WICKREMASURIYA
V.
DEDOLEENA AND OTHERS
(SUBSTITUTED)

COURT OF APPEAL
F. N. D. JAYASURIYA, J.
C. A. 172/84
AT/RATNAPURA/GODAKAWELA
21/14/18/C/5
MAY 15, JUNE 19 AND JULY 3, 1996.

Agrarian Services Act 58 of 1979 – S.5 and S.45 – Eviction – Prima Facie proof – Usufructuary Mortgage – Credibility of a Witness – Test of Probability and Improbability – Test of consistency and inconsistency inter se – Test of Interest and Disinterestedness – Means of knowledge – Evaluation and Assessment of Evidence –

The Original Applicant respondent's position before the Agricultural Tribunal was that he was put into occupation of the field by one F in 1964 and that he was theTenant Cultivator of the said field, till this field was given on a Usufructuary Mortgage to one S by the daughter of F and that S in concert

with the respondent - appellant illegally and unlawfully evicted him from the field in October 1973. The Assistant Commissioner came to the conclusion on the Evidence that was led before him, that there was eviction. On Appeal.

Held:

***Per* Jayasuriya J.**

"A Judge, in applying the Test of Probability and Improbability relies heavily on his knowledge of men and matters and the patterns of conduct observed by human beings both ingenious as well as those who are less talented and fortunate."

(1) The Commissioner has very correctly arrived at an adverse finding in regard to witness Gunasekare's testimonial trustworthiness. He is the master on all matters of fact including assessments in relation to the Credibility of Witnesses who had given evidence before him. The answers given by Gunasekere disclose that he lacked means of knowledge in respect to the Cultivation of the adjoining paddy field.

The Commissioner was quite right in applying the Test of Credibility, Test of Means of knowledge, Test of Probability and Improbability and the Test of Consistency and Inconsistency Inter-se in rejecting his evidene as false and partial.

(2) The expression prima facie proof in S.45 has to be construed and interpreted.

"*Prima facie* proof is Nothing more than sufficient proof which should be accepted only if there is nothing established to the contrary."

(3) It is insufficient merely to make a suggestion of partiality or to merely make a suggestion of the basis of a mere Nexus between the witness and the person for whom he has testified in a legal proceeding.

There was a failure on the part of the respondent - appellant's pleaders to establish that Appuhamy was a partial witness by an Application of the Test of Interest and Disinterestedness of the witness.

(4) As regards contradiction, after a considerable lapse of time as has resulted in this application it is customary to come across contradictions in the testimony of witnesses.

'This is a characteristic feature of human testimony which is full of infirmities

and weaknesses especially when proceedings are led long after the events spoken to by witnesses. A Judge must expect such contradictions to exist in the testimony. The issue is whether the contradictions go to the root of the case or relates to the core of a party's case.'

Per **Jayasuriya, J.**

"If the contradicton is not of that character the Court ought to accept the evidence of witnesses whose Evidence is otherwise cogent having regard to the Test of Probability and Improbability and having regard to his demeanour and deportment manifested by witnesses. Trivial contradictions which do not touch the core of a party's case should not be given much significance, specially when the probabilities factor echoes in favour of the version narrated by an applicant.

(5) Arriving at determinations with regard to Credibility and testimonial trustworthiness of a witness is a question of fact and not a question of law.

An Appeal from the Order of the Assistant Commissioner of Agrarian Services Ratnapura.

