lanka* (1990) ISLR 280

**APPEAL** from the judgment of the High Court.

*Dr. Jayampathy Wickramaratne, P. C. with Gaston Jayakody* for 1st appellant-accused.

*Dr. Ranjith Fernando with Himalee Kularatne* for 2nd and 3rd appellant-accused.

*Priyasath Dep, P. C. Additional Solicitor General with Mohan Seneviratne, State Counsel, K. P. Ranasinghe (Jnr.) State Counsel and Riyaz Hamsa, State Counsel for Attorney-General.*

*Cur. adv. vult*

November 24, 2004

**HECTOR YAPA, J.**

This is an appeal filed in terms of Section 451(3) of the Code of Criminal Procedure Act, No. 15 of 1979 as amended by Act, No. 21 of 1988, against the conviction and sentence imposed on the accused appellants ( Accused) by the trial at Bar.

Three accused in this case were indicted under 4 counts. In the 1st count, 1st, 2nd, and 3rd accused were indicted with the offence of conspiracy to commit the murder of Sujith Prasanna Perera between the period 21st March 2001 and 24th March 2001, and offence punishable under Section 296 read with Sections 102 and 113B of the Penal Code. In the 2nd count, the 2nd and 3rd accused were indicted with the commission of the murder of Sujith Prasanna Perera on 24th March 2001, an offence punishable under Section 296 read with Section 32 of the Penal Code. In the 3rd count, 1st accused was indicted for abetting the 2nd accused to commit the murder of Sujith Prasanna Perera on the date specified in count 2, and offence punishable under Section 296 read with section 102 of the Penal Code. In the 4th count, the 1st accused was indicted for abetting the 3rd accused to commit the murder of Sujith Prasanna Perera on the date specified in count 2, an offence punishable under section 296 read with Section 102 of the Penal Code.

At the conclusion of the Trial at Bar, three accused were convicted on all counts in the indictment and were sentenced to death. The present appeal is against the said conviction and sentence.

At the trial, prosecution led the evidence of several witnesses and marked several documents. Briefly the case for the prosecution as disclosed from

the evidence is as follows. According to the medical evidence, Sujith Prasanna Perera's death had occurred on 24.03.2001, at about 8.30 a.m. He had died of close range firearm injuries to his head and chest. Both these injuries were fatal, and were caused by bullets fired from a weapon which had emitted bullets with a spinning effect.

The only eyewitness to the incident was Dinesh Wijegunatillake. He was the brother in law of the deceased. According to him on 24.03.2001, he and the deceased had left their house in the car driven by the deceased towards Colombo at about 8.00 a.m. Deceased was going for his computer class at Kollupitiya and the witness was on his way to his shop at Maradana. When they were travelling on the Kandy - Colombo road near Ishara Traders, a motorcycle came on the right side of the car and was moving parallel to the car. At that time the witness had seen the rider wearing a helmet with a plain sun visor and the pillion rider was wearing a helmet with a dark sun visor. Both were wearing dark coloured jackets. The motorcycle was a Honda, red in colour. As they were riding, they were observing the inside of the car without overtaking. As he felt suspicious, he brought it to the notice of the deceased who did not pay any attention. Thereafter, the motorcycle slowed down allowing the car to proceed and when their car came closer to the Wedamulla Bridge, he heard a loud noise like a tyre burst. The car shutters broke and he saw a cloud of smoke. Head of the deceased had rested on to his side and was bleeding. He then realized that his brother in law had been shot. The car had slowed down, gone to the other side of the road and had fallen into a ditch. At that point of time, witness had seen the said motorcycle proceeding and the pillion rider looking back at the car. Witness had seen the registration number of the motorcycle as 160-four thousand series, which was a red coloured Honda.

The main witness for the prosecution was Ratnayake who had been tendered a pardon by the Attorney General. He was attached to the Customs Department as an Assistant Superintendent of Customs. According to this witness the 1st accused, some where on 15th or 16th March, 2001, had told him that he was having a problem that was "worrying his head" and requested of him to find a person who could ride a motorcycle. From this conversation, he gathered that the 1st accused was talking about the deceased Sujith Perera and that he needed a motorcycle rider to harm him. He knew that there was a customs inquiry against the 1st accused in which the deceased was an important witness. Besides, the

relationship between the 1st accused and the deceased was not cordial. Ratnayake said that the 2nd accused was working in his partnership business called "Canon Freight". His company had provided a motorcycle to the 2nd accused for his use and therefore, when the 1st accused requested a person to ride a motorcycle he thought that the 2nd accused was a suitable person. Therefore, somewhere between 15th and 20th March, 2001, he had told the 2nd accused who was known to the 1st accused as well, to do whatever Anura Weerawansa Sir (1st accused) requested him to do. Thereafter, on 22nd March 2001, in the evening, Ratnayake had gone in his car with the 1st accused to the Y. M. B. A. at Kiribathgoda where they met the 2nd and 3rd accused. Then the 2nd and 3rd accused joined them and four of them went to Kirillewella motorcycle sales centre owned by his friend Sisira. It had been through Ratnayake that the 1st accused had got friendly with Sisira. The time was about 7.00 p.m. when they went to the motorcycle sales center and as the gate was closed, they got it opened. Thereafter, the 1st accused had spoken to Sisira over the phone and was able to obtain a motorcycle. The 3rd accused examined the motorcycle, got the defects attended to and thereafter both the 2nd and 3rd accused left the place in that motorcycle. It was a red coloured motorcycle bearing registration number 160 series. After the 2nd and 3rd accused left the place, Ratnayake had gone to drop the 1st accused at his house at Welisara. When they went there, the 1st accused had given Ratnayake a parcel wrapped in a brown paper bag and had told him to give it to the 3rd accused at the Y. M. B. A. Kiribathgoda on the following day which was the 23rd March, 2001. Witness said that he knew the parcel contained a weapon like a pistol, which he brought home and kept under the bed.

