

**IN THE SUPREME OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of an Appeal in terms of Section 451(3) of the Code of Criminal Procedure (amendment) Act No. 21 of 1988 read with Article 127(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. TAB No. 03A- 03B- 03C/2017
High Court Case No. HCJ 2160/17

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Poobalasingham Indrakumar *alias*
Sinnappa
2. Poobalasingham Jayakumar *alias*
Ravi
3. Poobalasingham Thavakumar *alias*
Senthil
4. Mahalingham Shashidaran *alias*
Shashi
5. Thileinadan Chandrakasan *alias*
Chandra
6. Sivadevan Thushanthan *alias*
Periyathamby.

Ai Pazz

7. Palaniroobasingham Kuhadasan *alias* Nishanthan.
8. Jayadaran Kokilan *alias* Kannan
9. Mahalingham Sashikumar *alias* Swiss Kumar

Accused

AND NOW

2. Poobalasingham Jayakumar *alias* Ravi
3. Poobalasingham Thavakumar *alias* Senthil
4. Mahalingham Shashidaran *alias* Shashi
5. Thileinadan Chandrakasan *alias* Chandra
6. Sivadevan Thushanthan *alias* Periyathamby.
8. Jayadaran Kokilan *alias* Kannan
9. Mahalingham Sashikumar *alias* Swiss Kumar

Accused-Appellants

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant-Respondent

BEFORE : P. PADMAN SURASENA, CJ.
ACHALA WENGAPPULI, J.
K. PRIYANTHA FERNANDO, J.
MENAKA WIJESUNDERA, J.
SAMPATH ABAYAKOON, J.

COUNSEL : Anil Silva PC with Arindra Silva instructed by
Nandana Perera for the 5th Accused-Appellant
Mahinda Jayawardena for the 2nd and 6th
Accused-Appellants
Arumugam Ragupathi for the 4th & 8th Accused-
Appellants
Darshana Kuruppu with Tharushi Gamage, Dieru
Bandara, Anjana Adhikaramge, Sudarsha de
Silva and Rajitha Kulatunga for the 9th Accused-
Appellant.
Azard Navavi, ASG with Ms. Chrisanga
Fernando, SC, Nagaratnam Nishanth, SC and
Shezan Mahboob, SC for the Hon. Attorney
General

ARGUED ON : 06th November, 2025

DECIDED ON : 06th May, 2026

On 05.05.2017, the Hon. Attorney General caused to exhibit an Information before the High Court of *Jaffna*, which indicated that the nine persons named therein were involved in conspiring to abduct *Sivaloganthan Vithya* for the purpose of illicit sexual intercourse, conspiring to commit gang rape and also conspiring to commit her murder on or

around 13.05.2015. The said Information further conveyed to Court that; a person who had been arrested in connection with these offences, one *Udyasuriyan Sureshkarana* alias *Sure*, was granted a conditional pardon by the Attorney General, acting in terms of the powers conferred on him by Section 256 of the Code of Criminal Procedure Act No. 15 of 1979 as amended.

Hon. Chief Justice, in consideration of the circumstances referred to in the said Information and in responding to a request of the Hon. Attorney General, nominated a panel of three Judges of the High Court of the Republic, after determining that a Trial at Bar should be constituted to try the offences that are referred to in the said Information.

The proceedings before the said Trial at Bar thus constituted had commenced when the Registrar of the High Court of *Jaffna* presented a Charge Sheet on 12.06.2017, against all of nine persons and named them as accused. The said Charge Sheet contained a total of 41 charges. These charges included allegations that the nine accused have conspired to abduct *Sivaloganthan Vithya* for the purpose of illicit intercourse, conspired and committed gang rape, conspired and committed her murder, and they were members of an unlawful assembly which had its common objective as the abduction of *Vithya* for the purpose of illicit intercourse, abduct her and also of abetment to these offences.

The names of the accused named in the said Charge Sheet are as follows:

1. Poobalasingham Indrakumra *alias* Chinnappa

2. Poobalasingham Jayakumar *alias* Ravi
3. Poobalasingham Thavakuma *alias* Sendil
4. Mahalingam Sasidaran *alias* Shashi
5. Thileinadan Chandrasekaran *alias* Chandra
6. Sivadevan Thushanthan *alias* Periyambi
7. Palanirubasingham Kuhanandan *alias* Nishanthan
8. Jayadaran Kokilan *alias* Kannan
9. Mahalingam Sashiskumar *alias* Swiss Kumar.

The trial against the nine accused commenced before the Trial at Bar on 12.06.2017. The charges were read out and all the accused have pleaded not guilty to them. The prosecution thereupon placed a substantial body of both oral and documentary evidence, presented through the 36 witnesses, which it had placed reliance on, in order to prove those charges. After the prosecution closed its case, the Trial at Bar called for the defence. All the accused have opted to offer evidence under oath and denied of any involvement with the charges and relied on *alibi*. The 9th accused had, in addition to his oral evidence, called his wife as a witness.

On 27.09.2017, the Trial at Bar pronounced its judgment and found that the 2nd, 3rd, 4th, 5th, 6th, 8th and 9th accused were guilty to the multiple charges levelled against them. It also decided to acquit the 1st and the 7th accused from all these charges.

The 2nd accused was found guilty by the Trial at Bar to the charges Nos. 1, 2, 3, 7, 13 and 37, as contained in the Charge Sheet whereas the 3rd accused was found guilty to the charges Nos. 1, 2, 3, 7, 14 and 37. The 4th accused was convicted on the charges Nos. 1, 2, 3, 8, 21, 25, 29, 33 and 38,

while the 5th accused was convicted on the charges Nos. 1, 2, 3, 7, 15, and 37. The Trial at Bar also found that the 6th accused guilty to charges Nos. 1, 2, 3, 7, 16 and 37 along with the 8th accused who was convicted of charges Nos. 1, 2, 3, 10, 23, 27, 31, 35 and 40. The 9th accused too was found guilty to charges Nos. 1, 2, 3, 11, 24, 28, 32, 36 and 41. They were imposed sentences of imprisonment extending up to 20 years RI with fines, in addition to imposition of death penalty for the charge of murder.

Being aggrieved by the said finding of guilt based on the reasoning contained in the judgment and the consequent sentences imposed on them by the Trial at Bar, the 2nd, 3rd, 4th, 5th, 6th, 8th and 9th accused have preferred their respective appeals addressed to this Court through the Superintendent of Prisons of *Bogambara* Prisons on 10.10.2017. The 4th accused tendered his Petition of Appeal through his Attorney-at-Law on 09.10.2017 while the 2nd, 3rd, 5th, 6th and 8th accused have also tendered their joint Petition of Appeal on 12.10.2017.

The 3rd accused had died pending the determination of his appeal, which made the appeal preferred by him being treated by this Court as abated.

The Registry of this Court had registered all the said appeals and allocated Nos. SC/TAB/3A, 3B and 3C/2017 to them. Each of these individual appellants in their respective appeal Nos. SC/TAB/3A, 3B and 3C/2017 shall henceforth be referred in this judgment by following the same order in their numbering as indicated in the Charge Sheet presented before the Trial at Bar.

Hearing of the appeals of the 2nd, 4th, 5th, 6th, 8th and 9th accused before this Court commenced and concluded on 06.11.2025. The parties were afforded an opportunity to tender written submissions, supplementing their oral submissions.

The seven accused have sought to challenge the validity of their convictions on several grounds of appeal. Among those grounds of appeal there is one, which is common to all, although the learned Counsel who represented them have articulated same in varying terms. That particular ground of appeal, which therefore could reasonably be termed as the core ground of appeal, was described by the Counsel as the failure of the Trial at Bar to consider that there was no evidence presented by the prosecution to prove the allegations of conspiracies; namely, either to commit rape on *Vithya* or to commit her murder.

It was further contended on their behalf that, if at all, the accused should have been convicted by the Trial at Bar only on the individual acts that were attributed to each of them and that too only in relation to the count of rape. They stressed that the evidence presented by the prosecution is woefully inadequate to sustain a conviction for murder as the death of *Vithya* had occurred due to a combination of different factors, none of which could be attributed to any accused in particular.

In addition, the accused have challenged the decision to accept the evidence of witnesses *Udayasuriyan Sureshkararan* and *Nadarasa Kuganesan* by the Trial at Bar as witnesses who provided credible and reliable evidence, as a decision that had caused great prejudice to them. The accused have complained that the trial Court, in its process of reasoning, had failed to

consider both these witnesses are in fact "*accomplices to the crime*". Furthermore, the accused also complained of the rejection of their *alibi* by the Trial at Bar, for the reasons which could not be substantiated on the evidence presented before that Court, is palpably wrong.

In view of these multiple grounds of appeal raised by the seven accused, it is helpful at this stage of this judgement to make a brief overview of the case presented by the prosecution, as such an undertaking would undoubtedly facilitate this Court to arrive at a clear and informed finding on the merits of those grounds, which could only be made after having considered them in its proper factual and legal contexts.