Cases referred to:

1. *Onasis v. Vergotis House - (House of Lords)* 1968 2 Lloyds Report 403 at 437. (Court of Appeal) 1968 2 Lloyds Report 297.
2. *Velupillai v. Sidembaram* - 31 NLR 97 at 99.
3. *Undugodage Jinawansa Thero v. Piyaratne Thero* - SC 46/81 SC. M 5.4.1982
4. *Herath v. Peter* - 1989 2 SLR 325 at 326.
5. *Dolawatte v. Gamage* - SC 45/83 1989 2 SCM 327.
6. *Smithwick v. National Coal Board* - 1950 2 KB at 352.
7. *Rex v. Jacobson and Levy* - 1931 AD 466 at 478.
8. *Iswari Prasad v. Mohamed Isa* - 1963 A1R (SC) 1728 at 1734.
9. *Barwada Boginbhai Hirjibhai v. State of Gujerat* - 1983 A1R 753 at 755.
10. *AG. v. Viswalingam* - 47 NLR 286.
11. *State of Uttar Pradesh v. Anthony* - 1985 AIR 48 (SC).
12. *Jagathsena v. Bandaranaike* - 1984 2 SLR 39.
13. *Samaraweera v. The Republic* - 1990 (1) SLR 256 at 260.

N. R. M. Daluwatte P.C. with *Manohara de Silva* and *Gamini Silva* for Respondent - Appellant.

Anil Silva with *Sarath Liyanage* for substituted - Applicant - Respondents.

Cur. adv. vult.

July 08, 1996.
F. N. D. JAYASURIYA, J.

At the argument of this appeal, the principal complaint of learned President's Counsel was that the Assistant Commissioner (Inquiries) has not indulged in a proper analysis and evaluation of the evidence placed before him and he has not specifically referred to certain matters which learned President's Counsel described as "substantial contradictions" in the case of the Applicant. He also bitterly complained that the Assistant Commissioner has not indulged in a proper analysis and evaluation of the testimony of witnesses who have given evidence on behalf of the respondent-appellant.

I will advert my attention to the second complaint in the first instance. The Assistant Commissioner has arrived at an adverse finding in regard to the testimonial trustworthiness and credibility of witness Agampodi Sirisena Mendis Gunasekera who was called by the respondent. Learned President's Counsel has taken me over the evidence of this witness. This witness produced a document marked "I" at the inquiry with the object of establishing that Haramanis, the Applicant, is a person who was interested in obtaining perjured evidence and false evidence to gain success at this inquiry. He produced document marked "I" and stated that in that document there is a promise by Haramanis to give witness Gunasekera a sum of Rs. 20,000 in cash or to confer on him the rights of an ande cultivator in respect of two acres of the paddy field in question if witness Gunasekerea was prepared to change the dates on which he had cultivated this paddy field. Under cross-examination, witness Gunasekera admitted that this document was prepared by his own sister-in-law's husband and that Haramanis signed this document at his home; whereas, the witness to the document signed in the absence of Haramanis at a different place. Thus, this document marked "I" originated and emanated from witness Gunasekera's relation. A judge, in applying the test of Probability and Improbability, relies heavily on his knowledge of men and matters and the patterns of conduct observed by human beings both ingenious as well as those who are less talented and fortunate. Witness Gunasekera's position is that he did not accede to Haramanis's wrongful request and refused to fall in line with the suggestion of Haramanis, but, nevertheless, Haramanis who was rebuffed left this document in the possession of Gunasekera, though Gunasekera was

not prepared to fall in line with his request. This version of the facts leading up to the leaving behind of the document, which in fact originated from a source close to Gunasekera, in Gunasekera's house is inherently and intrinsically improbable and, though the Assistant Commissioner, has not referred to the test of Probability and Improbability in express terms, the germ of the concept relating to that test of credibility has prevailed, has pre-occupied his mental capacities when he concluded that witness Gunasekera, called on behalf of the respondent, is a dishonest and unreliable witness. Vide. *Onasis v. Vergotis House of Lords*[1] Judgment and the Judgment of the Court of Appeal delivered by Lord Denning LJ. Applying the Test of Probability and Improbability, he has very correctly arrived at an adverse finding in regard to witness Gunasekera's testimonial trustworthiness. The Assistant Commissioner (Inquiries) is the Master on all matters of fact, including assessments in relation to the credibility of witnesses who had given evidence before him. I am in complete agreement with the findings of fact of the Assistant Commissioner of Agrarian Services.