On March 23rd morning Ratnayake telephoned the 2nd accused requesting him to come to his house and when the 2nd accused came there, he took the parcel that was brought on the previous night, and went with the 2nd accused in his motorcycle to the Y. M. B. A. Kiribathgoda. Shortly thereafter, when the 3rd accused arrived there, he had given the parcel (weapon) to the accused and came home leaving the 2nd and 3rd accused there. After sometime 2nd and 3rd accused had come to Ratnayake's house and told him that they could not do the job and the 3rd accused returned the weapon. Immediately thereafter, Ratnayake had telephoned the 1st accused and informed him about it. Then on the 24th

March, 2001, 2nd and 3rd accused had come to Ratnayake's house in the morning around 7 .00 a.m. in two motorcycles. When Ratnayake gave the weapon to the 3rd accused, both of them had gone in the motorcycle in which the 3rd accused had come, leaving the other motorcycle at his house. Sometime later, Ratnayake had received a telephone call from the 1st accused saying that he was coming to Ratnayake's place. Then the 1st accused had come to his house at about 7 .30 a.m. and when they were in conversation, Ratnayake had got a call from the 2nd or 3rd accused stating that they were coming to his house. Shortly thereafter, the 2nd and 3rd accused came to his house and informed them that the mission was accomplished, suggesting that Sujith Perera was murdered. Thereafter, the 3rd accused had returned the weapon and a parcel containing two motorcycle number plates. Then they had tea and kiribath and immediately thereafter, the 1st accused had taken the 3rd accused in his jeep to the Pettah bus stand to send him off to the army camp in Vavuniya. The 2nd accused had gone away in his motorcycle.

While Ratnayake was at his work place, the 1st accused had given him a telephone call and when Ratnayake told him that he was frightened, the 1st accused had pacified him saying not to be afraid. Ratnayake said that the two number plates and the jacket, given to him by the 3rd accused were burnt in his back yard as he felt that they may cause problems, which he had later shown to the police as the place where they were burnt. Ratnayake further said that, he and the 1st accused attended the funeral of Sujith Perera. Then on a later date, at the request of the 1st accused he had taken the weapon to a place close to the Makola junction and the 1st accused had come in his jeep, collected it and had gone away. On 5th April, 2001, the 1st accused had met him (Ratnayake) at the Royal Park flats and had told him that he has problems other than this and therefore he was going to hide. About three days later, he had met the 1st accused in Negombo and on that occasion, Mansoor and Sisira had gone in search of a boat to send the 1st accused to India. Few days thereafter Ratnayake and Sisira had gone to Lellama, (Negombo) and on that occasion, he had seen the 1st accused shaking hands with Sisira in the presence of Mansoor. Thereafter, Ratnayake said that he had seen the 1st accused only in court.

The prosecution also presented evidence of other witnesses not only for the purpose of corroborating the evidence given by Ratnayake and Dinesh Wijegunathilake but also to disclose additional material relating to the police investigation and the conduct of the accused after the commission of the offence. When the defence was called, all three accused made dock statements denying any involvement with the crime. In addition the 1st accused called witness Abeysinghe to give evidence relating to the times that Ratnayake had reported for duty at the Customs Department on the 23rd and 24th of March, 2001. The defence case was closed leading in evidence D 1 to D 3 and X 1 and X2.

At the hearing of this appeal learned counsel for the 1st accused appellant submitted that according to count 1 in the indictment, the alleged conspiracy had taken place at Walisara or Kiribathgoda during the period 21st March, 2001 to 24th March 2001. In the information provided by the Attorney—General to the Hon. Chief Justice, it was stated that the alleged conspiracy commenced on 22.03.2001 at Kiribathgoda, when the three accused and Ratnayake met in front of the Y. M. B. A. and conspired to cause the death of the deceased and for that purpose they decided to obtain a motorcycle. Hence, the case the 1st accused had to meet in the High Court was that he conspired with the other accused between the period 22nd and 24th March, 2001. Therefore, it was contended by learned counsel, that the evidence of Ratnayake that, on or about 15th or 16th March, 2001, the 1st accused had told him that he had a “headache” and wanted a motorcycle rider to get rid of it, and also Ratnayake's evidence that he told the 2nd accused between the period 15th and 20th March, 2001, to do whatever the 1st accused wanted him to do, should be disregarded. He further submitted that the Attorney General did not consider these items of evidence to form any part of the evidence relating to the conspiracy. In other words, what the learned counsel for the 1st accused was trying to submit was that these items of evidence were inadmissible and therefore had been wrongly admitted as evidence.

In regard to this matter, learned Additional Solicitor General submitted that according to witness Ratnayake, the reference of the 1st accused to a “headache” which had to be got rid of, was made in relation to the deceased. This reference was made either on the 15th or 16th March, 2001, which was a date prior to the dates specified in the conspiracy



count in the indictment. His contention was that, it was open to the prosecution to place these items of evidence not to establish a conspiracy, but to show a motive or the existence of a state of mind which would be relevant under sections 8 and 14 of the Evidence Ordinance. In a charge of conspiracy it is always open to the prosecution to lead evidence of such isolated acts in order to establish the commencement or the formation of the conspiracy. It would appear from such evidence, that the relationship between the deceased and the 1st accused was not cordial. Prosecution also led evidence to show that the deceased was giving evidence in a customs inquiry against the 1st accused, and therefore there was a strong motive for the 1st accused to cause harm to the deceased. When the 1st accused mentioned to Ratnayake about a "headache" which had to be got rid of, Ratnayake understood the reference to mean the killing of the deceased. These items of evidence clearly establish the state of mind, the motive or even preparation on the part of the 1st accused to cause harm to the deceased. Undoubtedly, such evidence would be admissible under sections 8 and 14 of the Evidence Ordinance. *Vide King vs Jayawardena*<sup>(1)</sup> *Queen vs Sathasivam*<sup>(2)</sup>. Further, it would be wrong to assume that the conspiracy has to be proved before the evidence of other acts or conduct of the alleged conspirators could be led in evidence, since evidence of such acts would have a bearing with regard to the formation or the starting point of the conspiracy. Therefore, in our view the prosecution has the right to place those items of evidence before the court. The submission that these items of evidence were inadmissible, as they referred to a time prior to the period of the conspiracy is unacceptable. The guiding principle in this matter would be, whether such evidence could be considered as relevant and admissible in terms of the Evidence Ordinance.