Vithya was born in 1996 as the youngest in the *Sivaloganathan* family, with a sister as the eldest of the family and a brother born in between them. At the time of her death, she was 18 and studying at grade 13 of *Pungudutivu Maha Vidyalayam*, preparing for the G.C.E. (AL) examination. Life apparently did not treat *Vthya* kindly as she suffered an eye injury at a very young age, upon being hit by a duster that was thrown at her by a class mate covered in chalk powder, whilst studying in Grade 4. A surgery was performed at the *Colombo* Eye Hospital on her left eye and she was advised to wear spectacles throughout her life. The injury unfortunately had a permanent effect on her vision despite the surgery.

Her family, although had its origins in the *Punguduthivu*, was displaced due to war situation that had erupted between the LTTE and the security forces. It was only in 1999, the family were able to return to their homeland *Pungudutivu* once more, and take up residence in its 9th Ward.

Then her father, the sole breadwinner of her family, had suffered a medical condition that made him totally paralysed. At that time the eldest of the family was in her final year in University of *Vavuniya*, reading for a degree in Management, it was her brother, who had taken upon himself of the responsibility to support the family, after giving up his studies for the sake of his family.

Vithya had been in the habit of riding her bicycle to move around in the area and also to travel to her school in the morning and to return home in the afternoon. She would leave home around 7.30 in the morning and reach home after school around 3.00 in the afternoon. She would sometimes offer a lift on her bicycle to a child of one of her immediate neighbour, who also attended the same school. It generally takes over one and half hours to reach school by cycling from her home. *Vithya*, on her way to school, would take either the main road or would opt to ride through on a gravel road that ran through a desolate area, which apparently a short cut. Either side of that gravel road consisted of paddy fields and shrub jungle whereas the most of the buildings that stood along that route were either uninhabitable or abandoned.

Nadarasa Kuhanesan alias *Mappillai* (PW3) lived in Ward 12 of *Pungudutivu* for over a period of 25 years. He was married and fathered three schooling children. They also attended *Pungudutivu Ganesha Maha Vidalayam*. *Mappillai*, as he was known in the area, was self-employed as a toddy tapper and seller. He would, in addition pluck coconuts, cut coconut leaves and would undertake any type of manual work for the purpose of earning some extra income. *Mappillai* would sell toddy to a selected group

of his customers, who regularly visited his residence in the evenings, in order to taste his intoxicating product.

Udayasooriyan Sureshkaran, alias *Sure*, who also lived in Ward 10, was one such regular customer of *Mappillai*. *Sureshkaran*, who studied only up to Grade 9, had no proper form of employment. He often worked as a day labourer, in addition to undertaking plucking coconuts and cutting palm leaves. Sometime after April 1995, *Sureshkaran* introduced two other persons to *Mappillai* when the former made his regular visit in the evening for his share of toddy. The two persons so introduced had been the 5th and 6th accused. The 6th accused, employed in the local *Pradeshiya Sabha*, and was attached to its local office.

On 10.04.2015, the 5th and 6th accused had discussed about *Vithya* in the presence of *Sureshkaran* and *Mappillai* whilst consuming toddy. *Mappilai* had known *Vithya's* family well as he had plucked coconuts in their land on several occasions. He also knew *Vithya* did her studies at *Pungudutivu Maha Vidyalayam* and would ride her bicycle alone to attend school. There had been certain days in which *Vithya* would go to school with her brother, riding on the pillion of his motor cycle.

Whilst in the presence of this gathering, the 6th accused had indicated his mind by openly declaring that he was in love with *Vithya*. Thereafter, on multiple occasions, *Sureshkaran* had accompanied the 6th accused on the latter's motorcycle, in order to meet up with *Vithya* on her way. They would ride along the road *Vithya* generally takes in the morning as well as in the evening. The repeated attempts made by the 6th accused to strike up a conversation with *Vithya* proved futile. She had

stubbornly ignored all these overtures made by the 6th accused after scolding him once for the continued harassment. She further informed the 6th accused that her brother would assault her, if he gets to know of the 6th accused's actions. Thereafter, she remained tight lipped whenever he approached her.

It appears that after some time, she had lost her patience with the 6th accused, as she had thrown a slipper at him. This resulted after an argument between the two during which *Vithya* indicated her strong resentment to his interest in her. This incident had taken place in the junction in the presence of other people, who had come there to attend some business. The 6th accused had thereafter turned his motor cycle and rode away from the scene. *Sureshkaran* advised the 6th accused to leave *Vithya* alone, as she had explicitly indicated that she is not at all interested in him.

After a few days, the 6th accused invited *Sureshkaran* to join him to go to *Vithya's* house. They walked along the beach to reach her house around 12.00 noon. *Sureshkaran* did not enter the property and preferred to remain on the beach. The 6th accused had entered *Vithya's* house through the back door and found that there was no one inside the house. They returned to *Mappillai's* house to have some toddy. They were joined by the 2nd, 3rd and 5th accused, who also had come there for the same purpose. They met once more after two or three days at *Mappillai's* house. The 6th accused revealed his interest to the group of men.

The 2nd accused said if the 6th accused wants him to, he would help him to abduct *Vithya*. The 2nd accused imposed a condition on the 6th

accused to pay Rs. 20,000.00 or 23,000.00 in cash, in return for their assistance to abduct her. The 6th accused agreed with the offer and said he would make the payment after collecting his salary at the end of the month. The 6th accused apparently paid the agreed sum after collecting his salary for the month of April. It was thereafter agreed upon among the 2nd, 3rd, 5th and the 6th accused that *Vithya* would be 'abducted' within the next couple of days.

On the morning of the day the group of men agreed upon to carry out the abduction, the 5th and 6th accused had come to *Mappillai's* house around 7.00 a.m., in a motor cycle. The 2nd and 3rd accused who are brothers of the same family also have joined them after a few minutes. They told *Mappillai* and *Sureshkaran* that they will abduct *Vithya*. However, the 2nd accused suddenly decided to postpone the abduction to the following day. No reason offered and the group had dispersed thereafter.

It was on 13.05.2015, the 2nd, 3rd, 5th and the 6th accused have re-assembled themselves at *Mappillai's* house around 6.30 a.m. They asked *Mappillai* and *Sureshkaran* also to join them. The 5th and 6th accused proceeded on a motor cycle whereas the 2nd, 3rd, *Mappillai* and *Sureshkaran* have walked up to an area called *Sinna Aaladdy*. They were ordered to stand on either side of that road. *Mappillai* and *Sureshkaran* were asked to keep watch, and to alert the accused of any person who might come along that road. *Sureshkaran* knew that it was not the road usually taken by *Vithya* to attend school, but did not disclose that to the others.

Around 7.00 or 7.15 a.m., they saw *Vithya* riding her bicycle towards them. The 6th accused stopped her by blocking her way. She got down

from the bicycle. Then the 2nd, 3rd and 5th accused have surrounded her. The 6th accused asked whether she loves him and her reply was it is getting late to school. She wanted them to let her go. The 2nd and 3rd accused have blocked her from leaving and they pushed her bicycle which then fell on the ground. Thereafter, the 6th accused repeated his question. *Vithya* once more said that she is late for school and the 6th accused had slapped her. She was wearing spectacles at that time and with the slap, it fell on the ground. The pair of spectacles were picked up by the 6th accused. Thereafter, the four accused have dragged her into an abandoned house.

The 2nd accused told the 6th accused that he could have his desire satisfied with her. The 6th accused raped her while the 2nd and 3rd accused have pinned her to the ground. The 5th accused video recorded the 6th accused's act of raping *Vithya*. After the 6th accused got up, the 5th accused raped her whilst being videoed by the 6th accused. The video recording by the 6th accused continued throughout the entire duration the 3rd and 2nd accused have raped *Vithya*.

Since *Vithya* repeatedly shouted "*Ayyo, Ayyo, let me go*" the accused have prevented her from shouting by closing her mouth at first by their hands and thereafter by inserting her panties into the mouth, in order to gag her. With four men ravishing her continuously, *Vithya* lost consciousness. After the four accused have had their desires satisfied the 2nd, 3rd and 6th accused have lifted her now inert body and taken it out of the house over to the garden. The clothes that were forcibly removed from *Vithya*, before she was raped, too were brought out of the house by the 5th

accused. They tied her legs by separating them by almost by 180 degrees to two trees using her school tie and the hip belt of her uniform. They tied her hand placed behind her head and covered her lower abdomen with some of her clothes.

The group of men had dispersed after this act. *Sureshkaran* returned with *Mappillai* to his house around 8.30 in the morning. *Mappillai* proceeded on to the daily business of tapping palm trees as usual and both of them returned home by 9.30 a.m. They were drinking toddy when the 5th and 6th accused arrived at *Mappillai's* house. After a lapse of another half an hour the 2nd and 3rd accused too have joined the group. They all consumed toddy. Nothing was discussed about the morning incident but the accused have threatened both *Sureshkaran* and *Mappillai* not to talk about it with anyone else.

