IN THE COURT OF APPEAL, FIJI
[ON APPEAL FROM THE HIGH COURT]

Criminal Appeal Nos. AAU 0069 of 2012
(High Court Case No. HAC 60 of 2011)

BETWEEN	:	**LEPANI TEMO**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Gamalath, JA** **Prematilaka, JA** **Nawana, JA**
Counsel	:	**Ms. S. Nasedra for the Appellant** **Ms. S. Kiran for the Respondent**
Date of Hearing	:	**05 February 2020**
Date of Ruling	:	**27 February 2020**

JUDGMENT

Gamalath, JA

[1] The appellant was sentenced to life imprisonment with a minimum term of 18 year imprisonment, after being convicted of Murder in the High Court at Labasa. He had submitted notice of appeal to the Department of Corrections on 2 June 2012.However, due to inadvertence his notice has not been submitted on time and thus he was late by one month and few days. In his notice of appeal application there were 4 grounds of appeal against his conviction, and one ground of appeal against the sentence. On the issue of the delay in filing the appeal, State took no objection and thus the learned single Judge disregarded the delay.

[2] However, having considered the grounds of appeal, the learned Single Judge held that the grounds lacked merit and hence the refusal to grant leave to proceed both on the grounds of appeal against the conviction as well as against the sentence. This was on 15 January 2016.

[3] Based on the refusal by the single Judge the appellant presently renewed his grounds of appeal before us. He is relying on 6 grounds of appeal against the conviction and one ground of appeal against the sentence. The renewal application is dated 24 April 2017. On comparison it is clear that the grounds upon which the appellant presently relies have very little similarity to the grounds that were unsuccessful before the learned Single Judge. However, given that the appellant is appealing against the conviction for Murder, the Court is inclined to consider the present grounds of appeal.

The grounds of appeal are as follows:

Grounds against the conviction:

i. *That the Learned Trial Judge erred in admitting as evidence the alleged confessional statements when he failed to carefully and properly asses the evidence of assault, torture oppression and threat by Police in view of the injuries I sustained whilst in custody therefore.*

ii. *That the Learned Trial Judge erred in admitting as evidence the alleged confession statements as I was caution interviewed and charged by Police beyond the 48 hours required.*

iii. *That the Learned Trial Judge erred by stating at paragraph [18] line [3-4] of the Voire Dire Ruling that "there is no evidence of oppression before him to require the exclusion of the confessional statements." In view of the lengthy period of detention and interrogation by Police which definitely sapped the free will.*

iv. *That the Learned Trial Judge erred in law and in fact in allowing the Prosecution to invite her witnesses to identify me for the first time in Court which is so prejudicial and further erred in failing to direct himself and the assessors on the danger of acting upon the evidence of identification alone without corporation.*

v. *That the Learned Trial Judge erred in law and in fact in failing to clearly explain to the assessors the evidence of the Lady Doctor and Doctor Goundar when they stated that the injuries inflicted on the deceased's neck would have caused instant death and therefore impossible for the deceased to further speak out any word.*

vi. *That the Learned Trial Judge erred in law in failing to clearly explain to the assessors that the weight and value of the confessional statements are for them alone to decide.*

Sentence Appeal Grounds:

vii. *That the sentence is manifestly harsh and excessive.*

The Facts:

[4] According to the agreed facts in the trial in the High Court of Labasa, the deceased Susana Matila Niubalavu and the Appellant were cousins. At one time the deceased and the appellant had been involved in an intimate relationship that had lasted till September 2011. In relation to the death of the deceased, it was agreed that she succumbed to a deep cut neck injury as described in the Post Mortem Report.

[5] The main evidence upon which the prosecution relied to prove the case was the confession of the appellant. The reflection of that fact can be seen through the summing up. The main objections to the conviction of the appellant also arise mainly out of the issues relating to the voluntariness of the confession of the appellant.

[6] According to the prosecution evidence, on 19th November 2011 around 7pm the deceased was in the company of her cousin, the witness, Maria Peteresia, (Maria). Leaving the deceased's house both of them had been walking towards the main road through the gravel road with the idea of attending a fundraising event to support some village rugby club.