It was contended by the learned counsel for the 2nd and 3rd accused appellants that in a charge of conspiracy it is an essential ingredient to establish through evidence that there was an agreement on the part of the conspirators to commit the offence, namely, the murder of Sujith Perera. In this case, he complained that the Trial at Bar misdirected itself by failing to look for such material before coming to the conclusion that the charge of conspiracy has been established. On this question learned Additional Solicitor General submitted that, if the evidence of Ratnayake is accepted as true, his evidence clearly shows that there was an agreement among the accused to cause the murder of the deceased Sujith Perera. As stated above he further submitted that, the events referred to by Ratnayake had taken place between the period 21st March 2001 to

24th March, 2001 and these events cannot be explained in any other way except to say that these accused had acted according to an agreed plan. He said that it was Ratnayake's evidence that the 1st accused told him sometime earlier on the 15th or 16th March, 2001, that he had a problem that was "worrying his head" and requested him to find a person who could ride a motorcycle. At that point of time Ratnayake thought that the 2nd accused who was using a motorcycle and was working for him, was the most suitable person for the purpose and therefore, somewhere between the period 15th and 20th March, 2001, he had requested the 2nd accused to do whatever the 1st accused wanted him to do. Then on 22nd March 2001, in the evening 1st, 2nd and 3rd accused and Ratnayake met near the Y. M. B. A. Kiribathgoda, and proceeded to the Kirillewela motorcycle sales centre. At the sales centre the accused selected a manoeuvrable and high speed motorcycle and got the defects attended to. On the same day the 1st accused gave Ratnayake a parcel containing a weapon like a pistol to be given to the 3rd accused on the following day at the Y. M. B. A. Kiribathgoda. On 23rd morning Ratnayake went with the 2nd accused in his motorcycle to the Y. M. B. A. Kiribathgoda, met the 3rd accused and handed him the weapon and came back home leaving the 2nd and 3rd accused there. Sometime later both the 2nd and 3rd accused came to Ratnayake's house and returned the weapon to him stating that they could not do the job. Immediately, Ratnayake brought this matter to the notice of the 1st accused. Then on the 24th morning the 2nd and 3rd accused came to Ratnayake's house, collected the weapon and went away. Sometime thereafter, when the 1st accused was at Ratnayake's house, the 2nd and 3rd accused had come there and informed them that the mission had been accomplished. At that stage the 3rd accused had returned the weapon and a parcel containing the two motorcycle number plates. Then they all had food together and thereafter the 1st accused had taken the 3rd accused to be dropped at the Pettah bus stand to send him off to Vavuniya. All these events had taken place between the period 21st March to 24th March 2001 in quick succession. Why did these accused act in this way? Is it not logical to conclude that these accused acted in this way since, they had an agreement to commit the murder of Sujith Perera. This conclusion appears reasonable in view of the evidence of Rajakaruna who said that the 3rd accused had admitted to him about the commission of this murder, when the 3rd accused told Rajakaruna that he carried out a job for "Aiya" meaning the 1st accused.

An agreement could either be express or implied and it could be proved by direct or circumstantial evidence. In dealing with the nature of evidence that could be presented to establish a charge of conspiracy, the court in the leading case of the *Queen vs Liyanage and others*<sup>(3)</sup> at 203 stated as follows. "The evidence in support of an indictment charging conspiracy is generally circumstantial. It is not necessary to prove any direct concert, or even any meeting of the conspirators, as the actual fact of conspiracy may be inferred from the collateral circumstances of the case. Conspiracy can ordinarily be proved only by a mere inference from the subsequent conduct of the parties in committing some overt acts which tend so obviously towards the alleged unlawful results as to suggest that they must have arisen from an agreement to bring it about. Upon each of the isolated acts a conjectural interpretation is put, and from the aggregate of these interpretations an inference is drawn." Similar views were expressed in the case of *Mohamed Usman Mohamed Hussain vs State of Maharashtra*<sup>(4)</sup>. Further, it has been stated that in a conspiracy the accused may have agreed to act together without previous concert or deliberation since the requisite agreement may have come into being on the spur of the moment, although the accused had not met earlier. The gist of the offence of conspiracy is agreement. In the present case, there is clear evidence that the accused met together before. They are close associates. Therefore, their subsequent conduct as seen from the evidence clearly provides material from which their prior agreement, which is an essential ingredient of the offence concerned may be rightly inferred. Learned counsel's submission that in this case, the prosecution has failed to establish that there was an agreement on the part of the accused to cause the murder of the deceased is unacceptable. The Evidence of Ratnayake coupled with the other circumstantial evidence presented by the prosecution show very clearly that the accused conducted themselves in this manner, due to an agreement they had to commit the murder of the deceased Sujith Perera. In other words, an agreement by the accused to commit the murder of Sujith Perera has been inferentially established by the prosecution.

Another matter raised by learned counsel for the 1st accused appellant was that the Trial at Bar did not apply the higher standard of proof that was required, when applying the principle that the evidence of an accomplice should be corroborated by independent testimony. Learned counsel argued that witness Ratnayake was an accomplice and therefore his evidence had to be corroborated by independent evidence. He cited the case of

*Queen vs Liyanage (Supra)* where the principle has been laid down that the evidence of accomplices requires independent corroboration of their evidence in material particulars.

Counsel pointed out that Liyanage's case, after having laid down the general rule regarding corroboration, dealt with the case where an accomplice gives evidence under a conditional pardon and came to the conclusion that such evidence has to be considered carefully, even cautiously, and only accepted when it is corroborated and found to be convincing. His submission was that the court in Liyanage's case has set a higher standard of proof in the case of an accomplice who has received a conditional pardon. In the present case therefore, counsel complained that the Trial at Bar did not consider this important difference and instead relied on the standard that would be ordinarily applied to the evidence of an accomplice.