The 1st, 2nd and 3rd accused were arrested by the police on 14.05.2015 and the 4th, 5th, 6th, 7th and 8th accused were arrested on 17.05.2015. The 9th accused was first arrested by the villagers and handed over to police, after *Vithya's* body was found and her fate came to light. But the 9th accused managed to free himself from the police custody and fled to *Colombo*. He was re-arrested by *Wellawatta* police and handed over to *Jaffna* police station. The Criminal Investigation Department had taken over the investigation after the strong public outcry demanding action, IP *Nishantha* of the CID, was assigned to the case as the Investigating Officer.

After the arrest of the 6th accused, a pair of spectacles was recovered from his house by IP *Nishantha* on 24.07.2015, on the information provided by the former of the place where it was kept. The pair of spectacles were

lying on the roof of the 6th accused's residence. The said pair of spectacles was identified to be that of *Vithya* and the prosecution led evidence of witnesses, including the eye surgeon who treated her and issued the prescription for special lenses along with the evidence of the optometrist who prepared the lenses as prescribed. The strength of the lenses of the spectacles that were recovered from the house of the 6th accused matched with that of the prescription, when examined by the optometrist using relevant optical instruments. A neighbour of the 6th accused, *Anthony Pillai* confirmed that the CID officers borrowed a ladder from him and recovered a pair of spectacles from the roof of the 6th accused's house, in his presence.

The main ground of appeal that was relied on by all the accused; being the failure of the Trial at Bar to consider that there was no evidence presented by the prosecution to prove the different conspiracies; that is to commit rape on *Vithya* or to commit her murder, should be considered at this stage.

Perusal of the Charge Sheet, on which all the accused were tried by the Trial at Bar, revealed that it contained three charges that described these different conspiracies. The charge No. 1 was in relation to conspiracy to abduct *Vithya* for the purpose of seducing her or to commit illicit intercourse with her. The charge No. 2 was in relation to conspiracy to commit gang rape on her. The third conspiracy as referred to in charge No. 3 refers to the act of conspiring to commit her murder.

The Trial at Bar, in order to satisfy itself that the prosecution had proved the charges to the required high degree of proof, being proof

beyond reasonable doubt, accepted and placed reliance on the evidence of the two witnesses; *Mappillai* and *Sureshkarana*, as they were the only eye witnesses to the acts of abduction, rape and finally to the death of *Vithya*. Based on their evidence, the Trial at Bar concluded that the accused have conspired to abduct, commit gang rape and commit murder of *Vithya*.

In the narrative of the two eye witnesses, there was clear and unambiguous evidence that when the 6th accused declared his frustration over the incident of having a slipper thrown at him by *Vithya*, that the group of men consisting of the 2nd, 3rd, 5th and 6th accused, have agreed to “abduct” her. Of course, the 2nd accused quoted a fee for getting involved in the abduction to which the 6th accused had readily agreed without even making an attempt to bargain for a lesser sum.

The four men had thereupon agreed among themselves that they would abduct *Vithya*. During this discussion, there was no evidence to indicate that any of the accused either consulted or invited *Mappillai* or *Sureshkarana* to join them in the proposed abduction. Similarly, there was no evidence available before the Trial at Bar; that indicated the two witnesses have contributed to that discussion in any manner. The available evidence is confined to the fact that the discussion to “abduct” had taken place in the presence of *Mappillai*, and at his residence, where the four accused have gathered to consume toddy. Despite being cross-examined by a battery of Counsel who represented the nine accused, no suggestions were made that the two witnesses either have participated in or have offered their assistance to the proposed “abduction”.

Thus, direct evidence of the conspiracy to “abduct” *Vithya* was placed before the Trial at Bar, that implicated the 2nd, 3rd, 5th and 6th accused for that conspiracy. But the Charge Sheet speaks of conspiracy to abduct for the purpose of illicit intercourse. Nothing was discussed at *Mappillai* residence indicating that the accused intended to have sexual intercourse with *Vithya* after she was abducted. The impression created in the minds of both *Mappillai* or *Sureshkaran* appears to be that *Vithya* would be abducted by the four accused for the purpose of verifying her response to the 6th accused’s unilateral declaration of ‘love’ for her, which he tried unsuccessfully to impress upon *Vithya* for the past several weeks. There was nothing to indicate to the two witnesses as what the four accused had in their minds actually and what they planning to do with her after they abduct *Vithya*.

The unilateral declaration of love for *Vithya*, on the part of the 6th accused, is of a very recent origin. Despite the fact that they lived in the same area for a significant long time. The 6th accused had bought a motorcycle to himself, mere three months before the abduction, rape and murder. It was this motor cycle that was used by the 6th accused to impress *Vithya* with his interest in her and asked *Sureshkaran*, to ride on with him, whenever he wished to meet *Vithya*, either on her way to school or on her return journey.

The fact that the accused had accurate information about the movements of *Vithya* is clearly evident from their conduct. After the payment of the amount quoted by the 6th accused, which could be reasonably inferred, in the absence of any reminder over the dues, it was

the 2nd accused had apparently taken the lead role in the execution of their plan. The day on which the accused originally intended to abduct *Vithya* was 11.05.2017. That had to be called off due to the fact that *Vithya* had taken another girl in her bicycle on her way to school. On the following day, being the 12.05.2017, once more the accused had to abort the execution of their plan. *Sureshkaran*, who was asked by the 6th accused to come along to accompany him, was told that the abduction would be made not on that day but only on the following day also it being 13.05.2017. No reason was offered by any of the four accused which made them to change their original plan.

The explanation for this sudden change was provided by *Vithya's* mother. On 12.05.2017, *Vithya* did not go to school. Instead, she had gone to *Genesha Vidyalayam* to arrange an extra tuition class for her and, whilst at the junction attending to that task, she had given measurements for a dress to be stitched by a nearby tailoring shop. On that day she had worn a *Shalwar* dress, instead of her usual school uniform, visiting the tuition master.

The fact that the accused had accurate information of *Vithya's* movements is further confirmed by the route taken by her on that fateful day, which she had taken in order to reach her school. It was her turn to sweep the class room on that day. Perhaps due to this and being pressed for time, *Vithya* had taken a route, which she did not generally take, to reach her school. But the four accused somehow got information that, instead of taking her usual route, *Vithya* had taken that particular route on that fateful day. Acting on this information, the accused were waiting for

her arrival to have their sinister plan executed. Witnesses *Thanuram* and *Balasandiran* have seen the 2nd and 3rd accused in the early morning of 13.05.2015, waiting near the place where the body of *Vithya* was recovered on the following day.

After she was stopped by the 6th accused, who then told *Vithya* of his 'love' towards her, in the company of other three accused, she had acted tactfully by indicating that she is late for school and pleaded with them to let her proceed, instead of being blunt on expressing what she thought of him, as she did on the other day by throwing a slipper at him. Her repeated requests to let her proceed to school without replying directly to the expression of 'love' declared by the 6th accused made him angry. He then slapped on her face, causing the pair of spectacles she was wearing at that time, to fall on the ground. *Vithya* was thereafter dragged into the nearby abandoned house.

It is not a mere co-incident that there was an abandoned house near the place where *Vithya* was abducted. The four accused, when placing both *Mappillai* and *Sureshkaran* either side of the road to act as lookouts, have already chosen the place for the execution of their already agreed plan. They did not have to confer with each other on that morning to decide the point at which they would ambush *Vithya* whilst waiting for her arrival. As the group reached the road taken by *Vithya* on that day, only the *Mappillai* and *Sureshkaran* were assigned to the task that they were supposed to fulfil while all the other accused taken positions that have assigned to themselves individually.

The evidence of both *Mappillai* and *Sureshkaran* indicate that the four accused have discussed and agreed in their presence only to have *Vithya* 'abducted'. The four men, did not discuss in the presence of the two witnesses what they intend to do if *Vithya* refused to accept the 6th accused's declaration of 'love' to her, after she was abducted. They did not discuss, as to what they should do with *Vithya* after her abduction either. They also did not discuss in the presence of these two witnesses whether they should release *Vithya* after abducting her by allowing her to return to home nor did they discuss the consequences that would eventually follow, if she complain to some authority after her release.

If the accused have already planned to take the life of *Vithya*, after her abduction, then of course any of these considerations would not have arisen. The circumstances support this proposition strongly. The question whether there is any evidence presented by the prosecution before the Trial at Bar in relation to the conspiracy to commit gang rape and murder should be considered at this stage of the judgment.

The obvious act of insult by *Vithya* to the 6th accused by throwing a slipper at him in a busy junction would certainly have contributed to his decision to proceed with the conspiracy to abduct her for illicit intercourse and then for taking her life.

A closer scrutiny of the manner in which the entire sequence of events that lined up gives rise to the reasonable inference that none of the accused ever intended *Vithya* to return home alive.

After the 6th accused slapped *Vithya* on her face, the 2nd and 3rd accused have dragged her into an abandoned house. It was the 6th accused who had picked up the pair of spectacles that fell on the ground after him slapping her. Once inside the house, the 2nd accused invited the 6th accused to have his desire on her fulfilled. All the four accused had taken turns to have intravaginal intercourse with *Vithya*, who shouted and resisted as much as she could while the other accused have held her pinned to the ground, allowing the person engaged in the act of intercourse to penetrate her in spite of her resistance.