This witness, Gunasekera, alleged that before Jamis came upon this paddy field that he had cultivated the paddy field in question: that he had occupied the highland and lived in a house standing on that highland; that he had carried on a business or trade in that house and that he had cultivated the paddy field during several seasons. When he was questioned in relation to the paddy field, adjacent to the paddy field in question and asked whether a person by the name of Arnolis cultivated the adjoining paddy field, his meek reply was that he did not know. This answer really discloses that this witness lacked means of knowledge in respect to the cultivation of the adjoining paddy field and if the Test of Means of Knowledge is employed to evaluate his evidence, the Assistant Commissioner has arrived at the correct finding rejecting his credibility and holding adversely in regard to his testimonial trustworthiness. This witness has stated that during the time he occupied this house and cultivated this paddy field, he was holding a government post in the Irrigation Department at different points far removed from this paddy field. He has stated that he leaves home at 6 o'clock in the morning and returns to his home much later than 6 p.m. After indulging in strenuous work for the Irrigation Department, it surprises this court how he could have, despite his pre-occupation with governmental activity, carried on a business or trade in this house and how he could have attended to the cultivation of this paddy field personally during

the time he held this government office. Under cross-examination he changed his stance when he was confronted with that inconvenient governmental service and he stated that he employed hired labour and ensured that the paddy field was cultivated. He has stated that he never had the intention of claiming rights as an ande cultivator or as tenant in respect of the house which he occupied on the premises.Thus, the Assistant Commissioner was quite right in applying the Test of Credibility, Test of Means of Knowledge, Test of Probability and Improbability and the Test of Consistency and Inconsistency inter se in rejecting his evidence as false and as partial evidence volunteered on behalf of the respondent with the prospect of future benefits from the Respondent. Therefore, I hold that the criticism of learned President's Counsel that there has been no proper evaluation or improper evaluation of the evidence of witness Gunasekera is a wholly unjustified criticism in relation to the evaluation and findings in regard to his credibility arrived at by the Assistant Commisioner.Thus the first arm of the contention of learned President's Counsel is untenable and unsustainable. Then, the learned President's Counsel argued that though the Assistant Commissioner has concluded that the Applicant's testimony is substantiated and corroborated by the evidence volunteered by the other witnesses called on behalf of the Applicant, the Assistant Commissioner has not sufficiently given his mind to certain contradictions and inconsistencies inter se in the evidence led on behalf of the Applicant. A re-capitulation of the evidence is necessary to appreciate this contention.

The Applicant's position before theAgricultural Tribunal was that he was put into occupation of the paddy field in question by Marcelline Wickremasuriya Fernando, who was also referred to as the Baas Unnehe in 1964 and that he had cultivated the paddy field in question as an ande cultivator performing all the necessary legal acts of cultivation till this paddy field was given on a usufructuary mortgage to one Sirisena by Marcelline Wickremasuriya's daughter and that Sirisena, in concert with the respondent to this application, illegally and unlawfully evicted him from this paddy field in October, 1973. He has stated that in October, 1973, he had ensured that the paddy field was covered with sufficient water and that he had indulged in the act of ploughing the paddy field, but at night fall Sirisena had brought a tractor and re-ploughed the paddy field which had already been

ploughed by him. After the usufructuary mortgage in favour of Sirisena ended, he had stated that the respondent, Wickremasuriya, has handed over the paddy field to another cultivator for purpose of cultivation.