On the other hand in dealing with Ratnayake's evidence, counsel for the 2nd and 3rd accused appellants submitted that his evidence was unsatisfactory. He argued that the Trial at Bar failed to consider the question that corroboration is only required, if the witness requiring corroboration is otherwise credible. The tenor of counsel's argument was that the evidence of Ratnayake was not credible and therefore had to be rejected and there was no need to look for corroboration.

It would appear that both these submissions as referred to above made by both counsel relate to the question of credibility of witness Ratnayake. Hence, it would be appropriate to examine his evidence very closely for that purpose. Undoubtedly, witness Ratnayake is not only an accomplice, but a co-conspirator who had been given a conditional pardon. There is no controversy over this matter. Thus, it would require that his evidence should be corroborated by independent evidence, in material particulars. Even though, there is no impediment for a court to convict an accused person upon the uncorroborated testimony of an accomplice in terms of section 133 of the Evidence Ordinance. the principle that the evidence of an accomplice should be corroborated by independent evidence in material particulars, has now virtually become a rule of law. Besides, section 114 illustration (b) of the Evidence Ordinance states that the court may presume, that an accomplice is unworthy of credit, unless he is corroborated in material particulars. It would be safe therefore, to act on the evidence of an accomplice only when his evidence is corroborated and appears to be

convincing. In the case of *Queen vs Liyanage* at page 213, Reference was made to the assessment of the evidence of an accomplice who has received a conditional pardon in the following terms. "We have not forgotten that some of the prosecution witnesses who are obviously accomplices were giving evidence under a conditional pardon, "With halters round their necks", and with a natural inducement to earn it. Is their evidence to be forthwith struck out or disregarded ? Or is it to be considered carefully ,even cautiously, and only accepted when it is corroborated and found to be convincing ? We have chosen the latter course. The evidence of fellow conspirators or accomplices is of course tainted and suspect, especially when they admit their own complicity. But it is not usual for a prosecution for conspiracy to be instituted without the evidence of one or more persons who have, at one time or another, been parties to the conspiracy." Therefore, it is seen that the evidence of accomplices or co-conspirators who have given evidence under a conditional pardon could be accepted and acted upon, provided their evidence has been carefully and cautiously considered and found to be convincing.

Witness Ratnayake as stated earlier is not only an accomplice but a co-conspirator with the other accused. They happen to be close associates and the alleged conspiracy revolved round them. The 1st accused had obtained the services of the 3rd accused, a trusted friend who was from his village and who had earlier stayed in the 1st accused's house. Ratnayake obtained the services of the 2nd accused who was the wharf clerk attached to his business concern and was known to the 1st accused. The relationship between the 1st accused and Ratnayake appears to be something more than a friendship. Ratnayake's evidence clearly highlight his deep involvement with the other accused. If his evidence is accepted as being reliable, it is sufficient to establish the charge of conspiracy. Even in relation to the charge of murder which is the 2nd count in the indictment. If Ratnayake's evidence is believed, then there is sufficient material to establish this count. It would be seen that Ratnayake has given evidence in detail with regard to the conduct of the 1st, 2nd and the 3rd accused during the period 22nd March to 24th March 2001. The admission made to Ratnayake by the 2nd and 3rd accused in his house on 24th March, 2001, that the job was accomplished, and thereafter the handing over of the weapon and the two number plates show that the 2nd and 3rd accused were fully involved in the commission of the crime. It is also in evidence that the 3rd accused had admitted to witness Rajakaruna about the killing of Sujith Perera at the instance of the 1st accused. With regard to the complicity of the 1st accused on the charge of abetment

referred to in counts 3 and 4 of the indictment, Ratnayake's evidence alone if accepted would be sufficient to establish the said counts. Such an inference is possible because, according to Ratnayake, it would appear that the 1st accused was instrumental in obtaining the services of the 3rd accused, the securing of the motorcycle and the weapon to be used in the crime and finally he took the 3rd accused in his jeep after the commission of the murder to be dropped at Pettah in order that the 3rd accused could board a bus to Vavuniya. In fact Ratnayake has given direct evidence in respect of the 1st, 3rd and 4th counts in the indictment and circumstantial evidence in respect of the 2nd count in the indictment.

If one were to accept Ratnayake's evidence as trustworthy, then his evidence alone would be sufficient to establish the guilt of the 1st, 2nd and 3rd accused in respect of the four counts in the indictment. However, in evaluating Ratnayake's evidence, he being an accomplice and one who has been granted a pardon, it would be necessary to examine his evidence in the light of the nature and extent of corroborative evidence available in the case. In the leading case of *R vs Baskerville* <sup>(5)</sup> reference was made with regard to the nature of corroboration required in relation to the evidence of an accomplice. The relevant passage reads as follows "The corroboration required must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, *i.e.*, which confirms in some material particulars not only the evidence that the crime has been committed, but also that the prisoner committed it. The corroboration need not be direct evidence that he committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with it. Nor is it necessary that the accomplice should be confirmed in every detail of his evidence; if it were, his evidence would be merely confirmatory of the independent testimony and would not be essential to the case." This position was accepted and followed in the Case of *Queen vs Liyanage*. The important consideration when looking for corroboration is that, the complete story need not be corroborated, but what the law requires is corroboration in some material particulars so that a court could act on that evidence as being reliable. In other words what is necessary is some additional evidence direct or circumstantial, rendering it probable that the accomplice's story is true and reasonably safe to act upon, and such evidence has the effect of connecting or tending to connect the particular accused with the crime.