The evidence is clear on the point. It could be seen that; while the first three persons penetrated *Vithya*, she was conscious. It was also clear that after the four men have had their share of pleasure from her body, she appeared to be lost her consciousness. The evidence of the JMO provides a valuable insight into the reason why this situation had occurred. During the post mortem examination of her body, the JMO observed a sub arachnoid hemorrhage into the carinal cavity of the deceased girl. The expert was of the opinion that repeated banging of *Vithya's* head against a hard surface, similar to that of the cement floor of the abandoned house, would have caused such hemorrhages which in turn resulting in the inflammation observed by him on her brain. It is the effect of this injury which had primarily contributed to the death of the deceased, in combination with the other contributory factors. One such factor is the act of inserting the undergarment of the girl into her mouth, in order to prevent her from shouting.

This has happened well before she was carried out of the house and placed between the temple trees and an oleander tree, which were located around the latrine of that abandoned house. At that stage the two witnesses, who watched the activities of the four accused from a distance, saw the 2nd accused pushing her undergarment, which was already inside her mouth, further into her throat, using a piece of stick.

What is important to note is that when *Vithya* lost consciousness, none of the accused seemed to have panicked over that result. Their indifferent behaviour towards the fate of *Vithya* clearly indicated that it was an expected result of their collective action. None of the accused bothered themselves at least to verify whether *Vithya* was unconscious or at the least whether she was in fact dead. They have taken it for granted that she is already dead.

None of the accused made an attempt to consult others as to what to do with her body or to bring the body out into open area between the trees. While the 2nd, 3rd and 6th accused carried the body of the deceased girl out of the house and tied her limbs to three different trees, the 5th accused had picked up the clothes that had been removed from her, before they committed rape on her, and placed them over her body to cover her lower abdomen and chest areas. They all acted in perfect understanding of what exactly expected from each of them at that point in time even without being prompted by anyone.

Even the peculiar way in which the accused have tied *Vithya's* limbs to the trees using her neck tie, her hip belt from the school uniform and the brassier, depicting the gruesome fate that befell on her, made it highly

probable that the said depiction of the dying or already deceased girl had already been agreed upon among them, even prior to her abduction. This is primarily because none of these acts were discussed in the presence of either of the two witnesses in that morning or at any time prior to that. No single accused questioned the others as to why must they do such a thing to the body of the deceased girl. Each had faithfully performed the task already agreed upon between them and undertaken by each of the accused.

If the original conspiracy that had been agreed upon by the four accused was only to have illicit sexual intercourse with *Vithya*, the moment she lost consciousness and lying there remain motion less would have altered at least some of them that things did not happen the way they have intended. There was not even a hint of remorse or regret expressed by any of the accused over the death of a young school girl or seen from subsequent conduct of the four accused, when they re-assembled at *Mappillai's* place for the second time in the same morning to have some toddy, after *Vithya* was killed just an hour ago.

The evidence referred to above, being circumstantial in nature, is sufficient to support a reasonable inference that could be drawn to the effect that the 2nd, 3rd, 5th and 6th accused have agreed among themselves, not only to conspire to abduct *Vithya* for the purpose of having illicit intercourse with her, but also to commit gang rape and also to commit her murder, even before they set off in the morning of 13.05.2017, from *Mappillai's* house around 6.30 a.m. However, the evidence thus far considered only points to the involvement of the 2nd, 3rd, 5th and 6th

accused. But the Trial at Bar, in addition to finding these four accused guilty to the three conspiracies as alleged by the prosecution, also found the 4th, 8th and 9th accused also guilty to the three conspiracies referred to above.

It is important to note that the 4th, 8th and 9th accused did not present themselves physically either at the *Mappillai's* residence, where the other four accused have assembled before setting off to carry out the already agreed action plan or at the abandoned house, in which *Vithya* was raped and killed. As such, it is fundamentally important for this Court to consider the evidence on which the Trial at Bar found the said three accused guilty to the three conspiracies, in view of the core ground of appeal that was relied on by all accused before this Court.

The validity of the inference against the 2nd, 3rd, 4th and 6th accused reached whether they were involved in the three conspiracies on the evidence referred to in the preceding segment, could also be tested alongside, with the assessment of the justifiability of the conclusion reached by the Trial at Bar, by considering the nature of the evidence on which it had reached at the said conclusion.

The 9th accused, *Mahalingam Shashikumar*, is married to 6th accused's sister and had migrated to Switzerland with his family some time ago. Hence, he was known in the village by his alias "*Swiss Kumar*". He used to return to Sri Lanka regularly. He particularly did so whenever there was a festival in the village temple. After returning to Sri Lanka even for a short visit, he would make it a point to visit *Mappillai's* residence, along with the 6th accused and other friends, to consume toddy.

The 9th accused, by his own admission, was approached by a member of an underworld gang in Switzerland who wanted him to provide a video recording in which a young Asian woman being brutally raped and murdered. This information was conveyed by the 9th accused to his brother-in-law, the 6th accused. The 6th accused proposed *Vithya* as a potential victim and sent her photograph to the 9th accused, who approved the selection as a one which satisfied the physical characteristics that are expected of the girl to be raped and murdered.

It is already noted above, *Vithya* did not go to school on 12.05.2017. Instead, she had visited a private school to make arrangements for her to attend a tuition class, for a subject she was to take in the G.C.E. (A.L.) examination. She also needed to stitch a dress for her by a tailor. While at *Alladi* junction, she happened to walk pass a white coloured “*dolphin*” van that was parked alongside the main road. *Vithya* noticed that the persons, who were seated inside the van, were gazing at her with a keen interest, as they did so after opening the window shutters.

Upon her return, *Vithya* reported this incident to her mother. The fact that *Vithya* had been under the gaze of a group of men seated in a van was confirmed independently by witness *Illankeswaran* [PW7] who testified before the Trial at Bar, stating that he too was at *Alladi* junction on that day buying his weekly rations. Around 11.00 a.m., he saw *Vithya* walking past the parked “*dolphin*” van. He also noticed that she was being watched by the occupants of the van. He identified the 9th accused, who occupied the front seat wearing a pair of sun glasses, watched *Vithya* walking past. She was wearing a *Shalwar*. In addition to the 9th accused, the 4th, 5th and 8th

accused also were inside the van with two other unidentified individuals, who occupied its rear passenger seats. All of these men were watching *Vithya* intently. The witness also noticed that soon afterwards the van had pulled off.

It was the prosecution witness *Zeinul Abdeen Muhammed Iflar* who provided the most damning evidence of the involvement of the 6th and 9th accused, in relation to the three conspiracies, as alleged by the prosecution. *Iflar* had testified before the Trial at Bar for the prosecution.

Iflar had been in remand, after his arrest by the CID in relation to a financial fraud. *Iflar* who holds a degree in Information Technology and had acquired expertise in hacking of software since. He was being detained at *Vavunia* Prisons, when IP *Nishantha* visited there to record statements of some of the detainees, on orders of Court. The 9th accused, too was remanded in the same facility at the same time after being re-arrested in connection with *Vithya's* murder. After seeing IP *Nishantha* talking to *Iflar* in the prison, the 9th accused approached the said detainee. After getting to know that *Iflar* was approached by IP *Nishantha* to clarify a point as to the recovery of lost data from an electronic devise and assessing the relationship between the two, the 9th accused wanted *Iflar* to negotiate to have himself and his brother made witnesses for the State by speaking to IP *Nishantha*. The 9th accused was prepared to pay Rs. 20 Million to the officer in return. Thus, the *Iflar's* involvement in the instant matter and the evidence presented by him of what he was told by the 9th accused, revealed the following.

After the 9th accused informed his younger brother of the requirement of a video depicting an abduction, rape and murder of a young girl, the 6th accused had subsequently conveyed to him that he found a girl that matches to the description given in relation to the video. One of the descriptions indicated by the 9th accused to the 6th accused was that it should be a girl of less than 20 years in age. *Vithya* was 18 years old at the time of her untimely death. The 9th accused knew *Vithya's* family and knew her connection to that family.

The 9th accused was in Sri Lanka and during the time duration in which the 2nd, 3rd 5th and 6th accused abducted, raped and murdered *Vithya*, but he was in *Colombo*. The 9th accused ensured that his presence was captured on CCTV systems of the establishments he had visited during that time. After the acts of rape and the eventual murder of *Vithya* was recorded using a smart phone, 6th accused sent that footage to the smart phone used by the 9th accused, who then stored the video recording on a memory card. The 9th accused had thereafter sent that video to the contact person of the underworld gang that wanted such video *via* Google Drive.

The 9th accused further provided the rationale of making a display of *Vithya's* body in such a gruesome manner. Since there was a camp operated by Sri Lanka Navy in the area, it was thought that such a display of her body would make people believe that it was the Navy personnel who were involved with the rape and murder of a Tamil girl. Interestingly, the 9th accused admitted that, he got transferred to a hospital with the help of a brother of a local female politician and thereafter travelled back to *Colombo*

in a vehicle arranged by a Senior police officer in the area in order to prevent him arrested for the rape and murder of *Vithya*.