[7] According to Maria even at 7 pm, there was daylight and the degree of visibility had been high. Half way through having realized that she had accidentally dropped her jacket on the gravel road, Maria walked back to pick it up, leaving the deceased on the wayside. As Maria turned back to walk towards where her jacket was, she saw a man coming out of the gate of their compound. Maria was unable to distinctly identify the man. After having picked up the jacket, Maria had been walking towards where the deceased was waiting for her. At one point Maria turned back to notice the man whom she referred to earlier following her from a distance of about 20 meters, carrying a cane cutting knife.

[8] Even from that distance, she could not distinctly make out the person. Since she had some issues with one Soqulu, she thought it was Soqulu who was pursuing her and she started to run on the road. Whilst running she told the deceased also to join her, probably fearing the man would cause them harm. Maria noticed that the man started to run towards the direction where Susan was running. At one point he had run past Maria and as they were abreast of each other Maria identified him to be Lepani, the appellant. Lepani is no stranger to her as they are cousins. As he was passing Maria, the appellant tried to hide the knife he was carrying in his hand by turning it towards his back. The appellant continued to chase behind the deceased, who ran towards the compound of one Colin Caine who also gave evidence for the prosecution. Maria followed them and in a short while, which she had described as 5 minutes, she reached Colin's compound, in which she found the deceased lying on the sideway, with a deep cut wound in the neck, exposing the neck bones, and her body was shaking.

[9] Answering the cross examination, Maria said that while these things were happening, there was still daylight. It was suggested to the witness in the cross examination that she could not have identified the appellant as there was darkness already setting in, but Maria rejected the suggestion and reiterated that she identified the appellant clearly.

[10] The witness, Colin Caine, was the next prosecution witness, in whose compound the deceased was injured. Being alarmed by the cry of a woman running towards his compound, he looked at the direction to find the woman screaming and a man was chasing behind her, armed with an object, which for him appeared from a distance like a large stick. Adding support to Maria's evidence about the quality of light at that time, Colin also stated that the light was still bright, as it was between the day and the dusk.

[11] The witness, Salote Tagimoucia,(Salote) was making pizza for Colin, when she heard the scream of a woman. She looked at that direction to find the deceased running towards Colin's house, being chased behind by a man who carried a weapon. At one point the man hit the deceased with the weapon twice. At the time the man hit the deceased, the deceased was sitting on the ground. There was still day light and the visibility were clear.

[12] Salote ran up to the deceased who was then lying on the ground with injuries. Salote knew the deceased from her childhood. Salote called out her name. In responding the deceased, in a faint voice uttered "Lepani". According to Salote's own words, "she demonstrated soft Lepani sound".
This evidence was not controverted during the cross-examination.

[13] The evidence of Mataiasi Lelaibai, who lived in the neighbourhood of the place where the deceased was injured, also was alarmed by the scream of the deceased. As she was approaching the area from where the sound came, she saw a man, who she could not identify, running away from the place where a woman was lying on the ground with neck injuries. Having reached the place where the deceased was lying, she recognised the deceased and called her "Su" to find out what happened. The deceased looked at her and uttered twice "Lepani". According to the witness the utterances were loud, clear and distinct.

[14] Dr. Asela Matai, who was visiting Collin that evening had arranged the transportation of the deceased from the place where she was injured to the hospital in an ambulance. According to her evidence she knew the deceased as she was one of her former patients. By the time the ambulance arrived, the deceased had already succumbed to the neck injury which the witness described as a "wound that would have destroyed the respiratory reactions, causing the death instantly, if unattended."

[15] P.C.Thomas was the first police officer who visited the scene of crime. He arranged for the transportation of the body to the hospital. The witness was involved in the reconstruction of the scene of crime. The appellant and the team of police officers visited the farm of the appellant on 24 November 2011.It was at a place called Qacavulo.At the appellant's farm a knife was recovered from a place pointed out by the appellant.

[16] According to the evidence of CPL Elia, who was a member of the reconstruction team, he had visited the appellant's farm house and from a place which was about 15-20 meters away from the appellant's house, the police team had recovered a knife, which was pointed out by the appellant. At the trial the counsel for the appellant disputed the fact that the recovery of the knife was as a result of it being shown by the appellant. The witness refused to accept the suggestion. However, according to the evidence of Cpl Davila, who conducted the forensic examination the result was negative for blood.

[17] Dr. Goundar conducted the post- mortem on the deceased. He described the gaping neck wound found on the deceased. Although it would have been helpful for the case , neither party asked the Doctor about the speaking ability of the deceased after receiving the neck injuries that he described in his evidence.

