REV. MATHEW PEIRIS
v.
THE ATTORNEY-GENERAL

SUPREME COURT
KULATUNGA, J.
WADUGODAPITIYA, J. AND
PERERA, J.
S.C. APPEAL 21/88 WITH 11/88
C.A. NO. 126/87
HIGH COURT AT BAR
COLOMBO NO. 766/80
17, 19, JUNE, 23, 24, 29, 30 AND 31 JULY
AND 20, 21 AND 22 AUGUST 1991.

Criminal Law – Murder – Joinder of charges and fair trial – System evidence – Pooling of evidence relating to two alleged murders.

The High Court convicted the appellant of two murders (the deceased being Russel Ingram and Mrs. Eunice Peiris) on a single indictment on the basis that they had been committed in the course of the same transaction. The appellant

was the 1st accused at the trial and tried along with Dalrene Ingram the 2nd accused. They were charged on separate counts in the indictment with the offence of conspiracy to commit the said murders. They were charged with the murder of Russel Ingram (husband of 2nd accused) on the basis of an alleged common intention on their part to commit such offence. The 2nd accused was additionally charged with the offence of abetting the appellant to commit the murder of the deceased Eunice Peiris.

The trial judges convicted the two accused of all the offences charged against them. Both accused appealed against their conviction. The Court of Appeal held that whilst the evidence established a very close amatory relationship between the accused, it provided sufficient proof of a motive to commit the offence only against the appellant; that in the absence of a special overt act by the 2nd accused, the circumstantial evidence was equivocal on the existence of a common intention on her part, that the evidence is consistent with the 2nd accused having been an innocent tool in the hands of the appellant; and that the evidence of the 2nd accused's conduct relied upon by the prosecution to establish that the 2nd accused agreed with the appellant and facilitated the commission of the offence is consistent with her innocence. In the result the charge of murder against the 2nd accused based on common intention and the charges of conspiracy and abetment against her failed. The conviction of the appellant for conspiracy to commit murder was set aside but his conviction and sentence for the murder of Russel Ingram and Mrs. Eunice Peiris were affirmed. He appealed to the Supreme Court.

In the case of both deceased persons the High Court Judges held it proved beyond reasonable doubt that they had suffered permanent brain damage at the time of their last hospitalisation and that each of them died of pneumonia caused by prolonged unconsciousness resulting from hypoglycaemia (lowering of blood sugar) induced by anti-diabetic drug.

Held:

(1) The prosecution case was that the incidents complained of were committed in the course of the same transaction and the evidence was not adduced on the basis of system evidence. The appellant was not denied a fair trial on account of prejudice caused by the pooling of evidence led in respect of two murders at the joint trial of the accused, after the refusal by the trial judges of an application for separation of trials.

(2) The evidence supported the finding in respect of both the deceased persons that the cause of irreversible brain damage and unconsciousness leading to

pneumonia and death was hypoglycaemic induced by drugs and not a natural cause.

The facts justified as proved beyond reasonable doubt that both deaths were the result of murders and not accidents or suicide or natural causes. The facts also justified as proved beyond reasonable doubt that the murders were committed by the appellant.

Per Kulatunga, J.

> "Where the final decision is reached, as is the case here, on the basis of antecedent determinations of act on several issues, a court of final appeal should be slow to interfere with the findings of the trial court."

APPEAL from judgment of the Court of Appeal.

R. I. Obeysekera, P.C. with *Anil Obeysekera, A. W. Uysuf, Jayantha Weerasinghe, Upali Senaratne, Champani Padmasekera, Ramya Chandra Gunasekera, Deepal Wijeratne* and *D. Akurugoda* for appellant.

Tilak Marapane, P.C., Solicitor-General with *C. R. de Silva, D.S.G.* for *Attorney-General.*

Cur. adv. vult.

3rd February, 1992.

KULATUNGA, J.

The accused-appellant (hereinafter called the appellant) has appealed to this Court from the judgment of the Court of Appeal whereby that Court affirmed the conviction and sentence imposed on him by the High Court at Bar by three Judges without a Jury for committing the murder of two persons. One indictment was presented in respect of these offences on the basis that they had been committed in the course of the same transaction.

The appellant was the 1st accused at the trial and he was indicted with the murders of Russel Ingram and Mrs. Eunice Peiris and was tried along with Dalrene Ingram the 2nd accused who was the wife of the deceased Russel Ingram. The deceased Eunice Peiris was the wife of the appellant. The two accused were also charged on

separate counts in the indictment with the offence of conspiracy to commit the said murders. They were charged with the murder of Russel Ingram on the basis of an alleged common intention on their part to commit such offence. The 2nd accused was additionally charged with the offence of abetting the appellant to commit the murder of the deceased Eunice Peiris.

The trial Judges convicted the two accused on all the offences charged against them. Both accused appealed against their conviction. The Court of Appeal held that whilst the evidence established a very close amatory relationship between the accused, it provided sufficient proof of a motive to commit the offence only against the appellant; that in the absence of a special overt act by the 2nd accused, the circumstantial evidence was equivocal on the existence of a common intention on her part, that the evidence is consistent with the 2nd accused having been an innocent tool in the hands of the appellant; and that the evidence of the 2nd accused's conduct relied upon by the prosecution to establish that the 2nd accused agreed with the appellant and facilitated the commission of the offence is consistent with her innocence. In the result, the charge of murder against the 2nd accused based on common intention and the charges of conspiracy and abetment against her failed. Her, conviction on those charges was set aside and she was acquitted on all counts, allowing her appeal. The conviction of the appellant for conspiracy to commit murder was set aside and he was acquitted allowing his appeal in respect of that charge. His conviction and sentence for the murder of Russel Ingram and Mrs. Eunice Peiris were affirmed and his appeal was dismissed in that regard.

The appellant Rev. Mathew Peiris ordained in England in 1950s is a Priest of the Church of Sri Lanka, belonging to the Anglican Christian Fellowship. At the relevant time he was the Vicar of Saint Paul's Church Colombo. His wife Mrs. Eunice Peiris who was about 59 years old at the time of her death lived with him in the Vicarage. They had three grown-up children; two of them, a daughter and one son (Mihiri and Munilal) both married and were resident in England with their spouses; the unmarried daughter Malrani was also resident in England. All of them were employed there. Russel Ingram and his wife Dalrene were regular visitors to the Vicarage from 1976. The appellant

was known as an exorcist and conducted exorcism ceremonies at his Church on Thursdays which the Ingrams attended. At this time Russel has lost his job. Dalrene who was a typist was also unemployed. They had three small children. The appellant employed Dalrene as his Secretary and later found employment for Russel at Lake House.

The appellant and his wife went on a world tour on 06.02.78 leaving Russel and his wife in charge of the Vicarage. On 25.04.78 the appellant returned alone. On 09.06.78 Russel who had been in excellent health suddenly took ill. The appellant gave him some pills saying that they had been prescribed by Dr. Weerasena. Russel became drowsy and suffered bouts of unconsciousness and was admitted to hospital only on 26.06.78 in an unconscious state; he recovered with the administration of dextrose and was discharged on 14.07.78. He was again admitted to the hospital in an unconscious state on 18.07.78 and died without recovering on 10.08.78.

Mrs. Eunice Peiris returned from abroad on 06.12.78. She thereafter became slow in speech, drowsy and lethargic. The appellant showed her to Dr. Weerasena who prescribed a mild anti-depressant. On 15.01.79 she collapsed and was admitted to Durdans Hospital. She was treated for mild depression and was discharged having made an almost complete recovery. The appellant kept on giving her pills saying that they were prescribed by Dr. Weerasena. She was once again admitted to hospital on 31.01.79 in an unconscious state and remained in that state until her death on 19.03.79.