During the trial, *Shashikala Maheswaran*, former Member of Parliament, and *Tamilmaran*, an Attorney at Law, were called as witnesses for the prosecution who gave evidence in relation to the circumstances that preceded the re-arrest of the 9th accused. *Lalith Jayasinghe*, who served in the area during relevant time period as the Senior DIG of Police, was convicted by the High Court of *Vavunia*, along with another officer, for providing assistance to the 9th accused to escape after the arrest. *Jayasinghe* was imposed a term of imprisonment for a period of four years by the High Court.

When viewed in the backdrop of the evidence of *Iflar*, the 'love' declared by the 6th accused in the presence of *Mappillai* and *Sureshkaran* for *Vithya*, and repeated before the 2nd 3rd and 5th accused is clearly not a case where an ordinary village youth, blinded by his love at first sight, making a declaration in front of other village youth trying desperately to enlist their support to win her over. It is also not a case that love had turned to hate, after being rejected by his sweetheart coupled with an insult, and thereafter the heartbroken lover conspiring with others to teach her a strong lesson, which she would not forget for some time.

Even though such a narrative seemed somewhat an artificial one in this context, it could have even happened, given the complex nature of the human mind, if it was by another ordinary immature village youth. However, in this instant, it could be safely concluded that it was a well thought out part of the grand plan the 6th accused had undertaken to play.

with a view to secure *Vithya's* involvement to fulfil his brother-in-law's request for a video containing violence committed to the life of a young girl.

The 6th accused used the public rejection of his 'love' by *Vithya* by cleverly projecting it as a reason to enlist the support of the 2nd, 3rd and 5th accused, who were his drinking partners. They were roped in for a more sinister project, but the 6th accused was careful not to declare his real intentions in the presence of *Mappillai* and *Sureshkumar*.

This proposition is further supported when one considers the fact that the interest and the 'love' for *Vithya* of the 6th accused was not a one that had developed for some time. All of a sudden, the 6th accused's interest and the 'love' for a school girl, who had lived in the same village for the past several years, had blossomed and shot up into such heights, wanting him to 'abduct' her within days in order to win her heart over, but the plan had no guarantee of success or a Plan B, in case something went wrong.

But the attendant circumstances indicate that the sudden impulse of 'love' for *Vithya* allegedly felt on the part of the 6th accused, and the urgency with which he made preparations to abduct her for the purpose of declaring that 'love' to her, is clearly motivate by the 9th accused's request for a video recording. This fact is further confirmed, when the 6th accused sent a photograph of *Vithya* to the 9th accused for his 'approval' as a possible victim. There is high probability that the interest in *Vithya* made public by the 6th accused after the 9th accused approved her as the possible victim for their project.

This episode of the narrative presented by the prosecution must have therefore occurred well before the 9th accused's return to Sri Lanka and even before the 6th accused had even made his declaration of love before the 2nd, 3rd and 5th accused in the presence of *Mapplliai* and *Sureshkaran*, in order to enlist their support for the execution of the project he had in his mind, with the consultation of the 9th accused.

The fact that there was an agreement to 'abduct' *Vithya*, among the 2nd, 3rd, 5th and 6th accused is firmly established by the prosecution and the purpose for which she was 'abducted', indicative from the conduct of each of those accused when they took turns to ravish a helpless victim with the help of the others, after pinning her down to the cement floor of the abandoned house. It is the role expected of the others to facilitate their co-conspirator to have vaginal penetration of *Vithya* by holding her down for him to achieve his objective. The presence of all these accused on the days they intended to carry out the abduction at *Mappillai's* residence, but had to be aborted due to certain unexpected circumstances, coupled with the fact that they once again did so early in the morning of 13.05.2015, offering their active support to fulfil the respective parts allocated to them in the planned course of action, makes it abundantly clear of any reasonable doubt that might have lingered in the minds of the triers of fact as to their complicity, in relation to the charge of conspiracy to abduct *Vithya* for the purpose of illicit intercourse. The evidence sufficiently establish all the ingredients of the offence of rape.

Thus, this Court concurs with the finding of the Trial at Bar that the prosecution had established beyond reasonable doubt that there was in

fact a conspiracy between them to abduct *Vithya* for the purpose of illicit intercourse. The evidence presented by the prosecution also establishes that *Vithya* was sexually penetrated by the 2nd, 3rd, 5th and 6th accused. The observations made by the Consultant Forensic Pathologist during the post mortem examination conducted on the body of *Vithya* confirms that there were multiple tears in her hymen along with a vertically placed 2 cm long laceration on her posterior fourchette, which are factors consistent with acts of forceful vaginal penetration.

Accordingly the conclusion reached by the Trial at Bar that the 2nd, 3rd, 5th and 6th accused have committed the offence of gang rape, when considered in the light of the evidence that each member of the said group of men abetted the commission of rape, when holding down the victim in order to assist the other person to commit rape, as per *Explanation 1* of the proviso to Section 364(2) of the Penal Code, as amended, is based on the evidence presented before that Court and therefore is a valid one.

The evidence also establishes that *Vithya* was alive when she was dragged into the abandoned house by the 2nd, 3rd and 6th accused, followed by the 5th accused. She was dead within one and half hours since her abduction and in the presence of all these accused. The head injuries that resulted in subarachnoid hemorrhages and cerebral edema were caused to *Vithya* by the four accused, when they repeatedly banged her head on the cement floor, as they tried to overpower her. The accused have also gagged her by inserting her panties into the mouth. After the accused have removed *Vithya* from the place she was raped and taken out her into the open ground in order to tie her body to three different trees, the 2nd

accused had pushed down the undergarment further into her throat using a piece of stick.

The medical expert, at the time of his scene inspection, noted that all of *Vithya's* clothes were lying there at the scene itself, except for her panties. The expert witness had subsequently retrieved the undergarment from *Vithya's* throat only during the post mortem examination. The undergarment was soaked in red coloured liquid and as such could not be seen from external examination of the body. He was of the opinion that the death of *Vithya* had occurred due to combined effect of her head injuries, ligature strangulation and gagging.

The question that arises at this stage for determination is whether the accused have conspired, in addition to abduct and rape, to commit her murder as well. Section 113A of the Penal Code defines the offence of conspiracy that "*[I]f two or more persons agree to commit or abet or act together with a common purpose for or in committing or abetting an offence., whether with or without any previous concert or deliberation, each of them is guilty of the offence of conspiracy to commit or abet that offence ...*". The "agreement" entered into between the four accused, as spoken to by *Mappillai* and *Sureshkaran*, was merely to 'abduct' the girl. There was no discussion to have her killed at that point in time. It was noted in the preceding part of this judgment, none of the four accused have discussed what they would do with *Vithya* once they abducted her. Whether she would be forced to accept the love of the 6th accused, whether she be forced to marry him or what they intend to achieve after the abduction were not discussed. On the other hand, they also did not discuss in the presence of the two witnesses,

what they intended to do with her if she refuses to any of these options, to release her or to detain her and if she was to be detained, or where that place would be. These factors were already referred earlier on in this judgment.

But in the morning of 13.05.2015, after dragging *Vithya* to the abandoned house, the 2nd, 3rd, 5th and 6th accused have acted perfectly and an orderly manner as if they followed a well laid out course of action with which all of them have agreed. Although, it was the 2nd accused who took the lead role in the abduction, he and the other two accused allowed the 6th accused to rape her first, before they all had their desires satisfied. Even after her death, they all participated in taking out her body into open and place it in the most unusual manner by tying her legs spread at angle of 180-degrees. All these individual acts were performed by each of the four accused without any discussion among them at the place where *Vithya* was murdered but were performed without any form of instructions issued on each of them either by the 2nd accused or the 6th accused, as noted earlier on in this judgment.

When the sequence of events that had taken place commencing with the act of obstructing *Vithya*, and tying her body to three trees, it is highly probable that they all acted with a well-considered plan of action, in which the different roles attributed to each accused were all well-defined, and with their agreement to fulfil the task allocated. This factor justifies drawing of a strong inference that the 2nd, 3rd, 5th and 6th accused have acted on a pre-agreed plan of action, and thereby confirming a conspiracy

to commit gang rape and murder on *Vithya*. This they did in the absence of *Mappillai* and *Sureshkaran*.

Learned President's Counsel who represented the 5th accused, invited attention of this Court to the evidence of both these witnesses that at the time of abduction, and especially when *Vithya* indicated her mind that she is not willing to accede to the 6th accused's demand for her 'love', his client had intervened to urge others to let her go, as she is not willing, and that factor should be taken by this Court as a clear indication of his innocence to the charges of conspiracy.