The Applicant was unable to produce any documentary evidence in the form of Agricultural Lands Register exracts and receipts for payment of acreage tax executed in his name. He has produced certain receipts in respect of payment of acreage tax by Punchi Mahattaya who had subsequently taken a usufructuary mortgage and to whom he had paid the land-owner's share. It is an undisputed fact in this case that persons who cultivated this paddy field paid half share of the produce to the landlord as the land-owner's share of the crop. In view of the basis on which this paddy field was cultivated and the basis on which the land-owner's rent was apportioned, it is alleged that the cultivator's name has not been entered in the Agricultural Lands Register. It is also in evidence that the land-owner or the usufructuary mortgagee provided the seed paddy and paid the acreage tax in respect of the paddy field, as more than the share entitled to a land-owner was paid by way of rent, by apportioning half the produce on the threshing floor as the land-owner's share. Section 45 of the Agrarian Services Act provides that the Paddy Lands Register extracts and certified copies of that register are only *prima facie* evidence of the contents thereof. The expression '*prima facie* proof' which appears in section 45 of the Agrarian Services Act has to be construed and interpreted. Just because Haramanis, the Applicant, was unable to produce any documentary evidence in the form of Paddy Lands Register and Agricultural Lands Register extracs in his favour, such failure would not deter his claim to be considered as an ande cultivator before the Agricultural Tribunal or before the Court of Appeal. For, in the decision in *Velupillai v. Sidembram*[2], Justice Drieberg stressed that this expression means "nothing more than sufficient proof which should be accepted only if there is nothing established to the contrary. But that it must be what the law recognises as proof. That is to say, it must be something which a prudent man in the circumstances of the particular case ought to act upon". These observations were cited with approval and followed by Chief Justice Neville Samarakoon in the Supreme Court judgment in *Undugodage Jinawansa Thero v. Yatawara Piyaratne Thero*[3] in refuting certain inferences arising from docu-

ments which came up for consideration before the Supreme Court. Chief Justice Samarakoon observed: "It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal . . . If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as prima facie evidence is rebutted and is no longer of any value . . . Evidence in rebuttal may be either oral or documentary or both . . . The Register is not the only evidence". Thus, the overwhelming and cogent oral evidence led in support of the position put forward by the Applicant Haramanis, would weigh the scales in his favour even in the absence of such registration extracts.

Justice S. P. Goonewardene, in *Herath v. Peter*,[4] expressed similar views in regard to the interpretation and construction of the words '*prima facie* evidence' in relation to Agricultural Lands Register entries and followed the views expressed in the unreported decision in *Dolawatte v. Gamage* [5] pronounced by Justice Parinda Ranasighe.

In *Smithwick v. National Coal Board*,[6] Lord Denning discussed the other sense in which the expession '*prima facie* proof' is used. He observed: . . . "The guiding line between conjecture and inference is often a very difficult one to draw; but it is just the same as the line between **some evidence** and **no evidence**. One often gets cases where the facts proved in evidence - the primary facts - are **such** that the tribunal of fact can **legitimately draw from them an inference** one way or the other **or, equally legitimately, refuse to draw** any inference at all." These dicta of Lord Denning bring out another sense in which the expression *prima facie* evidence is used. When evidence is of such a nature, such evidence is most conveniently described as *prima facie* evidence in the **first sense** of the term. This expression is also used in a second sense to refer to a situation where a party's evidence in support of an issue is **so weighty** that no reasonable man could help deciding the issue in his favour, **in the absence of further evidence.** It would be more rational and logical to describe evidence of this degree of cogency as *presumptive*, but it is usually said to be *prima facie* evidence. Vide Article by Nigel Bridge in 12 Modern Law Review at 277. In *Rex v. Jacobson and Levy*,[7] Stratford J. A. remarked thus: "*Prima facie* evidence in its usual sense is used to mean *prima facie* proof of an issue, the burden of proving which is upon the party

giving that evidence. In the **absence** of further evidence from the other side, *prima facie* proof becomes conclusive proof and the party giving it discharges its onus". If the expression is used in Section 45 of the Agrarian Services Act in the first sense, it means very little for, the Tribunal is entitled to refuse to draw any inference at all from the registration entry. Even if it is used in the second sense in the aforesaid statutory provision, the overwhelming and cogent oral evidence adduced by the applicant-respondent upon this application, has clearly rebutted such *prima facie* evidence emanating from the production of the registration entries as contemplated and explained by Chief Justice Samarakoon.