In the case of both the deceased persons the High Court Judges held it proved beyond reasonable doubt that they had suffered permanent brain damage at the time of their last hospitalisation and that each of them died of pneumonia caused by prolonged unconsciousness resulting from hypoglycaemia (lowering of blood sugar) induced by an anti-diabetic drug.

The appellant obtained leave to appeal from the Court of Appeal on the ground that the joinder of charges in respect of two murders in the same indictment and the pooling of evidence relating to these

charges had caused grave prejudice to him. It was submitted that although the prosecution said that it was not relying on system evidence it in effect got the benefit of system evidence by pooling the evidence relating to the two murders. The prejudice caused by this procedure deprived the appellant of an acquittal on the strength of the medical evidence relied upon by the defence. It was the defence position that at the lowest such evidence created a reasonable doubt as to whether the irreversible brain damage and unconsciousness leading to the death of each deceased was drug induced or caused by a natural illness.

The charges in respect of two murders have been joined on the basis that, *prima facie*, the incidents complained of were committed in the course of the same transaction. However at the commencement of the Trial-at-Bar the defence objected to the indictment, particularly to the joinder of charges and applied for a separation of trials. The trial Judges refused the application. The accused made an application by way of revision to the Court of Appeal to canvass that order. The question whether the High Court had exercised its discretion correctly whether prejudice would be caused to the accused by the joinder of charges and whether the separation of trials would hamper the prosecution from effectively presenting its case were all considered by the Court of Appeal after which the accused's application was dismissed. Thereafter the trial was proceeded with and ended in the conviction of the accused.

In the appeal against their conviction, Counsel for the accused appellants sought to reagitate the question of separation of trials on the basis that the order made by the Court of Appeal in revision is a nullity in that the Bench that heard the matter consisted of three and not five Judges as required by the law as it then stood. The Court of Appeal held that the composition of not less than five Judges of the Court of Appeal under S.451(2) of the Code of Criminal Procedure Act is applicable only to appeals from a High Court at Bar and not to any applications in revision from 'orders' made by such Court; that in any event the order of the Court of Appeal had not been challenged by any application to the Supreme Court and hence declined to interfere with that order made by a parallel Court.

Even assuming that the point regarding the composition of the Court of Appeal Bench is arguable, I am inclined to the view that it is essentially a matter of procedure, the non-compliance of which does not make the order a nullity; if, therefore, the order was not canvassed in an appeal therefrom to this Court, it would not be competent for the appellant to canvass it in an appeal from the final verdict at the trial. When this position was indicated to Mr. R. I. Obeysekera, P.C., learned Counsel for the appellant, he submitted to us that it would still be competent for this Court to consider whether by reason of prejudice to the appellant caused by the pooling of evidence led in respect of two murders, the appellant has been deprived of a fair trial and if so to set aside the verdict entered against the appellant. The complaint so formulated does not involve a review of the decision refusing a separation of trials and can be considered by this Court. Indeed, if in fact the appellant was deprived of a fair trial in the way the decision for his conviction was reached that would constitute a denial of justice; and this Court must give him relief.

It appears that the learned trial Judges were themselves aware of the necessity to ensure a fair trial. They have set out the guidelines on the matter at the commencement of their judgment. They have noted that the order for a trial-at-Bar before three High Court Judges was itself made to avoid substantial injustice which may result by reason of prejudice in the minds of laymen in a case attended by much publicity. On the question of system evidence, the Court observed that it has been decided in this country that two instances of similarity do not form a series and said –

> ". . . we are of the view that any similarity appearing on the face of the evidence led in support of different charges at this trial should not be used for the purpose of arriving at any finding on any one of such charges. We would proceed to consider the evidence placed before us separately on the several counts upon the view that the joinder of charges is justified, in that, *prima facie*, the incidents complained of were committed in the course of the same transaction."

The learned Judges also said that the media publicity focussed upon the accused since their arrest in 1979 have in no way

influenced or affected their deliberations and that they would limit themselves to the evidence led before the Court. The Court further said that they were conscious of the responsibilities attached to their dual role as Judges of law and Judges of fact namely to first advise themselves correctly on the applicable law and to ensure a fair trial; and secondly, to emerge as reasonable men, who have the capacity to see room for reasonable doubt, to analyse the evidence, to overcome prejudice and the pressure of publicity. I have to consider whether despite these guidelines the appellant has in fact been deprived of a fair trial. This, I shall do by assessing the merits of all the grounds of appeal and submissions made to this Court.

Besides obtaining leave of the Court below to appeal on the grounds of law referred to above, the appellant obtained special leave from this Court to appeal on other grounds on the basis that they are fit for review. These grounds are in the main directed to challenging the findings of the trial Judges based on medical evidence that the cause of irreversible brain damage and unconsciousness leading to pneumonia and death of each of the deceased was hypoglycaemia induced by drugs and not a natural cause. This would require us to review the medical evidence, though within limits. The grounds urged would also require us to reverse the numerous findings of fact reached at the trial including those on the identity of the person who introduced the anti-diabetic drugs in the feeds brought by the appellant to the hospital as well as to reject the testimony of several witnesses who have been believed by the trial Judges. Implicit on these grounds is the submission that the Court of Appeal has erred in failing to reverse the findings of the High Court at Bar against the appellant.

The appellant thus calls upon us to discharge the heavy responsibility of considering whether we should reverse the findings of fact reached at the trial and affirmed by the Court below. It is to be noted in this connection that the Court below has upon a review of the facts, already reversed the verdict against Dalrene Ingram. The task of that Court in reaching that decision was not complicated by the need to consider mixed questions of medical evidence and fact based on the testimony of medical personnel and ordinary witnesses

which is what we have been requested to do in the case before us. Notwithstanding the difficulties involved in that task I shall endeavour to consider each and every issue raised before us and to express my views thereon before deciding this appeal.

It is relevant at this stage to note that as stated in the judgment at the trial that many witnesses testified at the trial which proceeded through two whole terms and two whole vacation periods. The judgment of the learned Trial Judges consists of 606 typed pages going into minute detail, with numerous repetitions or reformulations of the same matters or issues by way of analysis. What is more, the major part of the deliberations in respect of each murder comprises the consideration of the medical evidence on the question whether the deceased's condition was drug-induced or due to a natural cause. It was by such a procedure that the Court reached its findings of fact and the verdict of guilty against the appellant. We can review that decision upon a consideration of the facts only so far as it is humanly possible and is within our legal competence as the second Court of Appeal. Where the final decision is reached, as is the case here, on the basis of antecedent determinations of fact on several issues, a Court of final appeal should be slow to interfere with the findings of the trial Court. With these remarks, I shall proceed to a detailed consideration of the grounds of appeal and the submissions of Counsel.

THE VERDICT WITH REFERENCE TO RUSSEL INGRAM'S DEATH

In his appeal to this Court the appellant does not canvass the findings of trial Court that Russel was hospitalised on 18.07.78 in an unconscious state, and that this condition was caused by hypoglycaemia which was also the cause of irreversible brain damage which in turn led to prolonged unconsciousness, pneumonia and unavoidable death. However the point has been taken and the learned Counsel for the appellant strenuously submitted, that the prosecution had failed to establish beyond reasonable doubt that hypoglycaemia which was the medical condition that brought about the other conditions that resulted in death was drug-induced; that on the basis of the evidence of Dr. Dayasiri Fernando it is possible that hypoglycaemia was the result of a natural cause namely the

existence of insulinomas or secreting tumours in the ectopic sites in Russel's body, if not in the pancreas itself; and that this possibility has not been excluded beyond reasonable doubt, the benefit of which must accrue to the appellant. Learned Counsel submitted that the best evidence of the presence of a drug in Russel's body namely a test of blood or faecal matter for euglucon has not been done, which also should create a reasonable doubt in the matter. It appears that the submission based on the absence of such a test had been pressed at the trial only in respect of Mrs. Eunice Peiris. However, the point has been urged in respect of Russel as well in the petition of appeal to this Court and as such it will be considered by us.