It is correct that the witnesses *Mappillai* and *Sureshkaran* have testified that repeatedly the 5th accused asked others to let her go. That was before the girl was raped by the 6th accused. However, the evidence is also clear on this point as it indicates other than mere repeating the words "let her go", the 5th accused did absolutely nothing when his co-accused proceeded on with their plan of action, totally ignoring his half-hearted request. But, when the 6th accused had intercourse with *Vithya* inside the house, the 5th accused, who remained in the *varendah* of that house, and was acting as lookout for the group of men, took his turn to rape immediately after the 6th accused. If he was not part of the conspiracy and had only agreed to 'abduct' *Vithya*, there was absolutely no one who prevented him from leaving the scene in protest.

If he was not in agreement with what the others did after abducting the girl, that would have been his natural reaction. After the four had satisfied their carnal desires, it was the 5th accused who picked up all her clothes and walked after the other accused, who carried *Vithya's* body out

into the open. He placed her under skirt over the body covering her lower abdomen area. He also participated in tying her limbs. The initial reluctance of the 5th accused, even if it was a genuine one, could not absolve him of any criminal liability for he had willingly and actively participated in all the illegal activities that followed afterwards. Section 113A is clear on this as it states the offence is made out "*whether with or without any previous concert or deliberation*" on the part of a particular accused. Even if the 5th accused did not agree, he committed the conspiracy with that act. The evidence, however, strongly supports the inference that he conspired with the others and may have made the utterances to the two witnesses to indicate his innocence of the crime.

Thus, even though there are no direct evidence to establish that the 2nd, 3rd, 5th and 6th accused have conspired to commit gang rape on *Vithya* and of her murder, the acts of each of these accused are clearly indicative of their prior agreement to a detailed plan of action, which each of them had followed faithfully by executing their individual parts to the last detail, which then leads to a strong inescapable inference that they did conspire to commit both these acts. The subsequent conduct of the four accused cements this conclusion further. There was not even a hint of regret or remorse on the part of the four accused on their criminal act, even few hours after the incident, as they reassembled themselves over a pot of toddy at *Mappillai's* residence.

After the body was tied to the trees, the group of men dispersed. *Mappillai* went on his daily routine of tapping palm trees and *Sureshkar* tagged along with him. They returned to *Mappillai* residence around 9.30

a.m., and drank some toddy. They were joined by the 5th and 6th accused who arrived there in a motor cycle. After about another 1/ ½ hours, the 2nd and 3rd, being brothers, also arrived there. They all consumed toddy. During this gathering none of the accused, namely the 2nd, 3rd, 5th or the 6th accused, did not mention anything happened in the morning. If the agreement was only to abduct *Vithya*, once that abduction was accomplished, if one or some of them had overstepped from their original agreement by continuing with a course of action that ended up with gang raping *Vithya* and murdering her, it is reasonable to expect the innocent party to accuse the others for overstepping from the original agreement. There was no such evidence and there were no suggestions made to the two prosecutions witnesses to that effect either. Instead, they were enjoying the successful completion of the project with which they all had agreed on to fulfil, by their active participation.

The facts that *Vithya* was raped and murdered were established by the prosecution before the Trial at Bar, beyond any form of doubt. With the participation of the conspiracies to commit gang rape and murder, coupled with the eye witness account, the prosecution was able to firmly establish the fact that the four accused have committed the offences of gang rape on *Vithya* and thereafter her murder to the required degree of proof and therefore the Trial at Bar was correct when it determined that it is so.

The Trial at Bar also found the 4th, 8th and 9th accused also have conspired along with the 2nd, 3rd, 5th and 6th accused as the Charge Sheet alleged, although the said three accused did not participate in either for the acts of gang rape and or of murder. The only reference made to the 4th

accused in the prosecution evidence, other than being a brother of the 9th accused, is made by the witness *Illankeswaran* who saw him intently watching *Vithya* while seated in a white van, along with the 5th, 8th and 9th accused on 12.05.2015, the day prior to the rape and murder was committed on her.

This Court considered the complicity of the 9th accused in a preceding section of this judgment in quite a detailed manner and concluded that the initial conspiracy to abduct, rape and murder *Vithya* was between him and the 6th accused to video record the entire episode. This arrangement between the two of them was subsequently expanded to rope in others, when the 6th accused had successfully lured the 2nd, 3rd and 5th accused to agree with him to carry out the conspiracies that were already agreed between him and the 9th accused. The 6th accused had deliberately left both *Mappillai* and *Sureshkaran* out of these discussions in which sensitive information were disclosed. In these discussions, during which the 2nd, 3rd and 5th accused have reached agreement with the 6th accused over the various operational aspects of the execution of the conspiracies and the roles allocated to each of them, commencing with the obstruction caused to *Vithya's* cycle ride to her school and ending with the tying of her body to depict a gruesome sight.

The 6th accused had deliberately kept *Mappillai* and *Sureshkaran* in the dark of what they intend to do with *Vithya* after her abduction, by presenting a picture to the two of them that the 'abduction' of *Vithya* was merely to declare the 'love' of the 6th accused had in his mind towards her, although he and the 2nd, 3rd, 5th and 9th accused knew the fate that awaited

the school girl, who was busy preparing herself to the upcoming examination.

The complicity of the 9th accused in the conspiracies further confirmed by his conduct when considered in the light of the fact of watching *Vithya* walking past, while seated in a white van, in the day prior to her abduction, rape and murder. The conspiracy between these accused is evident that the abduction planned to carry out on that day (12.05.2015) was aborted without disclosing a reason to *Mappillai* and *Sureshkaran*. The reason was that *Vithya* would not attend school, and instead would go to secure a tuition class for herself.

The 4th and 8th accused, although were seated in the van with the 5th and 9th accused, who have actively engaged in the conspiracies, had no evidence against them indicating of any particular role played in that conspiracy by them individually. The presence of the 4th accused along with his brother the 9th accused and the 5th accused, who actively participated in the abduction, rape and murder, certainly gives rise to a very reasonable suspicion as to his complicity in the three conspiracies.

The 4th accused said in his evidence that of all the prosecution witnesses, only one witness said that he was with the 7th, 8th and 9th accused at *Alladi* junction observing *Vithya* from a white van and stated that no one alleged of his involvement with the crimes, which he attributed to the Sri Lanka Navy. He also said that he stayed in the Angel Hotel at Wellawatta on 13.05.2015 and withdrawn some cash from an ATM of Hatton National Bank at *Wellawatta*.

The role played by the 8th accused in relation to the multiple conspiracies is limited to being in the white van along with the 9th accused, and watching *Vithya* walking past them. Thus, his involvement in the conspiracies appears to be even of a lesser degree than that of the 4th accused when comparison is made of both, for he had no family relationship with the 9th accused. There was no other evidence by which it could be inferred that he had a close association with any of the accused who were involved with the different conspiracies. When the evidence of the prosecution is considered in its totality, it becomes clear that, apart from the strong and justifiable suspicion of their involvement with the conspiracies, which the 4th and 8th accused could have been well informed of the reason why they need to observe *Vithya* so intently, that solitary factor alone, cannot satisfy the high level of proof expected of the prosecution in order to prove the allegations that were made against the two accused, in order to rebut the overarching presumption of innocence, in terms of Article 13(5).

In the absence of any other evidence, either direct or circumstantial, that tending to draw a reasonable inference that these two accused have agreed with the other accused, in all of or, at least, in any one of these three conspiracies, they could not have been convicted for any of the three conspiracies. In addition, there is no evidence at all to implicate them in the acts of abduction, gang rape or to the murder of *Vithya*.

The second ground of appeal relied on by the accused relates to the evaluation of the evidence of the witnesses *Mappillai* and *Sureshkaran*, who the appellants contend as accomplices to the several offences.

Almost all the Counsel who appeared before this Court for the accused contended that both *Mappillai* and *Sureshkarana* were accomplices to the commission of the offences that are set out in the Information and; the Trial at Bar, should not have accepted their evidence in order to find them guilty. This contention was presented on the premise that the involvement of these two witnesses did satisfy the accepted criterion of an 'accomplice' that could be discernible from the significant body of jurisprudence that dealt with the issue and stressed upon the point that their evidence therefore become wholly unreliable due to that disqualification.

In its judgment, the Trial at Bar had treated *Sureshkarana* as an accomplice, who gave evidence under a conditional pardon. But it held that *Mappillai* as an independent witness, whose evidence could be utilised by that Court, even to the extent of corroborating the evidence of the accomplice *Sureshkarana*.

In view of the findings of the Trial at Bar and the specific ground of appeal raised by the accused on this point, it is necessary to critically examine the roles played by these two witnesses in the abduction, rape and murder of *Vithya*, and to test the legal validity of the findings made by the original Court in this regard. Since the prosecution witness *Sureshkarana* was accepted by the Trial at Bar as an accomplice, as the accused contended, while concluding that *Mappillai* is not an accomplice but an independent witness, perhaps it is prudent to undertake a comparison of their respective roles played, as revealed from their own evidence, to the commission of the offences on which the accused were found guilty.