Witness Vidanagama Ralalage Arnolis Appuhamy who happens to be a cultivator of the adjoining and contiguous paddy field and therefore is a person who has special means of knowledge, has testified at the inquiry that the original owner, Marcelline Wickremasuriya Fernando Baas Unnehe had placed Haramanis, the Applicant in this case, in the cultivation of this paddy field (as a tenant cultivator in 1964 and that Haramanis in that capacity continued to cultivate the paddy field performing all the necessary legal acts of cultivation in respect of this paddy field) from 1964 till October 1973, when he was wrongfully and illegally evicted by Sirisena who had taken a usufructuary mortgage from the daughter of the aforesaid Marcelline Wickremasuriya Fernando and who is the Respondent-Appellant in this appeal. After such forcible dispossession on the part of Sirisena with the blessings and at the behest and instance of the respondent-appellant, Sirisena had begun cultivation of the paddy field till the cessation of the usufructuary mortgage in his favour and thereafter, that the respondent-appellant had put other persons on to the paddy field and continued to wrongfully and unlawfully cultivate the paddy field. Though it was meekly suggested that Arnolis Appuhamy is a friend and a partial witness, in the course of cross-examinaton there was a complete failure on the part of the respondent's pleaders to establish that Arnolis Appuhamy was a partial witness by an application of theTest of Interest and Disinterestedness of the witness. As the Indian Courts have consistently pointed out, it is insufficient merely to make a suggestion of partiality or to merely make a suggestion on the basis of a mere nexus between the witness and the person for whom he has testified in a legal proceeding - vide *Iswari Prasad v. Mohamed Isa,*[8] Their Lord-

ships, in the aforesaid case, remarked: "It would be unsafe to discard evidence which appears otherwise to be reasonable and probable, merely because some suggestions were made to the witness without such suggestion being proved to be true." Their Lordships further observed: "In considering whether evidence given by a witness should be accepted or not, the court has to examine whether he is, in fact, an interested witness and to inquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is - whether there is a ring of truth surrounding his testimony". The Inquiring Officer has approached this issue correctly and given consideration to the evidence of this particular witness having these principles in mind.

Don CharlesWeerakoon who functioned originally as the Secretary of the Kaltota Govi Karaka Sabha and thereafter functioned as the Chairman of the Agricultural Cultivation Committee and in those positions had gained intimate knowledge and acquaintance with the cultivation of paddy field and the identity of the respective cultivators of the paddy field, has clearly stated that prior to 1964 the paddy field in question was cultivated by Kiri Appuhamy, Davith Singho and Gunasekea and that after Gunasekera left, the paddy field in question had been cultivated as an ande cultivator by Haramanis, the Applicant, with the blessings and approval of the aforesaid Marcelline Wickremasuriya Fernando Baas Unnehe, who was the owner of the paddy field at that time. He has stated that from 1964 Haramanis has continuously cultivated the paddy field till October, 1973 and has handed over half share of the produce from the paddy field as the land-owner's share of the rent. On a complaint made by the said Haramanis, he has stated that he had inquired into the complaint and after arriving at a finding that in 1973 October Sirisena had wrongfully and unlawfully entered upon the paddy field and had evicted Haramanis; that he had given directions to Haramanis to take over the paddy field and to plough the paddy field once again despite the ploughing effected by Sirisena by means of a tractor. He has further stated that since the ande cultivator Haramanis paid and handed over half share of the produce to the owner, the owner had provided the seed paddy and had paid the acreage tax in respect of this paddy field. Thus, according to this witness's evidence on which the Assistant Commissioner has placed much reliance and trust, possibly applying the Test of Means of

Knowledge, witness Gunasekea had cultivated this paddy field before 1964 and Haramanis had entered into cultivation of the paddy field as an ande cultivator in 1964 under the previous owner.