A somewhat tenuous ground has also been urged, viz., that consequent upon the acquittal of Dalrene Ingram on the charge of murder after being indicted with the appellant on the basis of a common murderous intention, the question now arises as to which accused introduced the drug in feeds brought by the appellant to the hospital, assuming that Russel's hypoglycaemia was induced by the administration of a drug. I shall deal with this point later but it should be noted straight away that neither at the trial nor in the Court below does it appear to have been alleged or suggested that Dalrene was responsible for administering any drug to Russel.

The appellant calls upon this Court to rule that the evidence of Alex Parker Ingram and Bridget Jackson (which has been accepted at the trial) regarding the administration of anti-diabetic drugs is unworthy of credit on the ground of belatedness, omissions and illwill. As a further reason for rejecting their evidence it is urged that the Court of Appeal erred in accepting the evidence of these witnesses against the appellant whilst at the same time ignoring the impact and implication of such evidence when considering the case against Dalrene.

At the time of death Russel Ingram was in his late twenties. He was a non-diabetic and had been a healthy man. According to Mr. Weeraman his superior officer at Lake House where he was employed in November 1977, Russel was in good health, a competent worker and a member of the Social Club and the cricket team at the place of his employment. The only evidence of a previous illness is that on 08.07.77 Russel had suddenly taken ill and was

admitted to Durdans Hospital by the appellant with the assistance of a parishioner by the name of Wanigasekera. According to Dr. Panditharatne, the patient was irrational, disoriented and was unfit to give a history. There does not appear to have been a clear diagnosis of his ailment but he was given Librium to calm him down on the assumption that he had a psychiatric problem.

Russel suffered two bouts of illness, the second of which ended in his death. During the first episode, he fell ill on 09.06.78 and the appellant administered some pills to him saying that Dr. Weerasena prescribed them (Dr. Weerasena denies this and says that the last time he had treated was in 1976 for some sores). Russel was not admitted to a hospital and was not given normal food by the appellant who made it known that Dr. Weerasena had advised a regulated diet for him. On the pills being given, Russel sweated profusely and collapsed. He appeared to be stuporous or unconscious, off and on; the appellant fed him and finally admitted him to the General Hospital on 26.06.78 in an unconscious state, with a letter from Dr. P. A. P. Joseph which was issued without seeing the patient but on symptoms given to him by the appellant. Evidence regarding Russel's illness and the attention paid to him by the appellant has been given by Alex Ingram, the father of Russel.

Russel was admitted to hospital at 2.30 p.m. and was given a 10% dextrose drip whereupon he regained consciousness by 8.00 p.m. the same night. He was discharged on 14.07.78 without drugs and reported for work the same day. The next day Dr. Joseph who had visited the Vicarage found that Russel could not subtract 7 from 100 which was a symptom of brain damage. Bridget Jackson (Dalrene's sister) says that at about 3.30 p.m. on 16.07.78 the appellant gave Russel some tablets and a capsule with a cup of tea; in 10-15 minutes Russel collapsed sweating and passed urine in bed. He remained unconscious and was admitted to the General Hospital on 18.07.78 by the appellant who was accompanied by Russel Jackson (Bridget's husband) and Dalrene.

The prosecution led the evidence of several medical officers including experts who have specialised in particular fields many of

whom had treated Russel during his illness. They are, Dr. Joseph, FRCP (England) former senior Surgeon, General Hospital; Dr. Mrs. Anula Wijesundera, MBBS, MD, MRCP; Dr. Wijesiriwardena, Dr. Sheriffdeen, General Consultant and Surgeon, General Hospital, Teacher in Surgery, University; Dr. Nagaratnam, MBBS, MD, MRCP, Senior Physician, General Hospital, Dr. Mrs. Balasubramaniam, MBBS, PHD in Pathology, London University, Professor of Pathology, Faculty of Medicine, Colombo University; Professor Jayasena, Professor of Pharmacology, Peradeniya University; Dr. Ruwanpathirana and Dr. Banagala. Dr. Dayasiri Fernando, Specialist Surgeon, a relation of the appellant was called to give evidence as to the conduct of the appellant. The defence cross-examined him and elicited evidence relevant to its case.

The learned High Court Judges subjected the evidence on each issue to meticulous examination. Where necessary they tested the cogency of medical evidence in the light of other evidence. Where the evidence was challenged on the ground of delay or omissions or illwill the Court also scrutinised such evidence intrinsically, applying the test of probability, to consider whether the facts spoken to are established beyond reasonable doubt. Adopting this approach the Court made its findings which I shall presently summarise; but before I do so I wish to consider the point regarding the want of scientific proof of the presence of euglucon in Russel's system.

Henry, Assistant Government Analyst called by the defence said that anti-diabetic drugs can be identified in urine up to 2 days, from the date of administration; in faeces up to 5 days and in blood up to 3 days if a test had been done. However, the doctors at the General Hospital were not aware of this test which was known to the Government Analyst; in any event conducting such a test was not a step which was vital for the treatment of Russel but a step which the police might have taken in the investigation of the crime. Investigations commenced only after Mrs. Peiris's death and the consequent arousal of suspicion against the appellant by which time a test on Russel was out of the question. The High Court was therefore, left with other available evidence on the basis of which it had to make its findings.

MATTERS HELD BY THE HIGH COURT TO HAVE BEEN ESTABLISHED BEYOND A REASONABLE DOUBT:

1. That on 26.06.78 Russel was admitted to Ward No. 44 of the General Hospital in an unconscious state. This is based on the evidence of Alex Ingram, the history given by the appellant that Russel had been unconscious for 20 hours (recorded in the Bed Head ticket P18) and the medical evidence.

2. (a) That on 18.07.78 Russel had been admitted to Ward No. 18 of the General Hospital in an unconscious state. This is based on the statement of the appellant to Dr. Sheriffdeen in his clinic when the appellant told him that Russel had been unconscious for one day, the testimony of Jacksons and the entries of Dr. Wijesiriwardena in the BHT P19 at RIGH 31(b).

   (b) That at the time of the said admission to the hospital Russel's blood sugar was zero consistently with his having been unconscious for a day prior to admission; this is supported by the evidence of Dr. Wijesiriwardena, nurse Manawadu, laboratory technician Oliver Fernando and the blood sugar report RIGH 54(a).

   (c) That at the time of the said admission to the hospital Russel had suffered irreversible brain damage; this led to his inevitable death following upon prolonged unconsciousness and pneumonia despite the treatment and attention provided to him. He was given normal food through a nasal tube i.e. nutrition such as soups, milk, eggs, fruit juice, Marmite and water with saline drip and 5% to 50% dextrose infusion whenever required. All this merely helped to keep him clinically alive. This is supported by the testimony of Dr. Nagaratnam.

3. That the appellant brought foods in liquid form which was given to Russel in the hospital whereupon he suffered hypoglycaemic attacks. This is supported by the evidence of the nurses, Dr. Wijesiriwardena and Dr. Banagala, the BHT and the Fluid Balance Chart. In this respect the Court considered certain

omissions and contradictions in the evidence of the nurses and held that they did not affect the evidence of the nurses as against the appellant.