The Trial at Bar referred to in detail, the items of corroborative evidence relating to Ratnayake's evidence. Briefly some of the items of corroborative

evidence taken into consideration by court were the following. It was Ratnayake's evidence that on 22nd March 2001, he along with the 1st, 2nd and 3rd accused went to the Kirillewela motorcycle sales centre to obtain a motorcycle and gave a detailed account of what took place at the sales centre. This material was corroborated by Gamage Sirisena and Don Nishantha who were working at the motorcycle sales centre. According to them on 22nd March 2001, at about 6.30 or 7.00 p.m. four persons came to their sales centre. One of them spoke to the owner of the sales centre Sisira Chandrasiri (Sisira) over the phone and thereafter the owner spoke to them and instructed them to give these persons who had come a motorcycle of their choice. They selected a 125 CC Honda red coloured motorcycle bearing registration number 160-2093. One of them inspected the motorcycle, got the defects attended to and removed if from the premises. Gamage Sirisena who noted down the number of the motorcycle on a piece of paper, identified this note and it was produced at the trial marked P7. The entry in the book maintained at the sales centre where it was noted that a particular motorcycle was given on 22.03.2001 to be returned on 23.03.2001 was produced marked P8. The owner of the sales centre Sisira gave evidence stating that on 22.03.2001 at about 7.00 p.m. the 1st accused spoke to him over the telephone from the sales centre and made a request for a motorcycle. He said he instructed Gamage Sirisena and Don Nishantha over the phone to give a motorcycle of their choice. It would appear that these three witnesses corroborated each other without any contradictions.

According to Ratnayake's evidence on 24th morning at about 7.00 a.m. 2nd and 3rd accused came to his house collected the weapon and went away. Thereafter they came home about an hour later and told him in the presence of the 1st accused that the job was done, meaning Sujith Perera was murdered. This position was corroborated by witness Rajakaruna who was working with the 3rd accused at the Pampamadu Army Camp Vavuniya. Rajakaruna gave evidence at the trial and stated that both of them *i.e.* he and the 3rd accused went on leave and reported for duty on 24th March, 2001. Two or three days after their return to the Army Camp, the 3rd accused had told Rajakaruna that he did a job for "Aiya" meaning the 1st accused and for the said purpose he got a good bike and a superb rider. He further requested Rajakaruna to read the newspaper. Rajakaruna after reading the newspaper inquired from the 3rd accused, whether he was referring to the murder of Sujith Perera, and the

3rd accused had admitted it. On this matter there is therefore, a clear admission by the 3rd accused to witness Rajakaruna.

When evaluating the evidence of Ratnayake, it is not out of place to mention the fact that the evidence of witness Dinesh Wijegunathilake the only eyewitness to the incident, provides some measure of corroboration to Ratnayake's evidence. His evidence in relation to time when this incident took place and with regard to the fact that the deceased was shot by two persons travelling in a red coloured Honda motorcycle 160 series, fall in line with the evidence of Ratnayake, Don Nishantha and Gamage Sirisena. Witness Dinesh Wijegunathilake was very clear in his mind that the two people who were responsible for the shooting of the deceased on the morning of 24.03.2001, travelled in a red coloured Honda 160 services.

Ratnayake's evidence was that, after the 2nd and 3rd accused collected the weapon from him and left his house at about 7.00 or 7.30 a.m. on 24th March 2001, he received a telephone call from them after about an hour stating that they were coming to his house. They had come walking into his house with a bag and then the 3rd accused had given the weapon and the parcel containing the motorcycle number plates. Witness Ariyadasa the three - wheel driver corroborated this part of Ratnayake's evidence; when he stated that on 24th March 2001 at about 8.30 a.m., he was at the Galewala junction, when 2nd and 3rd accused came with a small bag, got into his three wheeler and proceeded towards Makola junction and got down close to the Sapugaskanda police station. According to Ariyadasa 2nd accused was well known to him. He also identified the 3rd accused at the police station and in court as the person who travelled with the 2nd accused on that day in his three-wheeler. It would appear that Ratnayake's house was very close from the place they got down from the three-wheeler. On this matter Ratnayake's evidence is further corroborated by witness Randunu Mendis an employee of the communication centre "Gateway Enterprises" situated at the Galwala junction. He said that on 24th March 2001, around 8.00 or 9.00 a.m. a telephone call had been taken from the communication centre. The Register maintained at the communication centre in which the telephone number 927121 was recorded, was marked P14, at the trial. Apparently this telephone number 927121 (P14a), which was recorded in P14, was the telephone number at witness Ratnayake's house.



Another aspect of Ratnayake's evidence was that on the 24th March, 2001, 2nd and 3rd accused came to his house and reported that the mission was accomplished. Thereafter, they returned the weapon and the parcel containing the motorcycle number plates and the jacket. It was Ratnayake's position that the number plates and the jacket given to him were burnt in his backyard and later he had shown the police the place where these items were burnt. Inspector Liyanage said in his evidence that Ratnayake showed him a place in his back yard where these items were burnt and on examination he found some burnt articles such as a metal button in which was inscribed the words "London Fag", two other buttons, two burnt portions of a zip and some burnt remains of the size 2 1/2 by 1 1/2 inches. All these items were marked P39, P39(A), P39(B), P40, P40(A) and P41 at the Trial.

Ratnayake in his evidence mentioned the fact that about three days after on 5th April 2001 he met the 1st accused in Negombo. Ratnayake had gone there with Sisira and one Sunil Gamage. While they were in Negombo, Ratnayake said that one Mansoor and Sisira had gone in search of a boat to send the 1st accused to India. Few days later Ratnayake and Sisira had gone again to Lellama (Negombo) and on that occasion he had seen Sisira speaking to the 1st accused and shaking hands with him in the presence of Mansoor. Witness Sisira corroborated this evidence when he stated that he went to Negombo with Ratnayake and met the 1st accused and Mansoor there, and further on that occasion he (Sisira) went in search of a boat that would go to India. Witness Sisira also stated that on a later date he went with Ratnayake to Negombo and met the 1st accused in the night. It is to be noted that there is additional corroborative evidence provided by witness Anthony Perera who stated that he took the 1st accused and Mansoor to India by boat.