Learned President's Counsel referred to certain answers given by this witness in regard to pointed questions put to him in cross-examination. Before these particular questions were put to him, he had been questioned in regard to the period when Jamis and Puchi Mahattaya had received the land-owner's share as usufructuary mortgagees over parts of this paddy field from Haramanis, witness has stated that Haramanis paid the usufructuary mortgagees' half share of the produce of the paddy field. This answer has been given in the context of the previous questions and answers volunteered by this witness. It will be highly improper and unreasonable to contend that the totality of the evidence given by this witness points to the conclusion that Haramanis has only paid the land-owner's share to the usufructuary mortgagees. Any artificial interpretation and construction of his evidence to substantiate such a contention would be wholly untenable and unsustainable having regard to the totality of the evidence given by this witness. In the circumstances, I hold that there is no merit in the submission of learned President's Counsel that this particular matter ought to have engaged the specific attention of the Assistant Commissioner in giving reasons for his order.

Medagedera Jamis, in his testimony has stated that he has known this paddy field from the year 1960; that its owners were originally Marcelline Wickremasuriya Fernando Baas Unnehe and thereafter his daughter the respondent-appellant and that from 1964 Haramanis had continuously cultivated the paddy field as its ande cultivator. He has stated that in 1973, the respondent-appellant had executed a usufructuary mortgage in his favour, he had wrongfully and illegally evicted the ande cutivator Haramanis. He has stated that after the cessation of the usufructuary mortgage that the paddy field is still being unlawfully cultivated by nominees and agents of the respondent-appellant at her behest and instance.

On behalf of the respondent, witness E. L. Jamis has given evidence and has stated that he has obtained a usufructuary mortgage of the paddy field in 1966 and at the time he took the mortgage, witness

Gunasekera was residing in a house situated on the highland and that witness Gunasekera was cultivating the paddy field. He has stated that he took over the cultivation of the paddy field in 1966 when Gunasekera left the paddy field. He has also stated that at a certain point of time that both he and Punchi Mahattaya had taken a usufructuary mortgage over two divided portions of this paddy field.

Wickremaratchige Punchi Mahattaya giving evidence on behalf of the respondent has stated that he had known this paddy field from 1954 and that in 1964, Marcelline Wickremasuriya Fernando cultivated the paddy field in question as owner-cultivator; that in 1960 Jamis cultivated the paddy field after obtaining the usufructuary mortgage and that, thereafter, Sirisena having obtained a usufructuary mortgage in his favour had cultivated the paddy field. He has stated, in 1974 Sirisena cultivated the paddy field for two years and thereafter a person by the name of Gunatillake jointly cultivated the paddy field and that Haramanis, the Applicant, never cultivated the paddy field on any day. Learned President's Counsel conceded in the course of the argument that this evidence was incorrect and this position was false and that Haramanis cultivated the paddy field as an ande cultivator during the period 1968-73 under the usufructuary mortgagees Jamis and Punchi Mahattaya. Thus, the learned President's Counsel had abandoned the untenable position set up by the respondent at the inquiry and also the persistent and tenacious contention advanced to that effect by learned counsel, Mr. Gunawardena, who appeared for the respondent at the inquiry. In his written submissions, which were filed before the Assistant Commissioner and in his oral submissions, Mr. Gunawardena, Attorney-at-law, has persistently argued that Haramanis was the respective agent and/or hired labourer employed by Jamis and Punchi Mahattaya. Learned President's Counsel, at the argument of this appeal, very rightly abandoned that wholly untenable and unsustainable positon. Thus, the inconsistency in the cases presented before the Inquiring Officer and at the argument of this appeal is a startling and characteristic feature of the Respondent-Appellant's case. I have already referred to the unsatisfactory and untrustworthy evidence given by witness Agampodi Sirisena Mendis Gunasekera. Learned President's Counsel has referred me to the evidence given by some of the witnesses called on behalf of the Applicant and certain contradictions marked in relation to their evidence given at the abortive inquiry. In particular, he has referred me