4. That the cause of Russel's unconsciousness during both episodes of his illness was hypoglycaemia. Evidence regarding his condition on 26.06.78 has been given by Dr. Anula Wijesundera, Dr. Joseph and Dr. Nagaratnam. They have given reasons for their respective opinions. Dr. Nagaratnam who is a diabetes Specialist of 30 years standing eliminated other possible cause of a coma according to his knowledge and experience and in the light of the fact that Russel was a well-built young man with no injury or fever in his unconscious condition. The fact that he recovered upon dextrose and saline administration within 5 hours is also given as a reason for the opinion that the cause of his coma was hypoglycaemia.

As regards Russel's condition on 18.07.78, the trial Judges have examined the evidence of Dr. Sheriffdeen and Dr. Nagaratnam. Their opinion is that Russel's unconsciousness was caused by hypoglycaemia. Dr. Sheriffdeen held a pathological post-mortem examination on Russel's body and carried out an extensive examination of his liver, kidneys, adrenal glands, hypothalmous and pituitary glands all of which were normal with no tumors. He also examined Russel's brain with the assistance of Dr. Wickremasinghe Neuropathologist for any cerebral cause of unconsciousness and found it to be a perfectly normal brain. All this confirmed his clinical diagnosis that Russel's unconsciousness was caused by hypoglycaemia or the lowering of blood sugar in his system. This would deprive the brain cells of an essential nutrient leading to brain damage.

5. That Russel's hypoglycaemia was not caused by any endogenous system disorder or a natural disease; that in particular there were no insulinomas in Russel's system either in the pancreas or in ectopic areas where pancreatic tissues may be found. This finding was reached after considering the evidence of Dr. Joseph, Dr. Anula Wijesundera, Professor Jayasena and especially the

opinions of Dr. Mrs. Balasubramaniam, Dr. Dayasiri Fernando and Dr. Nagaratnam and in the light of all the facts and circumstances of the case. In this connection, the Court explains the relevance of correct blood sugar levels in the body. According to medical opinion, when food is consumed glucose enters the liver which in turn releases sufficient quantities of glucose into the blood stream. When the blood enters the pancreas, beeta cells secrete insulin, maintaining normal sugar/insulin level. The normal blood sugar level is usually 60 to 100 mg.% subject, however, to some upward variation in these terminals going up to 80 to 120 mg.%, the gradation varying with the lab. If due to excess insulin the blood sugar level drops below 40 or 30 mg.%, the medical condition of hypoglycaemia and unconsciousness would occur.

The medical experts considered all the possible natural or endogenous causes of hypoglycaemia in Russel which are as follows:–

1. Malfunction of endocrine or ductless glands, secreting pituitary glands, adrenal glands, thyroid glands.

2. Liver and kidney disease and hypoglycaemia caused by the toxic effect of acute alcoholism.

3. "Hungry tumours"; these are non-pancreatic tumours of the liver, abdomen, chest cavity or lungs.

4. Reactive hypoglycaemia i.e. lowering of blood sugar below 50 mg.% or 40% occasioned by a reaction to sugar.

5. Spontaneous hypoglycaemia –

   (a) diseases of the pancreas called hyperplasia adenamatosis, nesidioblastosis. These are insulin secreting diseases.

   (b) Insulinoma or Islet Cell Tumour; such tumours may be found in the pancreas or its ectopic areas, namely, duodenum, stomach and small bowel.

On the basis of clinical and pathological examination the medical experts eliminated without dissent the causes referred to at 1, 2, 3, 4 and 5(a) above. However, a difference of opinion arose in respect of the cause referred to at 5(b) above.

INSULINOMA OF THE PANCREAS OR ITS ECTOPIC AREAS

All the medical experts expressed the opinion that insulinoma is a very very rare condition. The defence relied on the testimony of Dr. Dayasiri Fernando who was called by the prosecution to speak to the conduct of the appellant. Testifying under cross-examination he said that:

(1) an insulinoma can be seen;
(2) it may be occult (hidden); the smallest insulinoma recorded being 0.5 mm;
(3) secreting tumours can have periods of remission;
(4) the amount of secretion does not depend on size; a small tumour can secrete a lot of insulin;
(5) there can be several secreting tumours;
(6) the rate of secretion can be moody but with time as it progresses, the rate increases;
(7) tumours can be in ectopic areas.

Dr. Sheriffdeen had a pathological post-mortem done on Russel's pancreas and a nodule taken from the duodenum. He cut the pancreas to thin slices and found no abnormality or a tumour and he sent these and the nodule for a histology. Dr. Mrs. Balasubramaniam conducted the histological examination microscopically and found no insulinoma, no tumour or other disease. The nodule was found to be a harmless lymph node.

Dr. Sheriffdeen examined the ectopic sites and found no insulinoma and no signs of ectopic tissues i.e. pancreatic tissues in places where they should not normally be found. To surmount all the dextrose Russel was given and to show the condition of hypoglycaemia, Russel would have had to have a large secreting tumour visible to the naked eye. He did not send the ectopic parts for histology because in that event he had to send all parts, which is

particularly impossible. He examined microscopically and took only the suspected portions; there were no suspicious areas except the nodule in the duodenum. The defence contended that insulinoma could be hidden; there could be multiple secreting tumours; and that in the absence of a histology Dr. Sheriffdeen could have missed deeply situated significantly secreting multiple tumours capable of producing insulin to cause Russel's hypoglycaemia.

Dr. Nagaratnam was of opinion that in the absence of some other disorder it must be a large virulent insulinoma or several of them, even smaller ones, that could have secreted a large amount of insulin to overpower the dextrose infusion which Russel was receiving. He also said that once insulinoma manifests, it tends to become very aggressive.

The High Court formed the view that insulinoma was possible but the medical picture and the behaviour pattern of Russel was against it. Among the reasons given for this view are the following:–

1. There were 4 attacks of hypoglycaemia between 9th and 26th June 1978 during which he was unconscious or stuporous.

2. He recovered after dextrose infusion on the 26th after which there were no attacks.

3. A glucose tolerance test on 3rd July showed his blood sugar level to be normal; and he was discharged on 14th July.

4. On 15.07.78 Dr. Joseph saw him at the Vicarage unsteady, drowsy and could not work a simple arithmetic sum, indicating brain damage.

5. On 18.07.78 he was deeply unconscious with zero blood sugar and on admission he had irreversible brain damage; but with 50% dextrose infusion his blood sugar rose to 265 mg%, which was three times the normal level.

6. On 19.07.78 his blood sugar picked up with 2 infusions of 5% dextrose and remained at 162 mg% (well above normal).

7. On 20.07.78 he received infusions of 5% dextrose and normal diet; blood sugar was 165 mg%.

8. Between 26.07.78 and 03.08.78 he had hypoglycaemic attacks, despite 50% dextrose. Attacks repeated to 26th, 27th, 28th, 29th July and 3rd August. From 4th August attacks subsidied; he died on 10th August.

The Court observed that tumours once established, progressively become aggressive and do not change their behaviour for the better. Russel's condition cannot be explained adverting to remission and secretion; they are not symptoms of tumours which increase secretions progressively. The Court, therefore, concluded that Russel's pancreas was functioning normally and that he had no insulinoma.

The High Court accepted Dr. Sheriffdeen's testimony that it is not possible to microscopically examine every bit of abdominal organ in the search for pancreatic tissue in ectopic areas; it held that a doctor is entitled to look for suspicious areas of tissue and select such tissue for histology. In considering the adequacy of what was done, the Court observed that one might approach the question from a human standpoint and not from the standpoint of the laws of mathematics.