[18] As already said the prosecution relied on the cautioned interview statement of the appellant as its main evidence, which is an incriminatory statement.

[19] At the end of the prosecution case the Appellant gave evidence. According to him the police rough handled him to extract the cautioned statement. He challenged its voluntariness. Referring to the prosecution witness Maria, he said that she had made a mistaken identity of him.

Dealing with the Grounds of Appeal:

[20] As the Grounds 1, 2, 3 and 6 are relating to the issues based on the cautioned interview statement, they could be considered jointly.

[21] In order to understand the strength of the above 4 Grounds, attention has to be drawn to the proceedings in the voir- dire enquiry and the ruling on it by the learned Trial Judge.

who ruled that the statement had been made voluntarily and admitted in to evidence. On the 6th Ground, it is the summing up that requires to be examined.

[22] The voir-dire enquiry started on 21 May 2012 with the prosecution witness DC 3573 Daniele Turaga, who in his evidence stated that the interviewing process started on 21 November 2011. He had taken three days to complete the interview. On 22 November, as he was involved in "more" inquiries, the interview was suspended till the following day. Again, on 23 November, in the afternoon, they have visited the appellant's farm and couldn't continue with the interview. On 24 November, the interview recommenced, and suspended at 1.30pm to revisit the appellant's farm for the reconstruction. In the cross examination, the witness denied that he used force, or he threatened the appellant or rough handled him to extract the statement. During the cross examination it was suggested that Inspector Mosese, hit the appellant on his knee with a stone used for flower beds, while others were assaulting him all over and rubbed chillies over his body. The Police witnesses denied these accusations.

[23] Inspector William Lomani, Police Constable 3101 Thomas, and several other Police Officers testifying stated that the appellant gave the statement voluntarily.

[24] Corporal 2708 Elia, stated in his evidence at the enquiry that he was also involved in the reconstruction of the crime scene, and he accompanied the appellant to his farm, where the appellant had shown him the place where the knife was hidden. The appellant had been remorseful. In answering the cross examination the witness stated that the appellant being remorseful cried over the killing of the deceased.

[25] The evidence of Sergeant Baleiwai is important, for according to him when he produced the appellant in the Magistrates Court on 24 November, he had shown no injuries on him, nor did the appellant complain of being assaulted by the Police.

[26] The evidence of the appellant at the voir-dire inquiry was that the Police had assaulted him to extract the cautioned interview statement and in essence the manner of the assault, which had lasted for well over three days, had been described as follows;

a) On 21st November in a Police cell at Taveuni Police Station he was put in to a room and handcuffed.
b) then he was tied to a chair.
c) he was hit on legs with a stone the size of which was described like a rugby ball.
d) he was forced to lie on the ground and gagged with a piece of cloth.
e) he was stomped and chilli was rubbed all over his body
f) the Police put chillie powder into his eyes
g) rubbed the genital with chillie.
h) he was kicked and stomped on
i) he was trampled by the Police Officer.
j) he was assaulted on 22nd November, the whole evening.

While the assault continued the appellant became unconscious, incontinent and after he regained consciousness, the Police had stomped on him, hit his back with a stone and while wearing the boots, they walked on his body.

[27] I find that the learned trial Judge, in his ruling had correctly paid attention to the above factors and considered them carefully in deciding on the voluntaries of the caution interview statement.

[28] On the 26 November, Doctor Sowani had examined the appellant in his cell. According to the medical evidence there had been no visible injuries on the appellant, except the injuries seen on his knees, which were reddish and swollen. He was admitted to the hospital on 25 November on the recommendation of the Doctor. The knee injuries were as a result of cellulites and there was an infested lesion, according to the Doctor. The medical evidence had shown no bruises, lacerations, or abrasions or any signs of distress on the appellant.

[29] On a careful examination of the voir-dire ruling, I find that the learned trial Judge had carefully considered all aspects of the evidence led at the inquiry before reaching his conclusion on its voluntariness.