Ratnayake is further corroborated with regard to the evidence of motive, which shows that the relationship between the 1st accused and the deceased was not cordial. Further, the 1st accused even tried to implicate the deceased on an allegation of bribery. The main reason for this strained relationship between the 1st accused and the deceased was the long drawn Customs inquiry that was proceeding against the 1st accused, where the deceased was giving evidence as the main witness. Next date of this inquiry was fixed for the 28th March 2001 and the deceased was murdered on 24th March 2001. It is pertinent to note that Ratnayake's

evidence that the 1st accused possessed a pistol was corroborated by witness Sisira and Narayan who gave evidence at the trial. Both these witnesses stated that they had seen the 1st accused using a pistol. The evidence of Ratnayake that a motorcycle obtained from the Kirillewala motorcycle sales centre was used in the crime was corroborated by the police, when it was stated that consequent to a section 27 statement made by the 2nd accused, the motorcycle marked P2, was recovered from the house of witness Albert. The motorcycle marked P2, was identified by witness Albert who said that the 2nd accused came and left it at his house to be collected later. Witnesses Gamage Sirisena and on Nishantha identified P2, as the motorcycle taken by the four persons who came to the sales centre on the night of 22.03.2001.

The material referred to above shows the extent to which the evidence of witness Ratnayake who is an accomplice has been corroborated by independent testimony. These items of corroborative evidence relates to material particulars, showing very clearly that the accused were fully involved with the murder in question. Further, Ratnayake's evidence has not been seriously challenged in court and as a result the defence has not succeeded in impeaching the credit of this witness. As observed by the Trial at Bar, the contradictions and the omissions referred to by the defence did not relate to any substantial matter so as to cast serious doubts on his credibility. However, an attempt was made by the defence to discredit Ratnayake's evidence by confronting him with the Attendance and Overtime Registers that were maintained by the Customs Department. But, it would appear that no weight or reliance could be given to the entries made in these registers which were not properly maintained. Further, it is common knowledge that these registers did not contain material which were reliable, as many of those entries regarding dates and times were questionable. Some of the entries made specially in the Overtime Register appeared to be of doubtful nature and made purely for the purpose of collecting overtime. Surprisingly, some of the entries in the Overtime Register indicated that all the officers concerned had reported for duty exactly on time, without even a delay of five minutes. Also it is apparent that some of the entries in the registers were made by the same person. The resulting position therefore is that, these entries that were referred to in evidence cannot be seriously taken into consideration, either to discredit or support any position. They are of a dubious nature and unworthy of any credit. Hence, it is very clear that the entries made in these registers and referred to at the trial by the defence cannot be used to discredit the evidence of Ratnayake.

In the light of the independent corroboration of Ratnayake's evidence as referred to above, it is clear that his evidence is reliable and could be safely acted upon. It must be mentioned here, that, having regard to his involvement in the crime, Ratnayake would never have volunteered to come out with the details of the crime at the first opportunity. Further, his relationship with the 1st accused was such that he could never have let down the 1st accused unless there was some pressing need to do so. That is why, Ratnayake did not disclose to the police in April 2001, the details of the plan which resulted in the murder of the deceased Sujith Perera. However, when Ratnayake found that with the arrest of witness Gamini Rajakaruna, things were becoming difficult for him to explain, he decided to disclose the material relating to the murder of the deceased Sujith Perera. Such conduct is not something uncommon and the law has made provision to receive such evidence. As a safeguard, law requires such evidence to be independently corroborated in material particulars. Therefore, when the evidence of an accomplice is independently corroborated in material particulars, a court could act on such evidence with confidence. The Trial at Bar which had the opportunity to observe the demeanor and deportment of Ratnayake giving evidence made the following comment about his testimony. "As Ratnayake is held to be an accomplice it is relevant to observe that Ratnayake in his evidence did not attempt to curry favour with the prosecution, show off more guilt of the accused nor tried to purchase immunity by falsely accusing the accused to minimise his role in the involvement in this murder and the story related by Ratnayake in relation to the murder of Sujith Prasanna Perera and the related circumstances connecting the accused to the crime are corroborated by other witnesses in almost every important area as described above. This gives additional strength to Ratnayake's evidence and makes it safe to act upon". Vide page 24 of the judgement. "Considering the demeanour and the manner in which this witness gave evidence in court and considering the consistency of his evidence in the absence of any contradiction or omission in material facts, we hold that his evidence could be accepted as creditworthy and reliable to act upon." Vide page 36 of the judgement. Therefore, it is very clear that the Trial at Bar having treated witness Ratnayake as an accomplice, and being satisfied that his evidence has been independently corroborated in material particulars, decided to act on his evidence as being reliable, safe, and convincing.

In dealing with Ratnayake's evidence counsel for the 1st accused appellants complained that the Trial at Bar failed to apply the higher standard

of proof referred to in *Liyanage's* case to test the evidence of Ratnayake who was an accomplice and instead applied the standard that would be ordinarily used. This is not so. It would appear that the Trial at Bar was very much mindful of the higher standard of proof required in the case of an accomplice who has received a conditional pardon. when it referred to the judgment in *Liyanage's* case and stated thus. "The preferable course is for the court to consider it carefully, even cautiously and to accept it only when it is corroborated and found to be convincing" Vide page 19 of the judgement. This contention of counsel is therefore without any merit.

Having regard to the matters referred to above on the question of the reliability of Ratnayake's evidence, even the submission of learned counsel for the 2nd and 3rd accused appellants that Ratnayake's evidence was unsatisfactorily and therefore the Trial at Bar erred in looking for corroboration is not tenable. In our view this is a case where corroboration has been considered in relation to a witness whose evidence is satisfactory. Further, counsel's submission that Ratnayake has given false evidence and by the application of the maxim "Falsus in uno, falsus in omnibus" his evidence should be rejected, is also without merit. Other than a few contradictions and omissions which were not very material, defence did not succeed in showing that witness Ratnayake had given false evidence. In relation to this matter, errors of memory, faulty observations, and even exaggerations must be distinguished from deliberate falsehood. Besides, this maxim has not been applied as an absolute rule. It was observed in the case of *Samaraweera vs The Attorney General*<sup>(6)</sup> that divisibility of evidence test is preferred under certain conditions. In the case of *Francis Appuhamy vs The Queen*<sup>(7)</sup> T. S. Fernando J, in the course of his judgement stated as follows : "Certainly in this country it is not an uncommon experience to find in criminal cases witnesses who, in addition to implicating a person actually seen by them committing a crime, seek to implicate others who are either members of the family of that person or enemies of such witnesses. In that situation the judge or jurors have to decide for themselves whether that part of the testimony which is found to be false taints the whole or whether the false can safely be separated from the true."