The Court observed that Dr. Sheriffdeen and Dr. Nagaratnam treated Russel and were involved with his illness; Dr. Dayasiri Fernando had never seen or treated Russel; he only heard of signs and symptoms from the appellant and gave evidence from medical journals. Finally, the Court said that the point is whether the facts and circumstances were sufficient to draw the inference safely and accepted Dr. Sheriffdeen's evidence that it was highly improbable that there were pancreatic tissues in ectopic areas; the Court also observed that the known behaviour and pattern of Russel's hypoglycaemia attacks make insulinoma manifestly improbable; the Court concluded that taking everything into account there was no insulinoma in Russel's system and that this fact has been established beyond a reasonable doubt.

It is clear that the above finding was reached on the basis of the medical evidence relied upon by the prosecution especially the testimony of Dr. Sheriffdeen which the Court was able to accept and act upon as expert evidence as against Dr. Dayasiri Fernando's evidence which was more in the realm of theory than expert opinion in relation to the case before the Court. That finding is justified. The evidence which eliminates a tumour in the pancreas is, in my view, beyond impeachment and has not been seriously challenged before us. As regards the suggestion of insulinoma in ectopic areas, microscopic examination of every bit of abdominal organ being impossible, the Court was right in considering the evidence of Dr. Sheriffdeen without devaluing it for lack of such examination and reaching the finding it did in the light of the entire evidence in the case. In this respect, the Court was entitled to take into account, *inter alia*, the testimony of the Ingrams and the Jacksons regarding the medical history of Russel and the history given to the doctors by the appellant. I now return to the enumeration of the findings made by the High Court.

6. That Russel's death is homicide by some person or persons –

After eliminating natural causes of hypoglycaemia the Court considered the question whether it was caused by some unnatural cause (exogenous hypoglycaemia). The Court found that it was not self-administration for Russel was not a diabetic; so there was no question of his having taken an overdose of anti-diabetic drugs. It was also not suicide particularly in view of intermittent hypoglycaemic attacks even during unconsciousness. It was also not an accident, particularly as it could not have repeated itself in June and July causing hypoglycaemia and unconsciousness.

In considering whether Russel's death was homicide, the Court considered the expert evidence given by Prof. Jayasena and Dr. Nagaratnam on the subject of diabetes. They have explained that diabetes occurs when beta cells of the pancreas cease to produce sufficient insulin; the result is high blood sugar which can be

controlled either by the injection of insulin directly into the blood stream or by giving anti-diabetic drugs such as diabenese or euglucon, the effect of which is to activate the functioning of beta cells to secrete insulin. Even if there are no functioning beta cells it helps the utilisation of glucose by other body cells.

The Court also accepted as proved beyond a reasonable doubt that the food brought by the appellant and given to Russel in hospital had a blood sugar reducing agent which caused attacks of hypoglycaemia between 26th July and 4th August 1978. Prof. Jayasena and Dr. Nagaratnam stated that an anti-diabetic drug can be crushed and put into liquid and passed down the nasal tube.

7. That the appellant is guilty of the murder of Russel.

In reaching its verdict the Court regarded (a) motive (b) opportunity (c) knowledge of drugs (d) possession of drugs as relevant. There was also evidence of conduct on the part of the appellant which showed that he contemplated Russel's death and yet sought to deceive the unsuspecting believer in his claimed spiritual powers that Russel was afflicted with a pancreatic disorder. He also sought to mislead the doctors and prevent them giving Russel appropriate treatment. The following items of evidence relied upon by the Court are significant:–

According to Cora Ingram (Russel's mother) on 18.04.78 Russel's wedding anniversary was celebrated at the Vicarage; he was in good health. Munilal says that the appellant who was at his daughter's house on holiday about that time in England went into a trance during which he said that the angel had told him that Russel was ill. Dr. Dayasiri Fernando speaks to the appellant meeting him in April or early May and giving the description of a lodger who lost consciousness associated with changes of blood sugar, a classic case of insulinoma. Dr. Fernando advised the appellant to admit him to a medical ward at the General Hospital. Chandrasiri Dharmadasa,

a lodger who left the Vicarage on 26.05.78 says that Russel was in good health at that time.

On 09.06.78 the day Russel fell ill, he told Alex Ingram "I can sleep, sleep and sleep". The appellant said "no man, he is having some pancreatic disorder, an operation has to be done, there is no other treatment". On 10.06.78 the day Russel collapsed on being given pills by the appellant, the appellant went into a trance and said "pancreas, pancreas". The Court examined the evidence of Munilal and Malrani regarding the appellant's claim to a connection with the supernatural and a diary entry kept by Alex Ingram and accepted their evidence as to the trance. Alex Ingram says that after Russel's admission to the hospital on 26.06.78, the appellant tried to prevent the nurses giving dextrose to Russel on the doctor's instructions. This is corroborated by Dr. Mrs. Ruwanpathirana who says that the appellant said "sugar is poison"; further when Cora Ingram tried to give custard pudding to Russel, the appellant objected, because custard contains sugar, though Cora Ingram did not realise that custard contains sugar.

Bridget Jackson says that on 16.07.78 the appellant gave lunch to Russel and also ice cream after lunch. The appellant said that Russel's condition was very low and he might pass away at any time and discussed funeral arrangements i.e. in which grave he should be interred. Notwithstanding this condition, Russel was not admitted to a hospital promptly; the appellant said "Doctor is gone; I will get him admitted to hospital on the clinic day". He was admitted only on 18.07.78. On 10.08.78 after Russel's death the appellant placed a ring on Dalrene's finger and said "Don't worry Dalrene, soon I will be in the same position as you".

I have already referred to the evidence that during both episodes of illness, the appellant was administering pills to Russel. Witnesses described the medicine as pills or tablets or capsules. The tablets were green or white. Some tablets resembled Disprin. The appellant

represented to Alex Ingram that Dr. Weerasena and Dr. Joseph were treating Russel between 9th and 26th June, '78. This claim was reagitated before us by Mr. Obeysekera, PC., both doctors have strenuously denied that they treated Russel during this period. There is nothing to indicate that this is a false denial. Thus if they treated a patient who was so seriously ill, there is no evidence as to what medicine was prescribed or where it was purchased. A point is made on the evidence of Alex that Dr. Joseph had visited the Vicarage on 20th June but Dr. Joseph is sure that his visit was on 15th July after Russel's discharge from Durdans Hospital. Mr. Marapana, PC., Solicitor-General submits that Alex had made a mistake as to the date. After a careful consideration of the testimony the Court has believed the witnesses and accepted their evidence referred to above, giving adequate reasons for such acceptance. The Court has considered the testimony of witnesses which has been challenged for belatedness, omissions, contradictions or animosity; whether they be doctors or laymen witnesses. Before accepting their testimony the Court has, were appropriate, tested the evidence intrinsically in the light of all the facts and circumstances and found corroboration. Their statements are belated because investigations were commenced only after suspicion arose on account of Mrs. Peiris's illness. In this appeal we have been called upon to reject the evidence which has been so accepted especially the evidence of Alex Ingram and Bridget Jackson on the same grounds urged at the trial. Sitting as a Court of second appeal we are unable to accede to this request.

The appellant was a diabetic and Dr. Weerasena had prescribed 5 mg. euglucon a day. The Manager of Osu Sala said that from 1977 the appellant used to buy euglucon once in three weeks. Munilal says that in April 1978 when the appellant was in the U.K. he purchased 100 tablets of euglucon. According to the Managing Partner, New City Chemists the appellant bought drugs on account. On 12.07.78 he bought 50 tablets of 5 mg. euglucon. He had a book containing information regarding the sugar in blood, the pancreas, secretion of insulin etc. (P40). The evidence of Dr. Dayasiri Fernando and Dr. Joseph shows that the appellant knew much about hypoglycaemia.