[30] The ruling clearly shows that the learned trial Judge made no mistake with regard to the burden of proof that rests in the prosecution to prove the voluntariness of the caution interview beyond reasonable doubt, and in arriving at his conclusion on this aspect, he had considered the fact that had the appellant been subjected to the physical abuse that he claimed, one would expect him to show more tell-tale injuries. In his ruling under the caption 'Discussion', the trial Judge set out the reasons for his final determination on the voluntariness of the confession from paragraphs 15 to 19 :

> "***Discussion***
>
> *15. The evidence of the Police Officers was consistent, honest and credible. They were at pains then to establish the true involvement of the accused in this homicide. I believe them and find their evidence reliable.*
> *16. While the accused in giving evidence does not have to prove anything to me, the State having to prove their case beyond reasonable doubt, I did not believe his evidence. Had he been subject to the physical abuse he claims, he would have suffered far more injuries and displayed marks of abuse and violence than he then presented with. His knee injury could well have been caused by mishap "in the bush" as was an earlier ankle injury that he told the interviewer about. In the round, I prefer the evidence of the Police Officers over that of the accused.*
> *17. The accused tells me that he changed his story on the third day of interview because of the assaults. I find that there were no such assaults and therefore the reason for him changing his stance in the interview remains unexplained by the evidence before me.*
> *18. I find that the answers given by the accused on each of the three days of the interview were given freely and voluntarily as was his response to the formal charge of murder. There is no evidence before me of oppression which would cause me to exercise my discretion to exclude the evidence.*
> *19. The cautioned interview and the charge statement are both admissible and may be led by the State in the trial on the general issue".*

[31] Counsel for the appellant strenuously urged that the line in para [16] of the voire-dire in which the learned Judge remarked that "his knee injury could well have been caused by mishap "in the bush" as was an earlier ankle injury that he told the interviewer about", is a misrepresentation of facts for as far as the evidence in the voire-dire inquiry was concerned, there had been no evidence to support such an assumption. In effect what the counsel was diving at was that the learned trial Judge had been acting on conjecture in evaluating the voire-dire evidence.

[32] I find that this finding in the Learned Judge's ruling was a reference to an answer given by the appellant in his evidence where he said that he "injured his ankle while in the bush". Having considered the totality of the evidence at the voire-dire inquiry and particularly having considered the medical evidence on the appellant and the fact that the appellant was produced before the Magistrate on 24 November, where there was no complaint made of any abuse by the investigators, I am unable conclude that the impunged reference in the ruling of the Learned Trial Judge had a serious bearing on his conclusion on the voluntariness of the cautioned interview statement.

[33] Having referred to the first three grounds of appeal, another factor that underscores the objection to the voluntariness is the alleged oppression used by the Police to extract the cautioned interview statement by placing him under oppressive conditions. In a general sense the oppression that has been alleged must be based on the overall abusive behaviour on the part of the investigating officers. But in a specific sense, this issues is directly arising out of the fact that he had been in custody for a period of well over 48 hours, exceeding the period that is permitted under law to keep a person under custody, following arrest.

[34] In order to understand the complaint, the meaning of the word 'oppression' has to be understood in its legalistic sense. **In R. v. Fulling** [1987] Q.B 426;85 Cr App.R.136, the Court of Appeal (U.K) held that the ordinary dictionary meaning of the word is sufficient to understand the meaning of the word *"oppression"*, in the context of determining the voluntariness of a confession;

> "The Oxford English Dictionary as its third definition of the word runs as follows; "exercise of authority or power in a burdonsome, harsh or wrongful manner; unjust or cruel treatment of subjects, inferiors etc; or the imposition of unreasonable or unjust burdens"; (per Lord Lane C.J. at pp 432.442).
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> The learned editor of *Archbold* had commented that "the Court found it hard to envisage any circumstances in which such oppression would not entail some impropriety on the part of the interrogator". (*Archbold*, 2011, para 15-358, pg 1673).

[35] In **R. v. Mushtaq** [2005] 2 Cr. App. R 32 HL, Lord Carswell used the following definition [taken from a 1968 speech by Lord Mc Dermott and quoted in **R.v Prager** [1972] I W.L.R 260, C.A. at 266]:

> "Questioning which by its nature, duration or other circumstances (including the fact of custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent".

[36] For an example of Police shouting during interview being held to be "oppression " could be found having reference to the *dicta* in R.v.Paris, 97 Cr.App. R. 99 C.A.; However, raised Police voices are not necessarily oppressive- see; R. v Emmerson; 92 Cr.App.R.284 CA; R. v Heaton [1993] Crim.L.R. 593 CA.

