IN THE COURT OF APPEAL FIJI
ON APPEAL FROM THE HIGH COURT

Criminal Appeal Nos: AAU 010 & AAU 058 of 2012
(High Court Case No: HAC 012 of 2010)

BETWEEN	:	**JOSUA RAITAMATA**
		JOSESE TUWAQA
		Appellants
AND	:	**THE STATE**
		Respondent
Coram	:	**Calanchini, P** **Jayamanne, JA** **P. Fernando, JA**
Counsel	:	**Mr. J. Savou for the Appellants** **Mr. Y. Prasad for the Respondent**
Date of Hearing	:	**5 May 2016**
Date of Judgment	:	**27 May 2016**

JUDGMENT

Calanchini, P

[1] I agree that the appeals should be dismissed.

Jayamanne, JA

Background

[2] Initially, two appellants were charged together in the Suva High Court. After commencement of the trial, a *Voir dire* inquiry was held to determine the admissibility of cautioned interviews given by the two appellants. The learned trial judge decided to admit the said cautioned interviews. Thereafter trial commenced and the prosecution led evidence of four vital witnesses, and the trial was postponed. However, on the next trial date, the 2nd appellant was absent. On a subsequent date the 2nd appellant was arrested and produced in court by the police. It was alleged that during his absence from court he was involved in a robbery and suffered injuries.

Outcome of the trial against 1st appellant

[3] Then State having moved for a separate trial, the court ordered a separate trial against the 2nd appellant and to start afresh. After amending the charges, trial against the 1st appellant continued for committing the following offences:

i. Conspiring with another, between 1st day of September 2009 and the 7th day of September 2009 to rob the Lokia Shopping Centre contrary to section 385 and 293(1) (b)of the Penal Code

ii. Receiving with another $ 3,000 knowing the same to have between stolen between 7th day of September 2009 and 12thday of September 2009, contrary to section 313(a) of the Penal Code.

[4] At the conclusion of the trial, three assessors unanimously opined that the 1st appellant was guilty on both counts. Having concurred with the opinions of the assessors the learned trial judge convicted him for both charges. On 24th February 2011, the 1st appellant was sentenced to 2 years and 3 years imprisonment on the first and second count respectively. The sentences were ordered to run consecutively. On 20th March, the 1st appellant filed a timely application for leave to appeal against the conviction.

Outcome of the trial against 2nd appellant

[5] The second appellant was charged for having robbed one Nizal Buksh (Director of Lokia Shopping Centre) of $74,034 in cash and $6,701.99 in cheques, to the total value of $ 80,736.79 contrary to section 293(1)(10(b) of the Penal Code.

[6] Prior to the commencement of a fresh trial against the 2nd appellant, the State moved to adopt the ruling pronounced by court admitting the cautioned interview of the 2nd appellant.

[7] The trial against the 2nd Appellant commenced on 18th June 2012 and concluded on 20th June 2012. The alleged caution interview of the 2nd appellant was also produced during the trial. Three Assessors unanimously opined the appellant guilty and the learned trial judge agreeing with the assessors found the 2nd appellant guilty convicted the 2nd appellant. On 29th June 2012 the learned trial judge imposed a sentence of 13 years imprisonment, with a non-parole period of 11 years. On the same day the 2nd appellant filed an application for leave to appeal against the conviction and sentence.

Appearance

[8] The 1st appellant defended himself. The second appellant was defended by his counsel: I have considered the submissions made by the 1st appellant and the counsel for the 2nd appellant and the written submissions filed.

Leave to appeal before a single judge

[9] Two leave to appeal applications of the two appellants were considered together by a single judge. Having considered numerous grounds, the single judge granted leave only on the following grounds:

Grounds of Appeal of the 1st Appellant

[10] The following grounds of appeal were found by the single judge as arguable;

I. The leading of the bad character evidence by the prosecution and the learned trial judge directing the assessors in following manner may have been prejudicial directions:
Para 14 of the summing up; '*According to the prosecution, the accused was serving time with one Eparama Nagalu in prison, prior to 2015*'

II. Misdirecting the assessors by telling them that the voluntariness of the confession was a matter for them

Grounds of Appeal of the 2nd Appellant

[11] Following are the grounds of appeal were found by the single judge to be arguable;

I. The leading of the bad character evidence by the prosecution and the learned trial judge directing the assessors in following manner may have been prejudicial directions:
Para 25 of the summing up; '*Sgt 988 said, the accused (Tuwaqa) was well known to police*'