Russel was living in the Vicarage and this gave the appellant the opportunity to administer drugs to Russel. Whenever the appellant gave pills to Russel he became unconscious. Taking all this evidence into consideration the High Court found the appellant guilty of murder.

EVIDENCE OF ALEX INGRAM, BRIDGET JACKSON AND THE MEDICAL EVIDENCE

On behalf of the appellant it was submitted that the credibility of these witnesses is affected by the medical evidence. It was submitted that if as Alex Ingram says Russel was unconscious between 24th and 26th June, according to medical evidence, he would have suffered irreversible brain damage and would not have recovered. Russel's blood sugar was 43 mg% at admission and he recovered the same day. As far as Bridget Jackson is concerned, Russel should have died before admission to hospital on 18.07.78. The submission here is that during each episode of his illness Russel's unconsciousness was not as prolonged as the witnesses make out as a basis for the alleged neglect of Russel by the appellant; and as such the implication in their testimony that the appellant administered anti-diabetic drugs to Russel is weakened. This submission is sought to be strengthened with reference to the entries on 18.07.78 in the BHT. Thus it is urged that the fact that Dr. Karunakaran made entries at 1.30 p.m. ordering saline and dextrose and blood and urine tests (RIGH 32), that the requisition for tests was made at 1.30 pm. (RIGH 54) and that the test report (RIGH 54(a)) which records zero blood sugar was made in the afternoon show that Russel who was admitted to the hospital at 9.00 a.m. that day (RIGH 31(b)) had not been attended to until the afternoon; and that the zero level blood sugar represents his condition in the afternoon and not at admission as believed by the High Court. Learned President's Counsel contended that in this state of the evidence it cannot be ruled out that Russel's blood sugar level would have been higher at his admission to the hospital.

Dr. Karunakaran had gone abroad and during the trial and hence did not testify. However, Dr. Wijesiriwardena has explained that having treated him during his previous hospitalisation he knew Russel and hence on the morning of 18.07.78 he would have ordered blood and urine tests and also ordered saline and dextrose infusion but had forgotten to make entries. Nurse Manawadu supports him and says that she drew blood immediately and administered saline and dextrose. She kept the blood sample in the refrigerator and sent it for examination in the afternoon having obtained the requisition from Dr. Karunakaran. In fact, several instructions given by Dr. Wijesiriwardena including the instructions to maintain the Fluid Balance Chart and to continue the administration of fluids slowly are found in RIGH 33 which is page 3 in the B.H.T. Dr. Wijesiriwardena says that he gave those instructions on a loose sheet of paper before 1.30 p.m. and it had probably got unstuck and was not available to Dr. Karunakaran when he reported in the afternoon and hence Dr. Karunakaran had also ordered saline and dextrose infusion and urine tests upon reading the entries in RIGH 31 only. Later RIGH 33 had been found and appended. It is the position of Dr. Wijesiriwardena that his entries at RIGH 33 were made before Dr. Karunakaran's entries at RIGH 32.

The High Court has accepted the above explanation and held that Russel had not been neglected and that the report RIGH 54(a) records the patient's blood sugar level at his admission to the hospital. The Court observed that in fact the patient survived till 1.30 p.m. because of medical help; and that this is also confirmed by his slight recovery at 10.00 p.m. the same day. The Court also relied on the history given by the appellant that Russel had been unconscious for 20 hours at the time of his admission to the hospital on 26.06.78 and for one day at the time of his admission on 18.07.78; this corroborates the testimony of Alex Ingram and Bridget Jackson. It is also observed that while Russel was in the Vicarage he was being given pills and food by the appellant until shortly prior to each hospitalisation. This shows that Russel's unconsciousness was not acute throughout in medical terms but that he was probably dazed

and lying motionless in bed, a condition which lay witnesses would describe as unconscious. However, shortly prior to each hospitalisation, Russel was deeply unconscious, a condition which could have occurred if a heavy dose of anti-diabetic drugs was given to him shortly prior to such hospitalisation. Viewed in that light it cannot be said that the testimony of Alex Ingram and Bridget Jackson that Russel was unconscious at the Vicarage is incredible.

The High Court also explained that according to medical experts, even if insulin makes the patient unconscious or stuporous, compensatory body mechanisms, secretions of pituitary and adrenal glands, breakdown of glycogen stored in the liver and muscles converted back into glucose can keep the patient alive for some time.

In the result, I see nothing in the medical evidence which would discredit the testimony of Alex Ingram and Bridget Jackson which evidence has been accepted by the High Court.

GROUNDS OF APPEAL CONSEQUENT UPON THE ACQUITTAL OF DALRENE INGRAM BY THE COURT OF APPEAL

It is urged by the defence that the Court of Appeal erred on three matters:–

(a) by accepting the evidence of Alex Ingram and Bridget Jackson against the appellant whilst ignoring the impact and implication of their evidence against Dalrene Ingram;

(b) by failing to consider a doubt which arises upon Dalrene's acquittal as to which of the accused introduced anti-diabetic drugs in feeds brought by the appellant to the hospital; and

(c) by regarding the amatory association between the appellant and Dalrene as a sufficient motive against the appellant for

murdering Russel whilst it did not constitute such a motive against Dalrene.

As regards the first point, it is not based on the premise that the Court of Appeal has rejected the evidence of Alex and Bridget. The substance of the complaint is that the Court below has found their evidence insufficient to convict Dalrene but accepted it against the appellant. Whether this approach is inconsistent would depend on the content of the entire evidence they gave against Dalrene. She was acquitted on the ground that in the absence of evidence of an overt act connecting her with the crime, each of the items of evidence led against her through these two witnesses is equivocal and hence she could not be convicted unlike the appellant against whom there was evidence of positive acts pointing to his guilt. Some of the items of evidence relied upon against Dalrene are:–

(a) that she permitted the appellant to treat Russel when he was gravely ill and unconscious or failed to remove him from the Vicarage;

(b) discussing the place of Russel's burial with the appellant when Russel was alive;

(c) informing relatives that Russel was being looked after and given medication by the appellant, and

(d) the appellant placing a ring on her finger on the day of Russel's death.

The Court said that these acts are explainable on the basis that Dalrene trusted the appellant and no irresistible inference of guilt is possible based on such evidence. In regard to the evidence about the ring, the Court thought that in the absence of a positive act on her part it was not safe to act on Bridget's evidence without corroboration. There is nothing in this approach which can enure to the benefit of the appellant. Dalrene's case was viewed differently because there is no evidence of any positive act by her. The Court

thought that as was the case of Russel, Alex, Cora and others who unsuspectingly trusted the appellant, Dalrene too would have trusted him and the various acts and omissions alleged against her are explainable on the basis that she was probably an innocent tool in the hands of the appellant. The Court of Appeal cannot be faulted for taking this view.

As regards the second point, there is no evidence that Dalrene administered any drug to Russel; nor does it appear that it is even now suggested that she gave him pills. Instead a doubt is sought to be created as to which accused introduced anti-diabetic drugs in the feeds brought to the hospital by the appellant. If the suggestion is that Dalrene introduced drugs to the food at the Vicarage it is no doubt a possibility in the sense that nothing is impossible but in the light of the available evidence it cannot be said that there is a reasonable doubt as to who administered anti-diabetic drugs to Russel. In this respect, it should also be borne in mind that at the time of his admission to hospital on 18.07.78, Russel had suffered irreversible brain damage on account of tablets given by the appellant during the afternoon of the 16th and Russel was in a coma which led to his death by pneumonia. If so, the lethal dose of drugs had already been given by the appellant before Russel's hospitalisation. What was introduced in feeds was not the cause of the condition that led to his death; and even if it accelerated the death, the feeds were given by the appellant; and it would be fanciful to suggest that Dalrene introduced drugs to the food without the knowledge of the appellant in such circumstances as would require the appellant to be acquitted. There is thus no merit in the second point raised by the defence.