[37] In **R.v. Parker** [1995] Crim. L.R 233, I.A it was held that the phrase "exercise of authority in a burdensome, harsh or wrongful manner does not mean that any wrongful breach of the codes amounts to oppression". In this decision, court giving emphasis to the *dicta* in ***Fulling*** stated that in determining whether there had been oppression it is important to look at the context in which the expression was used in **Fulling.**

[38] The above *dictum*, in their cumulative sense, presents an elucidating, comprehensive legalistic mechanism to be applied in determining ,on an objective basis, the existence or non-existence of oppression in recording a confession; a matter that is directly referable to the decision making process of a trial judge embarked on determining the voluntariness of a confession. I am of opinion that the substratum of ***Fulling*** could be adopted and used as a legal criteria in deciding on the issue of voluntariness of a cautioned statement. What flows out of these decisions have a universal relevance.

[39] In my opinion the available evidence with regard to the voire dire inquiry does not disclose evidence to satisfy the test laid down in ***Fulling*** in determining the existence of alleged oppression, that is said to have been exerted on the appellant in recording the cautioned statement of the appellant and in the circumstances I am unable to conclude that the learned trial Judge had erred in determining that the confession was voluntarily.

[40] Apart from the alleged brutal assaults said to have been carried out on him, the defence did not specifically made reference to the issue of oppression to assail the voluntariness at the inquiry.

[41] Reiterating the *dicta* in **R. v Parker** [1995] Crime.L.R.233 CA and by applying the yardstick finely laid down in ***Fulling*** (*supra*) it is to be recalled that "exercise of authority in a burdensome, harsh or wrongful manner" does not mean that any wrongful breach of codes amounts to oppression". In the instant case, in the absence of any convincing evidence, the learned trial Judge has held that the allegation of assault and abuse are unsustainable.

[42] In the circumstances, I am unable to hold that the Grounds under consideration are with merit and therefore I determine them as untenable.

[43] Before concluding on these grounds of the appeal, I need to pay attention to the fact that the appellant had been in custody for a period exceeding 48 hours, violating the constitutional provisions. On this issue, in the case of **Varani v State**, [2015]FJCA 145; AAU 064 of 2011; 2 October 2015 it was held that :

> *"iii. The cautioned statement was recorded after 48 hours of the arrest. This is a completely new point that the appellant has taken. As the learned counsel for the respondent did not object, we obliged the appellant. The appellant submitted that his cautioned interview was recorded after the lapse of 48 hours of his arrest. The appellant submitted that as a result prejudice was caused to him and that human rights were violated. However he did not submit that there was oppression. As this point was taken up for the first time the learned counsel for the respondent could not immediately counter it. If this point was taken up in advance, the respondent would have been able to explain the delay in recording the confession after the lapse of 48 hours. The appellant himself did not explain what he did within the period of 48 hours. The appellant was arrested in connection with many other crimes. Therefore we have no information that the appellant was kept in the police cell for 48 hours. This point is settled now. In Noa Mava and another v The State (AAU 0053 of 2011; HAC 0086 of 2009, 27*

February 2015) the Court of Appeal following a Supreme Court decision (Murti v State [2009] FJSC 5; CAV 0016.2008 (12 February 2009) refused to reject a caution interview recorded after being held for 48 hours. In Murti's case the accused was held for more than 60 hours".

[44] In **Maya v State** [2015] FJSC 30; CAV 009 of 2015; 23 October 2015, the Supreme Court held that the constitutional requirement of producing an accused person before a court within 48 hours is not an absolute requirement.(*Emphasis added*)

[45] In light of above, I am unable to hold that the learned Trial Judge had erred in determining that the cautioned interview had been recorded under oppressive circumstances.

[46] Another ground upon which the appellant relies in assailing the conviction is Ground 4 in which he states:-

"That the learned Trial Judge erred in law and in fact in allowing the prosecution to invite her witnesses to identify me for the first time in court which is so prejudicial and further erred in failing to direct himself and the assessors on the danger of acting upon the evidence of identification alone without corporation" (sic)

[47] Several issues are wrapped in one in the above ground, and at the outset, I must state that the need to look for evidence of corroboration of the identification evidence, does not arise in a case of this nature.