When the 6th accused, during a visit made to *Mappillai's* residence for the purpose of consuming toddy, publicly declared that he is in 'love' with *Vithya*, from that point onwards both *Sureshkaran* and *Mappillai* were aware of the involvement of a school girl, whom both of them knew well as a fellow villager that lived in their own neighbourhood. It is correct to state that, of the two witnesses, only *Sureshkaran* had taken part in the several attempts made by the 6th accused to have a relationship developed between him and *Vithya*. *Sureshkaran* was the regular pillion rider who accompanied the 6th accused whenever the latter wanted to meet *Vithya* on her way to and from school. He is the only one of the two witnesses, who saw *Vithya* threw her slipper at the 6th accused, which humiliated the said accused in public.

When the 2nd accused indicated his willingness to help out the 6th accused to "abduct" *Vithya* in exchange of Rs. 20,000.00 or more during the discussion held at *Mappillai* over a bottle of toddy, and when the confirmation of that offer made by the 6th accused with his agreement to pay the 2nd accused, both *Sureshkaran* and *Mappillai* were present there. Of course, the evidence does not transpire that; apart from being mere spectators to the agreement between the 2nd and 6th accused over the planned 'abduction' of *Vithya*, either *Sureshkaran* or *Mappillai* made any contribution to that discussion or to its conclusion. The 2nd accused made the offer of help, the money was not only him but the for the enlistment of the 3rd and 5th accused. When the 2nd, 3rd, 5th and 6th accused have agreed to 'abduct' *Vithya* in exchange of an agreed sum of money the initial part of the 1st conspiracy was complete. The remaining part of raping *Vithya* would have been discussed only within the four accused, leaving out

Sureshkaran or *Mappillai*, who therefore remain oblivious to what the real intention of the accused behind the planned abduction.

The 6th accused had obviously fulfilled his part of the obligation after receiving his salary for the month of April 2015, as it was agreed among the 2nd, 3rd, 5th and the 6th accused that *Vithya* would be abducted within the next couple of days, meaning the month of May. The two witnesses were clearly left out of from the group of men that formed the inner circle of associates of the 6th accused, who offered their services to 'abduct' a school girl. The payment was made in the absence of the two witnesses, and neither was promised any share of that payment. No suggestion was made by any of the accused who cross-examine them that they received their share of the money.

The presence of *Sureshkaran* at *Mappillai* residence at all times could not be taken as his willful participation as it is undisputed that even as early as 5.30 in the morning, he would visit the latter's house to consume his daily intake of toddy. Not only in the morning, *Sureshkaran* would dutifully visit *Mappillai* during midday and once again in the evening to consume the alcoholic beverage, that *Mappillai* would make available for his customers, after practicing his trade of tapping palm trees in their village. Thus, *Sureshkaran's* presence at *Mappillai's* residence is not necessarily connected to the conspiracy that exists between the 2nd, 3rd, 5th and the 6th accused to 'abduct' *Vithya*.

This could be seen from the activities of the group of men on the 11th, 12th and 13th of May, as they gathered on those three days to carry out the 'abduction' at *Mappillai's* residence. On all three days, both *Sureshkaran*

and *Mappillai* were “asked” by the 6th accused to join them. In the village, *Sureshkaran* and *Mappillai* used to accept any odd job that would be offered to them, be it colour washing a house, erecting a boundary fence, cutting or pruning down trees, plucking and husking coconuts, offering their time and services for a daily pay.

When *Sureshkaran* and *Mappillai* have obliged the request of the 6th accused, when he “asked” both of them to come along with group of men on the morning of 13.05.2015, the two witnesses only knew that *Vithya* would be ‘abducted’ for the purpose of knowing her intentions and to persuade her to marry the 6th accused, who had already declared his ‘love’ for her, but unfortunately unsuccessful in winning her heart.

It is evident, that *Sureshkaran* and *Mappillai* had a totally different notion as to what was the real purpose of the planned ‘abduction’ of *Vithya*. The Information speaks of a conspiracy by the several accused that the abduction of *Vithya* was “... in order that she may be forced or seduced to illicit intercourse...” one of the ways in which the offence of abduction, as defined in Section 353 of the Penal Code, could be punished in terms of Section 357 of that Code. But the two witnesses *Sureshkaran* and *Mappillai* seems to have had no such intention or even knowledge in their minds, when they stood either side of the road which was taken by *Vithya*, when acting as lookouts on the day of abduction.

This position; that *Sureshkaran* had no knowledge that *Vithya* would be raped after her abduction becomes explicitly evident when the manner in which he conducted himself after the four accused have gang raped her is examined. *Sureshkaran* said in evidence that the accused have asked both

him and *Mappillai* to have sex with *Vithya*. They both declined. The way *Sureshkaran* responded to the opportunity offered to him and to make use of *Vithya* to satisfy himself of any sexual desire he would have had, is indicative from the reply given by him. It also indicative of what he actually had in his mind, in relation to the planned 'abduction'. The very words used by him to reply the 6th accused, "... you took the girl for getting married and finally you did like this" shows not only he had no idea as to what the others had in their minds after the girl was abducted, but also indicative of his condemnation of what had taken place. This evidence was not challenged by any of the accused.

This assertion on the part of *Sureshkaran* cannot be an afterthought on the part of the witness as he had repeatedly discouraged the 6th accused from continuing his efforts to win over *Vithya*, which is clearly evident from his conduct, particularly after the incident involving attack with her slipper. It was obvious to *Sureshkaran* that *Vithya* absolutely had no liking towards the 6th accused. Hence, the *Sureshkaran's* advice to the 6th accused, which he did offer immediately after incident involving the slipper throwing incident, by stating he should "... leave that girl [alone] if she does not like him."

The words "... you took the girl for getting married and finally you did like this" not only conveys his frustration over what had taken place in his presence but a betrayal of what was said on the purpose of the abduction. Clearly, *Sureshkaran* had no understanding of the conspiracy involving the 2nd, 3rd, 5th, 6th and 9th accused that the 'abduction' of *Vithya* was "... in order that she may be forced or seduced to illicit intercourse..." by gang rape

and murdered. Here the witness was making an accusation that you said one thing and did something totally different. This was said by the witness when *Vithya* was lying unconscious on the ground after being subjected to repeated acts of forcible sexual penetration. By then, she was slowly advancing towards her death on account of the head injuries, until the act of her panties being pushed down her throat, which act prevented movement of air to her lungs and thereby causing suffocation, significantly contributed to hasten her death.

The said answer also could be taken as an admission of what the witness had agreed with the 6th accused. *Sureshkarana* was under the belief that *Vithya* would be abducted by the 6th accused in order to marry her. Section 357 has one of the many ways an accused for abduction could be punished. If the abduction was done "... with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will ..." such a person too could be punished for abduction. There was no such agreement between the witness and the 6th accused. It was just that *Sureshkarana* had entertained a belief on his own that the purpose of abducting *Vithya* was for the 6th accused to marry her with or without her consent. -

The unexpected turn of events made *Sureshkarana* nervous, which he shared with his friend *Mappillai*. With the four accused removing the body of *Vithya* out of the abandoned house, the witness *Mappillai* suggested to *Sureshkarana* that " if we stay here, it will be trouble for us, and let us move". Then the two men proceeded some distance away from the scene and watched what was happening in the garden of the abandoned house.

Thereafter they both proceeded to attend the daily tapping routine of palm trees.

But the conspiracy referred to in the Information is not that of a conspiracy by which the parties to the conspiracy have agreed to abduct *Vithya* “ ... with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will ...” but of a conspiracy that she would be abducted ... in order that she may be forced or seduced to illicit intercourse...”. Thus, the role played by the witness in the abduction of *Vithya* does not positively support a finding of fact to the effect that he had agreed with the co-conspirators that *Vithya* would be abducted and “forced or seduced to illicit intercourse”.

It is settled principle that an accomplice is a person who “knowingly, voluntarily and with common intent with the principal offender unites in the commission of a crime”, as described in *Coomaraswamy’s* treatise on evidence, following English judicial pronouncements.

When viewed in the light of the forgoing, it is clear that *Sureshkarana* could not have been charged for his involvement in any of the three conspiracies along with the other accused. However, this Court, particularly at this stage does not wish to interfere with the finding of the Trial at Bar that *Sureshkarana* was an accomplice although the evidence does not seem to support such a conclusion.

Returning to the specific ground of appeal, this Court would nonetheless proceed to consider same on the premise that even if *Sureshkarana* is indeed an accomplice, and in such circumstances whether

the Trial at Bar was correct when it decided to accept his evidence and whether the justification it had offered for its decision to accept and act on that evidence is acceptable.

The Trial at Bar, in its consideration of *Sureshkaran's* evidence, insisted on the general requirements that are applicable to an accomplice's evidence, namely that it must be corroborated in material particulars, if that Court were to accept same as credible and reliable evidence. In fact, the Court described that evidence as "*tainted*" evidence and accordingly insisted on satisfying itself the requirement of corroboration of that evidence.

That Court was mindful of the fact that *Sureshkaran* was arrested and produced before Court as a suspect and subsequently granted a conditional pardon before listing and calling as a witness for the prosecution. The judgment of the Trial at Bar also referred to the psychological impact the witness has had, after witnessing the abduction, rape and murder of the young school girl. *Sureshkaran* had referred in his evidence of the recurrence of bad dreams in his sleep that led him to an increased dependency on alcohol and it is these factors that led him to make a complete disclosure of the events that he had witnessed, despite admitting that he did not mention any of these in his statement made to the CID immediately after his arrest.