The point with reference to motive is untenable. All that the Court of Appeal said was that in the absence of an overt act, the amatory association between the accused was insufficient proof of a motive for the crime as against Dalrene. They regarded it as a sufficient motive in respect of the appellant against whom there is evidence of positive acts. I see no error in this finding.

In the result, I hold that the Court of Appeal has not committed any error as averred in the petition of appeal. Adverting to the complaint that the appellant has been denied a fair trial on the ground of prejudice arising by reason of the pooling of evidence, I am of the view that in the light of the evidence which I have analysed above, it cannot be said that any such prejudice has occurred. I have myself considered the charge of murder against the appellant with reference to Russel's death independently of the case against him on the other charge of murder of Mrs. Eunice Peiris. I find that it is possible to decide the two charges separately. I am unable to agree with the submission that the appellant has been denied a fair trial on account of prejudice caused by the pooling of evidence.

I am of the opinion that the conviction of the appellant for the murder of Russel Ingram is in accordance with the law and the weight of the evidence led. I hold that there is no merit in any of the grounds adduced against the judgment of the Court of Appeal dismissing the appellant's appeal on count 2 of the indictment and accordingly affirm the said judgment.

VERDICT WITH REFERENCE TO MRS. EUNICE PEIRIS'S DEATH

The High Court at Bar found that Mrs. Peiris had been admitted to hospital by the appellant on 31.01.79 in an unconscious state with irreversible brain damage and despite treatment died of pneumonia caused by prolonged unconsciousness; and that the cause of her unconsciousness was hypoglycaemia induced by the administration of anti-diabetic drugs. The Court found the appellant guilty of murder, under count 4 of the indictment, the motive being the close association between the appellant and Dalrene Ingram. The Court rejected the defence, based on the evidence of Dr. Abeysuriya, that Mrs. Peiris's condition was caused by a depressive illness which occasioned a fall of blood pressure and diminution of oxygen supply to the brain associated with reactive hypoglycaemia resulting in a drop of blood sugar. It is common ground that the immediate cause

of Mrs. Peiris's death was pneumonia of both lungs and pulmonary oedema resulting from prolonged unconsciousness due to brain damage. However, the appellant contends that the defence position at least raises a reasonable doubt in the prosecution case as to the cause of brain damage to the deceased, particularly in view of the fact that there is no affirmative specific proof of the presence of anti-diabetic drugs in her system. It is the case for the appellant that Dr. Abeysuriya is a disinterested expert witness whose evidence the trial Court could not have totally rejected for the reasons adduced by that Court for such rejection and that the Court of Appeal erred in upholding the conviction of the appellant for the murder of Mrs. Eunice Peiris.

Mrs. Peiris returned to the country from England on 06.12.78. Rev. Edison Mendis (her brother) and his wife Mrs. Myrtle Mendis had seen her. She was happy and cheerful on 07.12.78, attended the Thursday Church Service as usual and was normal. Malrani speaks to an incident on 06.12.78 when the appellant went into a trance and told them that the angel said that Mrs. Peiris had a stomach ailment and should be shown to Dr. Weerasena. To an inquiry by the appellant, Mrs. Peiris said that she had no pain. The appellant showed her to Dr. Weerasena around 10.12.78, and gave a history of the illness on the basis of which Dr. Weerasena prescribed stalacene (for anxiety) and maxolen (for puffiness of stomach). The appellant also obtained for himself declinex (for high blood pressure, a drug to reduce blood pressure). These drugs he purchased on 11.12.78 (X13B).

After a lengthy consideration of many other matters to which I shall presently advert, the High Court took the view that Mrs. Peiris had no cause for anxiety but that the appellant was confusing her with his statements based on supernatural powers of which the Court cannot take cognizance; the Court has to decide issues upon evidence concerning things of this world as against matters which depend on faith. In any event, there was no evidence that the appellant indeed had such powers, the defence suggestion being that Malrani had

been put up by the Mendises to falsely testify against her own father. Therefore, the Court can only decide whether the appellant in fact claimed supernatural powers and uttered the words attributed to him. On this basis the Court believed Malrani's evidence regarding the trance and the conduct of the appellant.

The next phase namely, the period subsequent to the treatment by Dr. Weerasena and up to 15.01.79 is covered by the testimony of Malrani, Rev. & Mrs. Mendis and Eardly Mendis. The deceased was less cheerful after 07.12.78. She said that she was feeling dizzy, dull and drowsy; she deteriorated around Christmas. On 29.12.78 after a party at the Vicarage, the appellant had gone into a trance and told the deceased that this was going to be her last party, upon which she started crying. The deceased did not attend the new year's eve family lunch at Rev. Mendis's house on 31.12.78. She did not go to the Airport to see Malrani off on 02.01.79. Malrani says that the appellant used to give pills to the deceased and after taking them she used to sleep and sleep. The appellant told Dr. E. V. Peiris (on 24.01.79) that on the 17th and 29th July '78 the deceased had collapsed. On 14.01.79 the deceased wrote a letter to her children in Wales (2D1); that letter does not indicate that she was having any mental illness; but in it she explained that she did not know what was wrong with her.

The High Court makes the point that although the appellant rushed Mrs. Peiris to Dr. Weerasena soon after her return to the Country, the appellant did not summon a doctor when she was ill the whole of December after the consultation on 10.12.78 and up to 15.01.79 when she was found unconscious. This resulted in her first hospitalisation.

DECEASED'S FIRST HOSPITALISATION AT DURDANS HOSPITAL

On 15.01.79 Dr. Weerasena visited the Vicarage on being summoned by the appellant and found the deceased unconscious with an unrecordable blood pressure; her pulse could not be felt.

Dr. Weerasena dispatched her to Durdans Hospital. The appellant gave the history as follows:–

"Treated for acute depression – artaine and stalacene – was drowsy since yesterday" (P10). So, when he admitted her to the hospital the appellant did not inform that she had collapsed at the Vicarage.

Dr. Weerasena had phoned Durdans Hospital at the time the deceased was sent there and given instructions to administer 10% of dextrose (to elevate blood sugar) and methasole (to elevate blood pressure). This treatment was promptly given whereupon the patient recovered; she was then drowsy but her blood pressure picked up to 150/90. At that stage Dr. Mrs. Panditharatne had seen the deceased.

Thereafter Dr. Sathanandan who had seen the deceased was not aware that she had been brought unconscious and acting on the history given by the appellant, diagnosed endogenous reactive depression and gave her a mild dose of Tofranil. He equated the depression to a condition resulting from a family bereavement, failing an examination or a broken love affair. Sathanandan admitted that if the deceased had been unconscious and regained consciousness, it was consistent with a physical and not a mental cause. Thereafter she did not suffer lack of oxygen to the brain or brain damage; she recovered almost fully and was discharged on 20.01.79.

GLASS HOUSE TEST ON MRS. PEIRIS

After her discharge from Durdans, Dr. Weerasena wanted Mrs. Peiris to be shown to Dr. E. V. Peiris. This was done on 24.01.79. Dr. Peiris gave a letter (P22) for an Extended Glucose Tolerance Test. Thereafter the appellant met Dr. Weerasena and without showing him P22 told him about the test ordered by Dr. Peiris and got another letter from Dr. Weerasena (P11). The appellant booked an ordinary test at the Glass House over the phone for 29.01.79, took Mrs. Peiris

to the Lab and started the test without showing P22 or P11 (these were later found in the Vicarage by the police). After one hour the appellant told the Lab Technician (Harridge) that he had given a call to Dr. Weerasena who wanted an extended GTT. The bill was altered accordingly; an extra Rs. 40/- was charged; and the test was done.