As highlighted by learned Additional Solicitor General one salient feature in this case is that there are two admissions made by two accused. One admission was made to witness Ratnayake and the other was made to

witness Rajakaruna. It was the evidence of Ratnayake that 2nd and 3rd accused came to his house in the morning of 24th March 2001, about one hour after having left his house with the weapon and told him in the presence of the 1st accused that the job was accomplished, meaning Sujith Perera was murdered and handed over the weapon and the parcel containing the motorcycle number plates. Then according to witness Rajakaruna he and the 3rd accused were stationed at the Pampamadu army camp in Vavuniya. Both of them had gone on leave and reported for duty on 24th March 2001. Two or three days after their return to the Army camp the 3rd accused had told Rajakaruna that he had done a job for "Aiya" meaning the 1st accused, and told him to read the newspaper. After having gone through the newspaper and when Rajakaruna inquired from the 3rd accused whether he was referring to the murder of Sujith Perera, 3rd accused had admitted it. Therefore in this case there are two clear admissions relating to the murder of Sujith Perera. One admission was made shortly after the killing of Sujith Perera and the other was made a few days later. Admissions and confessions are made admissible in our law against the maker. *Vide* Section 17 read with Section 21 of the Evidence Ordinance. Law has made provision to admit such admissions and confessions against its maker because there is an inherent guarantee of testimonial trustworthiness and truth. The evidentiary value of admissions and confessions were considered fully in the case of *Nallaratnam Singarajah vs Attorney General*<sup>(8)</sup> and in the case of *Nagamani Theivendran vs The Attorney General*<sup>(9)</sup>. In *Nallaratnam Singarajah's* case accused-appellant was convicted purely on a confession made to the Assistant Superintendent of Police. In that case Justice Jayasooriya in dealing with admissions stated thus. "Besides, as convincingly set out by Best on Evidence there is a guarantee of testimonial trustworthiness and truth in its contents in admitting admissions against its maker. It is for the aforesaid reasons that admissions and confessions are rendered relevant and admissible against the maker. Thus there is a presumption and guarantee of testimonial trustworthiness and truth in law in regard to the contents of a confession." Confession is a species of admission. On the other hand Justice Mark Fernando in *Nagamani Theivendran's* case referred to the evidentiary value of confessions and accepted the position that solely on a confession an accused could be convicted. The learned Judge in that case referred to the opinion expressed by twelve judges in the year 1791, in *Rex vs Lambe*, which reads as follows. "Confessions of guilt made by a prisoner to any person at any moment of time, and at any place.....are, at Common law, admissible in evidence, as the highest and most satisfactory proof of

guilt, because it is fairly presumed that no man would make such a confession against himself if the facts confessed were not true." Therefore it is very clear that, if the evidence of Rajakaruna and Ratnayake is accepted the 2nd and 3rd accused could be convicted even without any other evidence for the commission of the murder of Sujith Perera which is the 2nd count in the indictment.

A submission was made by counsel for the 2nd and 3rd accused appellants that the Trial at Bar misdirected itself with regard to the burden of proof required in a criminal case. Counsel contended that mere rejection of the evidence for the defence namely, the dock statements of the accused as false, did not mean that the prosecution has established its case. He said that the learned judges constituting the Trial at Bar after having rejected the dock statements of the accused, should have examined the evidence presented by the prosecution to see whether the case has been proved beyond reasonable doubt. Counsel pointed out that, nowhere in the judgment is there any finding to say that the prosecution has proved its case beyond reasonable doubt and therefore this failure was a serious infirmity that would vitiate the conviction.

Learned counsel was correct when he submitted that no mention in the judgement has been made that the prosecution has proved its case beyond reasonable doubt. However, this omission did not mean that the Trial at Bar did not give its mind to the question of the burden of proof requiring the prosecution to prove its case beyond reasonable doubt. When one reads the judgment of the Trial at Bar it would appear that the learned judges have proceeded on the basis that the prosecution has established its case beyond reasonable doubt and then considered the dock statements of the accused to ascertain whether these statements had any effect on the prosecution case. Such a conclusion is possible in view of the comment the judges of the Trial at Bar made in their judgment when dealing with the defence evidence more specifically the dock statements, in the following terms. "The 1st, 2nd and 3rd accused's denials in their dock statements, regarding the evidence implicating them, cannot be accepted due to the reasons set forth above as being truthful and therefore should be rejected. Hence, whether the statements would create a doubt in the prosecution case does not arise". Vide page 63 of the judgment. The only reasonable inference that could be drawn from this passage is that learned judges were of the considered view that the prosecution has proved its case beyond reasonable doubt and the defence evidence did not create any doubt in their minds in respect of the prosecution case. This matter would have been clear, if the Trial at Bar referred to the general principle applicable

in a criminal case namely that the burden of proof rests on the prosecution to prove its case beyond reasonable doubt and that they were satisfied that the prosecution has discharged this burden. Anyway, had this case being a trial by jury where the jurors had to decide this case, the failure to direct them properly on the burden of proof could in certain circumstances vitiate conviction. In the present case, three judges constituting the jury, they being trained judges who are mindful of the presumption of innocence and the required burden of proof in a criminal case, there is no justification to hold that the accused were convicted without considering the paramount requirement that the burden was on the prosecution to prove its case beyond reasonable doubt. Therefore we are unable to agree with this submission.

On this submission relating to the burden of proof, learned Additional Solicitor-General contended without conceding, that, even if there is any substance in what the learned counsel for the defence submitted, it is permissible for the Court to apply the proviso to section 334(1) of the Code of Criminal Procedure Act, No. 15 of 1979 to sustain the conviction. In support he cited the case of *Mannar Mannan vs The Republic of Sri Lanka*<sup>(10)</sup> where it has been held that the provision clearly vests a discretion in the court and could be applied even where there is a non direction amounting to a mis direction in regard to the burden of proof. However, in this case having regard to the totality of the evidence available against the accused, it is very clear that the prosecution has established the case beyond reasonable doubt against the accused. It was never a difficult decision which the judges of the Trial at Bar had to make. Under these circumstances it would not be reasonable to hold that the Trial at Bar had misdirected itself with regard to the standard of proof required in a criminal case.