In relation to the incident in which the four accused have stopped *Vithya* on her way to school on 13.05.2015 around 7.00 to 7.30 in the morning, the Trial at Bar found corroboration from the evidence of *Nadarasa Kuganesan, Thanuram, Balachandran and Sathanandarubini* who saw

the 2nd, 3rd and 5th accused around that time, waiting near the abandoned house, the garden of which her body was recovered on the following day. That Court also considered the fact referred to by *Sureshkaran* when he stated that after the acts of gang rape, her body was removed outside the abandoned house and placed on the bare earth, as it was supported by the medical evidence based on the observations made by the medical expert, at the scene of crime. The fact that a thorn had embedded on *Vithya's* skin was taken along for consideration with the fact that her panties was found inserted in her mouth also considered by the Trial at Bar as factors that independently corroborates the evidence of *Sureshkaran*.

The trial Court, similarly considered the evidence of the other eye witness to the incident, *Mappillai* and decided to accept same as credible and reliable evidence offered by an "independent witness"; but it arrived at that conclusion only after undertaking a detailed evaluation of that evidence. Then the Trial at Bar found the corroboration that it needed to accept *Sureshkaran's* evidence based on *Mappillai* evidence, in addition to what it found, as referred to in the preceding paragraphs.

Not only these items corroborate the evidence of *Sureshkaran* but also of the other witnesses who gave evidence for the prosecution. More significantly, the fact that the undergarment was inserted into the mouth and it was further pushed down to her throat was confirmed by the medical evidence. The recovery of the pair of spectacles from the information provided by the 6th accused is another factor that corroborates the witness, who saw him picking up that item from the ground after slapping *Vithya* just before her abduction.

Sureshkarán knew that it was not the road usually taken by *Vithiya* to attend her school. But he did not think it fit to disclose that information to the accused, who were eagerly waiting for her to reach where they were, in order to carry out the plan which the four men had agreed on. This reluctance to volunteer information on the part of *Sureshkarán* is strongly suggestive of the inference that indicates the position the witness did not want to ensure that *Vithya* is abducted that morning. It also proves that the two witnesses were kept in the dark by the inner ring of the 6th accused, who somehow had more accurate information on the movements of the deceased that morning.

It need not be reiterated here that the evidence of an accomplice could be accepted and relied upon by a trial Court to arrive at a finding of guilt against the accused before it; provided that the requirement of independent corroboration, which imposed as a rule of prudence on such evidence is sufficiently satisfied.

A closer scrutiny of the evidence of *Sureshkarán's* and of *Mappillai* by juxtaposing them, it becomes clear to this Court that they both had almost identical roles to play in the abduction of *Vithya* and were ignorant of the more sinister plan that existed in the minds of the accused.

Thus, in view of these factors, we are of the view that there is no merit in the said ground of appeal relied on by the accused.

The third ground of appeal relied on by the accused is that their *alibi* was not properly considered by the Trial at Bar and therefore needed to be considered at this stage, being the last ground of appeal.

Only the 5th and 6th accused relied on *alibi* in response to the prosecution evidence, whereas the evidence of the 2nd and 3rd accused is confined to a denial of any involvement with the alleged acts. The 9th accused said in evidence that *Iflar* demanded Rs. 20 Million to close the case against him, through IP *Nishantha* whom he knows personally and wanted Rs. 2.5 Million to be paid as an advance. The 9th accused denied watching *Vithya* at *Alladi* junction from a van.

Although the 5th accused said in his evidence that he went fishing in the sea on the morning of 13.05.2015 and returned only around 11.30 a.m., he did not specifically claim that he was out in the sea between 7.15 a.m., and 8.30 a.m., on that morning. Instead, his evidence was that he stayed at home as one of his cousin sisters who arrived from Switzerland was expected and he went fishing only after she left with his mother. During cross-examination by the prosecution, the 5th accused conceded that he did not put his *alibi* across to *Shanthiruban* who testified to the effect that she saw him in the vicinity of the place where *Vithya* was killed. Neither did the 5th accused challenge when *Illankeswaran* said in evidence he was watching *Vithya* with the 9th accused in a van at *Alladi* junction. The *alibi* taken up by the 5th accused is not specific enough and was presented for the first time only after the defence was called by the Court.

The 6th accused did not take up the position that he was elsewhere during the relevant time. It was the evidence of 6th accused that he was not involved with the crimes alleged. Only during cross-examination, the 6th accused said that he reported to work on 13.05.2015 at 8.15 a.m., and

stayed in his office in the entire morning. The 6th accused is an employee of *Velanai Pradeshiya Sabha* and was attached to its sub office at *Pungudutiou*.

In order to counter the possible *alibi* that would be presented by the 6th accused, the prosecution already presented evidence of several other employees who also worked at the said sub office, during its case. *Sri Kanthan* said in evidence that the 6th accused entered the office around 9.15 a.m., on 13.05.2015, but signed in to reflect the time of arrival as 8.15 a.m., and left the office almost immediately. The 6th accused was seen by *Nagatharasan* while leaving the office around 9.15 a.m. *Sanjeevan* reported to work at 8.00 a.m., on that day and left around 8.30 a.m., but did not see the 6th accused either reporting to work or remaining inside the office. Despite the clear evidence of these witnesses presented before the Trial at Bar to the effect that the 6th accused did not report to work on that day until 9.15 a.m., none of these witnesses were cross-examined by him, on that clear evidence that had the effect of reducing the value of the evidence of his *alibi* in its totality.

The Trial at Bar in fact did consider the *alibi* of these accused in its judgment with reference to statutory provisions contained in Section 126A(3) of the Code of Criminal Procedure Act No. 15 of 1979, as amended, and noted that the “*evidence in support of an alibi*” as per the said Section means “... *evidence tending to show that by reason of the presence of the defendant at a particular place or in particular area at a particular time he was not likely to have been at the place where the offence is alleged to have been committed at the time of alleged commission*” and the evidence presented before that Court did not satisfy that requirement. In other words, the Trial at Bar had

rejected the *alibi* of the 5th as well as the 6th accused on the basis that their evidence could not be accepted as credible evidence and on the other hand, the prosecution had established the presence of these two accused beyond reasonable doubt. After undertaking a closer examination of the evidence, this Court accepts the conclusion reached by the Trial at Bar on the claims of *alibi* presented before that Court by the 5th and 6th accused. This Court concurs with the said rejection of the claims of *alibi* and of denial, in view of the reasons it had stated in the impugned judgment.

Turning to the conviction entered by the Trial at Bar in respect of the 4th and 8th accused, in view of the reasoning contained in this judgment, this Court is of the view that the prosecution had failed to establish the guilt of the 4th and 8th accused beyond reasonable doubt as the evidence presented before the Trial at Bar to establish that they have conspired with the others to abduct *Vithya* for illicit intercourse, conspired to commit gang rape and conspired to commit her murder, are insufficient to sustain a conviction. Therefore, this Court holds that the conviction of the said two accused should not be allowed to stand as there is merit in their appeals.

This Court further holds that the convictions entered against the 2nd, 3rd, 5th, 6th and 9th accused by the Trial at Bar were correctly made after proper evaluation of the available evidence. Therefore, their convictions are ought to be affirmed, as there were no merits in their respective appeals. With the death of the 3rd Accused, his appeal to be treated as abated.

With regard to the sentences imposed on the Accused by the Trial at Bar, we direct that all those sentences imposed on these Accused must run consecutively so that the Accused would serve longer sentences. This direction must also apply to the sentences of death if they are commuted to life imprisonments.

This alteration in the sentences imposed on the accused by the Trial at Bar is made by this Court primarily due to the fact that the accused have intentionally treated with pre-meditation young innocent school girl *Vithya* as a mere disposable commodity which could be discarded once it served its purpose of being used as a sexual object, a warped mentality that should be condemned in the strongest possible terms by any civilised society.

The appeals of the 4th and 8th accused are accordingly allowed. Their convictions and sentences imposed by the Trial at Bar are therefore set aside by this Court. The conviction and sentences of the 2nd, 5th 6th and 9th accused are affirmed, and the sentences imposed them are subject to the alterations made by this Court.

The appeals of the 2nd, 5th 6th and 9th accused should therefore stand dismissed. The appeal of the 3rd accused is abated owing to his death pending the determination of the appeal.

The High Court of Jaffna is directed to issue warrants of detention in respect of the 2nd, 5th, 6th, and 9th accused, in accordance with the orders made by this Court in its judgment.

P. PADMAN SURASENA, CJ.

CHIEF JUSTICE

ACHALA WENGAPPULI, J.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

JUDGE OF THE SUPREME COURT

MENAKA WIJESUNDERA, J.

JUDGE OF THE SUPREME COURT

SAMPATH ABAYAKOON, J.

JUDGE OF THE SUPREME COURT