III. Misdirecting the assessors by telling them that the voluntariness of the confession was a matter for them.

Prosecution Case against the 2nd appellant

[12] The complainant, Mr. Nizal Buksh is the Director of Lokia Shopping Centre in Nausori. On the day in question, 7th September 2009, around 8.00 am, the complainant visited his headquarters at Nausori with cash and cheques collected from other branches during the weekend. He was carrying cash amounting to $74,000.00 and cheques for $6,700.00, in a box. When he reached the compound of the headquarters, four masked robbers armed with iron rods came in a car and started throwing beer bottles at him. The witness got

frightened and when he started to run away, the box containing cash and the cheques fell down.

[13] Having taken the box, robbers drove away. The witness, who was the complainant also got in to his four wheel drive vehicle and chased the robbers' car. When the witness started the hot pursuit, a few members of his staff also followed him in another vehicle. When the vehicle of the witness rammed the robbers' car at the round-about near Nausori Health Centre, robbers got down from the car and fled on foot towards Vunivivi hill. While running, they opened the box and shared the money. The witness chased the robbers and he was followed at a distance by his staff and civilians in the area. Then the robbers ran away in different directions to avoid apprehension. One of the robbers, the 2nd appellant couldn't run fast and the witness had asked his staff to chase him. When they gave chase, the 2nd appellant threw the box away. The witness, his staff and some civilians were able to apprehend the 2nd appellant. He was beaten up and injured by the people who chased him. The witness and his staff found the box in a nearby cassava patch. However, the box contained only $24,000 cash and cheques.

[14] The witness had indentified the 2nd appellant without any obstruction. Faiyaz Ud Din, was another witness. He was a manager of the company of the complainant. He corroborated the evidence of the complainant. He also followed the robbers and saw the 2nd appellant removing the mask while fleeing. The witness has observed the 2nd appellant throwing the box that contained money. He also assisted in apprehending the 2nd appellant. He too had identified the appellant at that time.

[15] Sergeant 998 Josese Nakaloulevu, a police officer testifying stated to court that while was going to the police station, he had observed two abandoned vehicles on the roundabout near Nausori Health Centre. He also said that he saw a Fijian youth being chased by some people and that he joined the chasing party. He had clearly identified the 2nd appellant at the scene, whom he knew by name. Later he saw the 2nd appellant lying down on the ground with bleeding injuries. Having spoken to the him, he got to know that the 2nd appellant had sustained injuries on the head, hand and feet. It was this

witness who saved the life of the appellant from the civilians who gave chase. The witness took the 2nd appellant to hospital for treatment.

[16] PC 3762 Tamanalevu with two other officers rushed to the scene on the advice of the senior officers and saw Sergeant 998 Josese speaking to an injured person lying on the ground. The injured person was identified as the 2nd appellant whom he knew prior to this incident.

[17] IP Savou told the court that on 14th September 2009, the 2nd appellant made a caution interview statement to him voluntarily. On 7th November 2011, this witness had testified at the *Voir dire* inquiry. At the fresh trial against the 2nd appellant, the interview statement was marked and produced as Exhibit No. 1(a) and 1(b). The 2nd witness maintained that the appellant was not threatened or assaulted before, during or after the interview. He further said he never gave any promise to the appellant. However, the appellant through the cross examination of police witnesses attempted to show that caution interview was made by him involuntarily.

[18] The 2nd appellant in his cautioned interview, at question no 35, admitted grabbing a carton and fleeing away with his friends. In addition, he admitted to few items of incriminating evidence. (Page 177 of the record)

[19] Other police officers also gave evidence at the main trial and confirmed that IP Savou recorded the caution interview statement voluntarily. They were primarily summoned to explain the details of the investigations carried out

[20] The 2nd appellant remained silent and did not adduce any evidence at the trial (page 205). The 2nd appellant submitted that he did not make the confession voluntarily.

Analysis and response to the grounds of appeal of the 2nd appellant

First Ground

[21] Although there were several eye witness to the incident of robbery, none of them could see the face of the perpetrators at the time of the robbery as the four robbers were masked. However, the complainant was bold enough to give a chase in his vehicle and ram the car of the robbers. Then he saw the robbers getting down and running away at which point the other witnesses also joined in the hot pursuit. During the process, witness Faiyaz Ud Din saw the 2nd appellant removing his mask and throwing it away. Thereafter, it appears that the witnesses were able to see the face of the 2nd appellant.