to contradiction marked V6. After a considerable lapse of time, as has resulted on this application, it is customary to come across contradictions in the testimony of witnesses. This is a characteristic feature of human testimony which is full of infirmities and weaknesses especially when proceedings are held long after the events spoken to by witnesses; a judge must expect such contradictions to exist in the testimony. The issue is whether the contradiction or inconsistency goes to the root of the case or relates to the core of a party's case. If the contradiction is not of that character, the court ought to accept the evidence of witnesses whose evidence is otherwise cogent, having regard to the Test of Probability and Improbability and having regard to the demeanour and deportment manifested by witnesses. Trivial contradictions which do not touch the core of a party's case should not be given much significance, specially when the 'probabilities factor' echoes in favour of the version narrated by an applicant. Justice Thaaker in his judgment in *Barwada Boginbhai Hirjibhai v. the State of Gujerat*,[9] remarks: "Discrepancies which do not go to the root of the matter or to the core of a party's case and shake the basic version of the witness cannot be given too much importance. More so, when the all important probabilities factor echoes in favour of the version narrated by the witness."

In the case of *Attorney-General v. Viswulingam*,[10] Justice Cannon stressed that the trial judge should direct his mind specifically to the issue what contradictions are material and what contradictions are not material before he proceeds to discredit the testimony of a witness. Likewise, in *State of Uttar Pradesh v. Anthony*[11] the important principle and rule of caution was laid down that a witness should not be disbelieved on account of trifling discrepancies and omissions. In a similar conext, Justice Collin Thome in *Jagathsena v. Bandaranaike*,[12] in considering the issue of contradictions inter se of the testimony of two witnesses, emphasized that the trial judge should probe the issue whether the discrepancy is due to dishonesty or defective memory or whether the witness's powers of observation were limited, This is particularly true where, after an abortive inquiry, the fresh inquiry is held after a protracted delay and lapse of time. Justice Collin Thome was pleased to remark on that occasion that in weighing the evidence, the trial judge should specifically take into consideration the *demeanour* of the witness in the box. The Inquiring Officer has had the benefit of such

demeanour but certainly the Appeal Court is not provided with that opportunity and, therefore, the Inquiring Officer's findings in regard to testimonial trustworthiness and credibility is entitled to much weight and consideration. Vide also the observations made by Justice Priyantha Perera in *Samaraweera v. The Republic*,[13] where he has adopted and followed the observations and principles laid down in leading Indian decisions on contradictions and discrepancies in the evidence.

I respectfully adopt and cite these helpful observations and remarks.The present Assistant Commissioner (Inquiries) has had these principles and observations at the back of his mind in regarding these contradictions adverted to by the learned President's Counsel as trivial and not befitting detailed enumeration in his order. I hold that the Assistant Commissioner had indulged in a proper and adequate analysis and evaluation of the respective evidence placed before him. This court is unable to say that the Assistant Commissioner (Inquiries) had arrived at an improper evaluation of the evidence placed before him. Arriving at determinations with regard to credibility and testimonial trustworthiness of a witness is a question of fact and not a question of law. I hold that there is no misdirection in point of fact or in point of law, nor any defective procedure discernible from a perusal of both the oral and documentary evidence and the order pronounced by the Assistant Commissioner. In the circumstances, I hold that the Assistant Commissioner (Inquiries) has arrived at strong and tenable findings of fact and in the result, this court has no jurisdiction or power to interfere with the finding of fact of the Assistant Commissioner and no error of law or issue of law arises for consideration upon this appeal. I wholeheartedly agree with the findings of fact reached by the Assistant Commissoner. In the result, I proceed to dismiss the appeal of the respondent-appellant with costs fixed in a sum of Rs. 575/- payabe by the respondent-appellant to the Substituted appellant-respondent.

Appeal dismissed.