Another matter referred to by counsel for the 2nd and 3rd accused appellants was that, there was a failure on the part of the Trial at Bar to judicially evaluate the circumstantial evidence led in this case. Counsel's contention was that items of circumstantial evidence such as the selection of the motorcycle, reporting to witness Ratnayake that the mission was unsuccessful on 23rd March 2001, and successful on 24th March 2001, handing over of the number plates, ride in the three-wheeler, hiding the motorcycle etc. were items of circumstantial evidence which were equivocal in nature and nothing flowed from such evidence. He further submitted

that these items of circumstantial evidence did not clearly connect the accused. Hence, counsel contended that the Trial at Bar failed to apply the criteria applicable in a case of circumstantial evidence where the inference drawn should be irresistible, not only consistent with guilt, but also inconsistent with innocence, an inference from which there is no escape. It is true that some of these circumstances referred to by counsel taken separately may be circumstances only creating suspicion. But the question for consideration here is whether if these items of evidence are taken cumulatively, are they sufficient along with the other evidence to rebut the presumption of innocence. Therefore one has to consider the totality of the evidence, such as the admissions made by the 2nd and 3rd accused, evidence of absconding against the 1st accused, the explanations given by the accused with regard to the evidence presented against them by the prosecution and come to a conclusion. It is only then that one could appreciate the value of some of these circumstances as referred to by counsel. It is well to remember that the prosecution case did not depend entirely on these circumstances as referred to by counsel nor did this case depend entirely on the evidence of Ratnayake. Prosecution led the evidence of many other witnesses and they were corroborated in several ways. For example take the motorcycle marked P2, in this case. Dinesh Wijegunatilake said that two persons came in a red coloured Honda motorcycle 160 series on 24.03.2001, and shot at the deceased. Gamage Sirisena and Don Nishantha said that on 22.03.2001, four persons came to the sales centre and selected a 125 cc Honda red coloured motorcycle bearing No. 160-2093. According to Sisira, 1st accused spoke to him from the sales center and made a request for a motorcycle. The police officer recovered P2 consequent to a section 27 statement made by the 2nd accused from the house of Albert who identified P2, as the motorcycle the 2nd accused left at his house. The 2nd and 3rd accused admitted to Ratnayake soon after the killing of the deceased, that they accomplished the job, and returned the weapon and the number plates. Few days later 3rd accused admitted to Rajakaruna that he did a job for the 1st accused and for that purpose he got a good bike and a super rider. With all these material being available to court, it would be a reasonable inference to make that the motorcycle marked P2, was used in the murder of the deceased. Then, how could one say that the selection of the motorcycle is equivocal. Therefore, the contention that the Trial at Bar has failed to judicially evaluate such circumstantial evidence cannot succeed.



It was also urged by counsel for the 2nd and 3rd accused appellants that the Trial at Bar came to conclusions on speculation and conjecture. In this regard, counsel referred to the fact that witness Ratnayake could not explain the presence of the 2nd and 3rd accused at the Y. M. B. A. Kiribathgoda on 22nd March 2001. Counsel pointed out that without any material the Trial at Bar concluded that, probably the 1st accused would have told them to come there. Similarly with regard to the finding of the burnt remains of some buttons and a zip (vide P38- P41), counsel said that the Trial at Bar had concluded that probably they were from the burnt jacket. He referred to few other matters as well, and contended that some of these conclusions were mere speculation and conjecture, since there was no material to support such conclusions. It cannot be said that these conclusions were arbitrarily drawn by the Trial at Bar in view of the material that was available. With regard to the presence of the 2nd and 3rd accused at the Y. M. B. A. Kiribathgoda, Ratnayake did not say that the 1st accused asked them to come. But what he said was that "I do not know, probably they may have come on the request of Anura Weerawansa (1st accused) Vide page 164 (v ol.I) In respect of this matter it is useful to note that Ratnayake had told the 2nd accused to do whatever Anura Weerasinghe sir (1st accused) requested him to do. It was also the evidence of Ratnayake that the 3rd accused was very close to the 1st accused and in fact the 3rd accused spoke to Ratnayake about a problem "worrying his head" and needed a person who could ride a motorcycle, Ratnayake's understanding was that the 1st accused needed a motorcycle rider to kill the deceased Sujith Perera. In this background, if the Trial at Bar had drawn the inference that the 2nd and 3rd accused were present at the Y. M. B. A. Kiribathgoda on 22nd March 2001, at the request of the 1st accused, it cannot be said that such an inference was mere speculation and conjecture. In our view, it was a reasonable inference one could have drawn from the surrounding circumstances. In fact it was Ratnayake's evidence that the 1st accused wanted the job of killing the deceased done within two or three days time but did not give a reason for it. Vide page 162 and 163 (vol.I) Similarly it was Ratnayake's evidence that he burnt the number plates and the jacket given to him by the 3rd accused in his back garden and showed this place to the police. The police officer having examined this place found the burnt remains of some buttons and a zip. Therefore, when the Trial at Bar decided that they were the burnt remains of the jacket that hat was burnt by Ratnayake, it was not speculation, but an inference that could have been reasonably drawn from the available facts. Therefore, we are unable to subscribe to the view put forward by learned counsel.

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For the aforesaid reasons, we are of the view that there is no merit in the submissions advanced by learned counsel on behalf of the accused appellants. In the circumstances, we affirm the conviction and the sentence imposed on the accused appellants and dismiss this appeal.

**WEERASURIYA J.** — I agree.

**JAYASINGHE J.** — I agree.

**UDALAGAMA J.** — I agree.

**FERNANDO J.** — I agree.

*Appeal dismissed.*

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