[22] As the 2nd appellant was caught red handed following hot pursuit, in strict sense there is no necessity to apply Turnbull Guidelines. Similarly there is no purpose in holding an Identification Parade, provided that chain of events from the place of the robbery up to the arrest of the appellant is placed unbroken. The learned trial judge was mindful to the issue and quite correctly brought the matter to the attention of the assessors at para 21 of his summing up which reads as follows:

> *'They picked on the robber, who was slow in getting away. So, it would appear that the chain of events from the robbery at Mistry Lane, to the round-about and the fleeing to Vunini hill, appeared unbroken. The complainant and his friends were on hot pursuit of the four robbers. The identification evidence of PW1(Nizal Buksh-the complainant),PW2(Faiyaz Ud Din) and PW3(Sgt 988 Josesse Nakaloulevu), must be understood within the above context.'*

[23] Similarly the learned trial judge has given directions touching Turnbull guidelines at para 22 of the summing up(page 60). He specifically, among other factors, invited the assessors to consider the question '*Has the witness seen the accused before?* ' If the accused was known previously then he could be easily identified even while running. In my view, this is the context within which evidence of Sgt 988 Josese Naloulevu was examined. The witness joined the chase in the halfway and he easily recognized the 2nd appellant during the chase as the witness knew him previously. Sgt 988 Josese's

evidence corroborated the testimonies of other witnesses as a person who joined the chase. In the circumstances I find that the directions of the trial judge in this regard were fair and legitimate.

[24] The next question is as to how Witness Sgt Josese previously came to know the 2nd appellant and if so whether the trial judge has made any misdirections touching bad character. In order to have a proper understanding of the issue, it is relevant to refer to his evidence and the context in which he came to identify the 2nd appellant. An extract of his testimony regarding the chase is found at page 199 which reads as follows:

> *'I saw 5 or 6 civilians crossing some Fijian youths. ....The Fiji youths were carrying pinch bars, boxes and a yellow bag. I followed the chase.....When I arrived at the school. I saw Josese Tuwaqa been chased by civilians. I followed them, across Creek and saw the suspect was lying injured. I stopped and arrested him. .....There was no obstruction in the way when I saw accused's face. I knew the suspect before the incident. He is well known to the police. If I see Josese I will recognize him. He is present in court today...'* (emphasis added)

[25] The learned trial judge referred to the evidence of Sgt Josese Naaloulevu in his Summing up which is found at para 25 (page 61):

> *'When he arrived at the school, he said, he saw the accused been chased by civilians. He followed them across the creek, and saw the accused lying on the ground injured. He said he arrested him and called for police assistance.....It was broad daylight and he saw his face clearly, without any obstruction. Sgt 988 said, the accused was well-known to the police. On how you assess PW1,PW2, and PW3,s identification evidence, in the light of the direction I gave you in paragraph 22 hereof, is a matter for you. If you accept the identification evidence, then you must move on to consider his alleged confession to the police' (*emphasis added)

[26] Examination of the evidence and the directions clearly show that the focus of the learned trial judge was to draw the attention of assessors to the issue of identification. It is beyond any doubt that learned trial judge never wanted even discreetly to tell the

assessors the appellant's previous character. The context in which the evidence was led and directions given, were confined to the issue of identification.

[27] In any event, Sgt. Josese's evidence does not indicate that the 2nd appellant was known to the police because his complicity in criminal cases or his propensity in committing crimes or his general criminal behaviour. Police may come to know of a variety of persons in society due to a number of reasons. For example, police may know thousands of innocent civilians. Therefore I hold that neither the evidence of the witness nor the summing up was been prejudicial to the 2nd appellant.

[28] Further, even without this piece of evidence that came from Sgt Josese, any reasonable panel of assessors, on the strength of the evidence relating to hot pursuit, would have formed an opinion that the appellant was guilty. The appellant has not really challenged the prosecution version with regard to the hot pursuit.