[48] The overall complaint as set out in the ground of appeal is about the evidence of Maria, whose evidence I have already discussed in the preceding paragraphs of the judgment.

Maria's evidence in regard to the degree of visibility prevailed when she identified the appellant:

[49] Maria's identification of the appellant was based on a recognition for they are cousins. Although the appellant was wearing a bucket hat, she was able to recognise him. Answering the cross-examination, the witness was emphatic that it was the appellant she saw as he was running towards the deceased, passing the place where she was standing on the road. On the issue of the quality of light, the witness, Collin Caines, described it as the dusk; "lighting was dusk hour at between day and dark. It would start to get dark at about 7.30", Colin had stated.

[50] In his summing up, the directions on the issue of identification by the witness are terse and in paragraph 13 the learned trial Judge had stated as follows:

> *"The man was also running. He ran past Maria and Maria looked at him. She recognised him. It was Lepani, the accused; it was suggested to Maria in cross examination that she had got her times wrong, and that it was getting dark and so she would not have been able to have seen these events very clearly. Mr W. also suggested to Maria that the hat the man was wearing would have obscured her view of his face and she therefore could not be sure it was Lepani; these are matters for you to consider, Ladies and Gentlemen."(See para 13 – pp 554 -555; court record).*

[51] Following the unanimous verdict of the assessors, the learned trial Judge, in the Judgement stated that;

> *"The evidence against you is overwhelming. You were seen and identified at the scene of the crime with a cane knife and you admitted your guilt to the Police when being interviewed."*

[52] I am of the opinion that the summing up should have been more in detail with regard to the issue of recognition made of the appellant by Maria. However, the case for the prosecution did not depend "wholly or substantially on the correctness of one or more identification of the accused which the Appellant alleged to be mistaken"; **R v Turnbull**

[1977] Q.B. 224 at 228-231. In the circumstances, in my opinion I am doubtful whether the deficiency in the directions on the issue of the quality of identification had a serious bearing on the final outcome of the case. Moreover, the counsel for the Appellant did not raise any argument based on this proposition in his submissions. This case, as stated at the beginning rested mainly on the strength of the cautioned interview statement. Therefore, in my opinion this is a curable situation by the application of Section 23 (1) of the Court of Appeal Act and Rule (Cap.12).

Ground 6

That the learned Judge erred in law in failing to clearly explain to the assessors that the weight and value of the confessional statements are for them alone to decide.

In relation to this ground of appeal, the summing up of the learned trial Judge provides a satisfactory answer. In paragraph 42 of the summing up, the learned trial Judge has directed the assessors in the following manner:-

> *"[42] I must now give you directions on how to approach the accused's confession in his caution interview. The State says that after two days of denial the admissions to the murder were made quite voluntarily and of his own free will and should be considered by you. The accused says that he was assaulted at the Police Station and because of great pain from those assaults he confessed in desperation. Now if you think that the accused was assaulted or may have been assaulted then you will discard the interview and give it no weight whatsoever. If on the other hand you don't believe he was assaulted, the answers in the interview become evidence in the normal way for you to consider. It is all a matter for you."*

[53] In my opinion, the learned Trial Judge has given sufficient directions on how to evaluate the confession is satisfactory. Therefore, this ground is devoid of merit.

[54] The ground against the sentence is also without a proper basis for as the learned trial Judge had stated in his sentencing order in paragraph 8 as follows:-

"8. This was a violent and unnecessary attack on a defenceless woman who was in fear of you despite your earlier loving relationship. To reflect that horrific crime and to protect the community for some time in the future, I order that you serve a minimum term of eighteen years for this offence".

[55] Given the circumstances of this case, the sentence of imprisonment cannot be construed as manifestly harsh and excessive. The appeal against sentence is therefore dismissed.

Prematilaka, JA

[56] I have read the draft judgment of Gamalath, JA and I agree with the reasons, conclusions and orders proposed.

Nawana, JA

[57] I agree with the reasons, conclusions and orders proposed by Gamalath, JA.

The Orders of the Court:

1. Appeal against conviction dismissed.
2. Appeal against sentence dismissed.
3. Conviction and sentence affirmed.

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Hon. Justice S. Gamalath
JUSTICE OF APPEAL

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Hon. Justice C. Prematilaka
JUSTICE OF APPEAL

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Hon. Justice P. Nawana
JUSTICE OF APPEAL