Second Ground

[29] The second ground of appeal relates to the judge's direction to the assessors stating that the voluntariness was a matter for them. The relevant direction is found at para 27 of the summing up which is as follows;

> *'In considering the accused's alleged confession, I must, as a matter of law, direct you as follows..A confession, if accepted by the trier of fact-in this case, you as assessors and judges of fact-is strong evidence against its maker. However, before you can accept a confession, you must be satisfied beyond reasonable that it was given voluntarily by its maker. The prosecution must satisfy you beyond reasonable doubt that the accused gave his statement voluntarily, that is, he gave statement out of his own free will. Evidence that the accused had been assaulted, threatened or unfairly induced into giving those statements, will negate free will, and as judges of fact, you are entitled to disregard them. However, if you are satisfied beyond reasonable doubt, so that you are sure, that the accused gave those statements voluntarily, as judges of fact. You are entitled to rely on them against the accused.'* (emphasis added)

[30] Further in para 28 of the summing up the learned trial judge said that:

'If you, as assessors and judges of fact, accept the accused alleged confession, that itself is sufficient, to find the accused guilty as charged.'

[31] It has been a longstanding legal principle that a trial judge must hold a *Voir dire* inquiry in the absence of the jury or the assessor's to determine the legal admissibility of a purported confession. This is referred as 'trial with in trial.' It has been well established in common law jurisdictions that unless a confession was made voluntarily i.e without inducement, threat or promise, it should not be led at the trial as admissible evidence. At the said inquiry the police officers involved in the arrest, detention and recording of the caution interview statement are generally led by the prosecution to establish that the confession was obtained voluntarily. Even the accused and his witnesses are entitled to give evidence to show the contrary. The burden is on the prosecution to prove the voluntariness beyond reasonable doubt before the judge. Any material that transpired during the *voir dire* inquiry is prohibited in producing as substantive evidence at the trial before the assessors.

[32] Once a judge determines that the confession is legally admissible, it is up to the assessors to determine the truthfulness and sufficiency of the contents of it. This is generally referred to as the 'weight of the confession'. The rationale in following this principle is that an accused may have given a false confession even though it was made voluntarily. Similarly the confession may not have sufficiently linked the accused to the offence for which he has been charged. Deciding the weight of the evidence is entirely on the assessors.

[33] I need to be mindful to a situation that can arise during a trial when the prosecution summon investigating and other police officers to lead evidence at the trial proper. They are summoned to illicit evidence relating to investigation and that stage also defence is entitled to ask questions even with regard to voluntariness. For example any threat, assault and promise exerted by the police during the investigation which includes the recording of caution interview. Trial judge cannot stop such questioning on the basis that

he had already decided that the admissibility of the confession. Even the accused whilst giving evidence at the trial, can complain that the alleged confession was made involuntarily. He can substantiate his claim or may try to create a reasonable doubt by calling witnesses. At that stage judge cannot rule against eliciting such evidence.

[34] The next question is as to how a judge must give directions to the assessors in such a situation. Can the judge tell them not to consider voluntariness as he had already decided it was made voluntarily? It is unfair and goes to the root of a fair trial procedure in an adversarial system. A judge must not prevent assessors deciding on the voluntariness even though he had already decided the admissibility. Material that comes to mind of the assessors with regard to threat or duress cannot be shut out. In the circumstances I hold that the learned trail judge in the instant case clearly and lucidly addressed the assessors that it is up to the assessors to determine the voluntariness.

[35] In the instant case, the judge has not taken away the traditional role of assessors in determining the weight of the evidence of the alleged confession. In addition he has succinctly told them that was up to them to decide the voluntariness as shown in para 27 and 28 of the summing up. This does not mean that the issue of deciding admissibility has been entrusted to the assessors. This approach only demonstrates that even though the judge previously decided that the confession was legally admissible, still assessors are entitled to determine the voluntariness in the light of the material transpired at the main trial. The approach is in fact in keeping in line with the pronouncements in Fiji Supreme Court and common law jurisdictions.

[36] The traditional division of roles of the jury and judge was pronounced in **Chan Wei Keung v The Queen** (1967) 2AC 160. It held that if the judge was required to direct the jurors to disregard the confession if they were not sure that it was made voluntarily, that would tantamount to the judge usurping the jurors' function of evaluating the evidence for themselves. The Privy council further held that the appropriate direction is to tell the jurors that the weight they should give to the confession is for them to decide.

[37] However a different approach was made in **R v Mushtaq** *(2005) UKHL 25.* House of Lords held that jurors should be directed to disregard a confession if they think that the confession may have been involuntarily. A question arose as to whether Courts in Fiji should follow this approach in view of the absence of statutory provision such as section 76(2) of UK Police and Criminal Evidence Act 1984.

[38] The issue was finally settled by the Supreme Court of Fiji in **Maya v the State,** *Criminal Petition No. CAV 009 of 2015(dated 23.10.2015)* where Gates CJ held at para 2; *'the assessors should be directed by the judge in his summing up that if they are not satisfied that the confession was given voluntarily, in the sense that it was obtained without oppression, ill treatment or inducements, or conclude that it may not have been given voluntarily, they should disregard it altogether.'*

[39] In the same case Keith J pronounced at para 23; *'We should adopt the position which says that a confession should be treated as valueless if it may have been made involuntarily. Judges should for the time being, therefore, tell the assessors that even if they are sure that the defendant said what the police attributed to him, they should nevertheless disregard the confession if they think that it may have been made involuntarily.'* (emphasis added)

[40] In the light of the above reasoning, I am of the view that the direction given by the trial Judge at para 27 and 28 are reasonable, fair and in line with the development of the law. It was legitimate for him give such direction. It is interesting to note that although the summing up was made in June 2012, rationale and approached followed by him was endorsed by the Supreme court in *Maya's* case only in October 2015. It is creditworthy for the learned trial judge to think ahead of development of the law in the land.

[41] In the circumstances, I hold that there was no misdirection regarding the voluntariness of the confession. Therefore, I hold that ground two of the 2nd appellant has not been established.

Prosecution Case against the 1st appellant

[42] The case for the 1st appellant was primarily based on the alleged confession he made to a police officer on 14th September 2009 and the evidence of another police officer who claimed that he saw the 1st appellant handing over $ 3000 to his girl friend on 13th September 2009. This has happened six days after the incident of the robbery and the position of the prosecution was that the said $ 3000 was a part of the robbed money. If the confession was not made admissible there would not have been any evidence with regard to conspiracy (count 1). Similarly, if the confession was not admitted the prosecution would not have been able to establish that the appellant knew the money he had handed over to the girl friend, Koleta Roko was stolen property. In such event, the prosecution would have failed in establishing count 2 also. In the circumstances, the alleged confession was the most valuable evidence for the prosecution to establish the case against the 1st appellant.

[43] The caution interview was held on 14th November 2009. *Voir dire* inquiry was held and the learned trial judge decided that confession was legally admissible on 9th November 2011. At the trial against the first appellant the police officer who recorded the confession gave evidence and produced the document as exhibit 1A and 1B.

[44] According to the confession, the 1st appellant had been in prison in connection with another robbery before 2005 and was released on 6th August 2009 i.e. 38 days prior to the instant case of robbery. Whilst in the prison, he had a discussion with another prisoner named Eparama Nagalu prior to 2005 about the robbery of cash from Lokia shopping centre. When the 1st appellant came out from prison, he visited Eparama Nagalu at his home on 23/09/09. While drinking grog they planned out the 'job' relating to the shopping centre. Following day i.e on 24/08/09 both of them went near the Lokia shopping centre to observe as to how the staff carried the cash. On 11/9/09 Eparama Nagalu met the 1st appellant and thank for the assistance with regard to the 'job' at the shopping centre and gave him $3000.00. The 2nd appellant knew that it was robbed money. Out of the said amount the 1st appellant handed over $ 2360 to his girl friend Koleta Roko.

[45] Following are the relevant excerpts of confession that were relied upon by the prosecution to prove the count of conspiracy.

Q.9 When did you come out of prison?

A On the 6th of August, 2009

Q.10 You go in prison for what offence?

A Robbery at Mobil service Station, Naulu and Shop Breaking at Roops Pawn shop.

Q 11 When you came out of prison where did you reside?

A I stay with my sister at Makoi

Q 37 I wish to inform you that Koleta Roko still admitting giving the money to you inside the van. What can you say about this?

A I gave it to her

Q 38 Where did you bring this cash from?

A Given to me by Eparama Nagalu at the back of Hansons Supermarket, Makoi on Friday afternoon 11/9/2009 about 6 pm when I was send to buy grog.

Q 40 Why did Eparama Nagalu gave you this cash?

A To thank me for the job well done at Lokia Shopping Centre that I told him.

Q 41 How much money that he gave it to you?

A $ 3000.00

Q.43 Why did he give you the $ 3000.00?

A We went together in prison and we always having conversation about the delivering of cash at Lokia Shopping Centre. This conversation is from 2005 before he came out from prison. When I came out on 12/8/09 I

stay with my sister at Makoi. I met with Eparama Nagalu and having conversation at his home on Sunday 23/9/09 and we were planning about the job at Lokia Shopping Centre and we were drinking grog.

Q 44 What was job mention before?

A Robbery

Q 46 After having conversation what else did you do?

A We came to Nausori town on Monday morning 24/8/09 with one car driven by Eparama and park at the back of Mobil Service Station to wait for the staff to come out from the shop with the cash and follow them to Manoca at their Bulkstore

Q 50 Why did you follow them?

A To time the robbery

Q 56 By the time you receive the cash $ 3000.00 from Eparama did he mention to you where the money came from?

A Money from Lokia Shopping centre.

Q 57 Who all did he mention to you that take part for the robbery at Lokia Shopping Centre?

A He only knows Josese and the rest he don't know.

Q 58 $ 3000.00 was given to you by Eparama Nagalu and $ 2,360 was recovered from Koleta Roko. Where is the $ 640.00?

A I use it for buying beers at Kings club and Whistling Duck.

[46] The learned trial judge in his summing-up at para 14 referred to the conversation and planning done by the 1st appellant and Eparama as far back in 2005 with regard to delivery of cash at the Lokia shopping centre. First ground of appeal is the judge's

reference to 1st appellant serving time in the prison. It was submitted by the first appellant that bad character evidence has been allowed to be led at the trial.

[47] A careful examination of the evidence shows that the evidence of being in the prison was elicited to chronologically explain the meticulous planning carried out from the inception. The main purpose was not to show that the appellant had a criminal disposition. But it revealed only as a collateral sequence. In a criminal case it is an accepted rule that bad character evidence should not be lead out as that would blur the substantive evidence in the case. Sometimes there is a potential that assessors might arrive at an adverse finding prejudicial to the accused.

[48] The prosecution must take every feasible step to avoid bad character evidence coming into the court proceedings. However we need to be careful in making pronouncements overboard stating no evidence should be led giving the indication that the appellant was in prison. It depends on facts and circumstances of each case.

[49] In the instant case even without any reference to the time spent in the prison, the prosecution could have established the conspiracy charge. For example answer to question no 43 shows that even after coming out from the prison the 1st appellant discussed with Eparama about robbery and visited the shopping complex for familiarization in order to carry out robbery meticulously. In the teeth of this evidence, prosecution when submitting the caution interview statement should have removed the reference about the prison. That would have prevented assessors coming to know of the stay of the first appellant at the prison.

[50] Even if we were to assume that bad character evidence has been accidently led, it would not have caused a substantial miscarriage of justice. Any reasonable panel of assessors listening to the other parts of the confession would have opined that the 1st appellant was guilty of the offences charged with.

[51] In any event, unlike in a jury trial, in the case of assessors in Fiji, the final decision is Vested with the High Court judge. Whilst concurring the opinion of the assessors he has concluded that the 1st appellant was guilty.

[52] In the circumstances I hold that no prejudice has been caused to the first appellant and therefore ground 1 of the appellant has not been established.

[53] The second ground relates to learned judge directing the assessors that deciding the voluntariness of the confession was a matter for them. This is found at para 29 of the summing up.

[54] I have made detailed analysis on the issue with regard to the confession of the 2nd Appellant. The same analysis is applicable to the 1st appellant as well. . Applying the same analysis, I hold that there was no misdirection with regard to assessor's role in determining the voluntariness.

[55] In the circumstances I hold that 1st appellant has not established his ground two of the appeal.

Conclusion

[56] For the reasons set out above I hold that the 1st and 2nd appellants have not established the grounds of appeal raised by them. There is no reason to interfere with the conviction. Therefore I dismiss the appeal and affirm the conviction and the sentence imposed by the High Court judge.

Priyantha Fernando, J

[57] I agree with the reasoning and the conclusion of Jayamanne, JA.

The Orders of the Court are:

1. *The appeals of both appellants are dismissed.*
2. *The conviction and sentence of both appellants are affirmed.*

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Hon. Mr. Justice W. Calanchini
PRESIDENT, COURT OF APPEAL

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Hon. Mr. Justice S. Jayamanne
JUSTICE OF APPEAL

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Hon. Mr. Justice P. Fernando
JUSTICE OF APPEAL