The appellant brought Mrs. Peiris from the verandah each time a blood sample was drawn, and did all the talking whilst she appeared weak and sick. The appellant knew a lot about the GTT and showed Harridge 2 blood reports during the test. The defence position was that the appellant made a mistake when he ordered an ordinary test and corrected himself when he realised his mistake. Dr. Weerasena denied giving instructions to the appellant over the phone. After considering the testimony very carefully the Court held that the appellant's conduct was deliberate. The result of the test so obtained is in document P24 and shows that the fasting blood sugar was 73mg% and despite the administration of 50cc glucose blood sugar fell down to 65mg%, 51mg% and 50mg% at each stage of the last three 1/2 hourly tests i.e. below fasting level showing reactive hypoglycaemia. The prosecution led this evidence to show that the appellant manipulated the test to indicate a false endogenous spontaneous reactive hypoglycaemia for the purpose of obtaining a letter from Dr. Weerasena to mislead the hospital at the final hospitalisation of the deceased.

FINAL HOSPITALISATION OF MRS. PEIRIS

On 30.01.79 Mrs. Peiris had been well and sitting up; she had her meals and saw Rev. & Mrs. Mendis off at 7.30 p.m. Dr. Weerasena saw her at the Vicarage that evening and found her drowsy; (the appellant did not show him the result of the GTT (P24). On 31.01.79 the appellant telephoned Rev. Mendis, Dr. Weerasena and Dr. Peiris. He told Rev.. Mendis that he was hospitalising Mrs. Peiris; she was sleeping and there was no hurry and asked Rev. Mendis to collect a letter from Dr. Weerasena. Rev. Mendis collected the letter (P13) and visited the vicarage and found Mrs. Peiris unconscious.

P13 issued for admitting Mrs. Peiris to the hospital states –

"4 hour GTT shows that there is hypoglycaemia after 4(3) hours and she also says that she feels giddy when she takes sugar".

This history was given by the appellant to Dr. Weerasena over the phone after reading figures from the GTT; the fact that the appellant made such a phone call is also borne out by Dr. Peiris, (to whom also the appellant rattled off GTT figures over the phone) Myrtle Mendis, Eardly Mendis and Rev. Mendis who collected P13 from Dr. Weerasena at about 10.30 a.m. The High Court correctly held that the statement that "she feels giddy" is not a dying deposition attributable to Mrs. Peiris because Dr. Weerasena said that he wrote P13 on what the appellant told him.

At the admission to hospital Dr. Rajah Silva recorded in BHT P21 at EPGH 10C "history from the husband Rev. Father Mathew Peiris – thirst, loss of appetite, later she felt giddy 2 to 3 hours after meals"; at EPGH 11 "The patient had been given glucose at a GTT and she became very drowsy after the test"; EPGH 11A "Having fluctuating levels of unconsciousness (drowsy to deep coma) from about 6.00 p.m. the previous day . . ."; EPGH 11B "yesterday she had slurring of speech, she took some sugar, but she became very drowsy according to her husband.

CONDITION OF MRS. PEIRIS ON ADMISSION AND TREATMENT

On admission she had suffered irreversible brain damage and was unconscious. At 12.15 p.m. blood pressure was 100/60 (just below normal) BHT P24 at EPGH 9; blood sugar was 30mg%. At 12.30 p.m. Dr. Silva saw her; the pressure had dropped to 60/40, EPGH 16B. On seeing the figures in the Glass House GTT a photocopy of which the appellant produced on admission, Dr. Silva inquired whether the deceased had taken anti-diabetic drugs. The appellant said she was not a diabetic and had not taken anti-diabetic drugs. At 1.00 p.m. the patient was still unconscious, EPGH 14A. The appellant said the

patient's blood sugar falls more when glucose is given, EPGH 14B. He also gave a history of depression and treatment with Tofranil, EPGH 10C. Even after dextrose infusion the patient did not recover and Dr. Silva informed the appellant that the patient had suffered permanent brain damage and was unlikely to recover. At 2.45 p.m. the appellant again advised the doctor not to give dextrose to the patient, EPGH 15B.

Notwithstanding the appellant's objections the patient was given dextrose. By 11.00 p.m. her blood sugar rose to 247mg% (above normal) pressure was 70/40 (still below normal) at 12.30 a.m. on 01.02.79 a blood transfusion was started and at 4.30 a.m. the patient responded to painful stimuli. At 3.30 p.m. blood pressure was 100/60 (near normal) at 10.45 p.m. blood sugar was 82mg% (within normal level). These levels remained until her death. While all this was happening Dr. Wickremasinghe, Senior House Officer made an entry "suspected poison – inform police – hypoglycaemia agent – attempted suicide/homicide", EPGH 18A. The police were accordingly informed.

Mrs. Peiris was given antibiotics and 50% dextrose until 07.02.79. She was then switched over to normal food through nasal tube; she was also given oral dextrose; but she had suffered irreversible brain damage and hence never recovered consciousness. She died on 19.03.79.

CAUSE OF MRS. PEIRIS'S PERMANENT BRAIN DAMAGE AND UNCONSCIOUSNESS

(a) **PROSECUTION VERSION**

On this matter, the prosecution led the evidence of Dr. Rajah Silva, Dr. Subramaniam, MBBS, MRCP, AJMO who did the Judicial Post-

mortem and the autopsy on all organs and Dr. Naganathan, MBBS, MD, MRCP, FRCP Consultant Physician.

Dr. de Silva said that his tentative diagnosis of Mrs. Peiris's permanent brain damage and unconsciousness was –

(a) hypoglycaemia or

(b) cerebro-vascular accident (stroke).

He excluded diabetic coma, uremic coma (kidney disease), hepatic coma, meningitis and encephalitis; endocrinal dysfunctions; head injuries, infectious disease; all poisons except anti-diabetic drugs. The cause of the coma was also not anti-depressant drugs for Dr. Sathanandan prescribed a mild dose of Tofranil which could not result in unconsciousness; it was not suicide for by 20.01.79 she had almost fully recovered at Durdans from her first illness. Dr. Subramaniam at the Judicial Post-mortem confirmed this diagnosis. He found no infection of the brain, no sign of stroke, no heart disease, organic disease or poison. The medical evidence for the prosecution concludes that the cause of Mrs. Peiris's unconsciousness was hypoglycaemia.

(b) **DEFENCE VERSION**

The defence called Dr. Abeysuriya, MBBS, FRCS, Senior Consultant Neurosurgeon, General Hospital. We were told at the hearing of this appeal that this doctor had been listed as a witness in the indictment but was not called by the prosecution; and that the defence called him. On 03.02.79 he had examined the patient at the request of the Physician in charge of the ward. Having found that the patient was in a semi-comatose condition Dr. Abeysuriya made an entry in the BHT "Her comatose state appears due to Anoxia consequent to a sustained hypotension about 72 hours ago". He

went through the BHT and the history recorded there as provided by the appellant and gave his opinion.

It would seem that the cause of coma contemplated by his entry is severe depression but later Dr. Abeysuriya modified this and said even moderate depression can bring about unconsciousness. Accordingly, the High Court raised the issue for decision i.e. whether acute or moderate depression could result in stress leading to suppression of the hypothalmus pituitary glands giving rise to a fall in blood pressure and reactive hypoglycaemia causing a fall in blood sugar.

HOW DEPRESSION LEADS TO BRAIN DAMAGE

Suppression of the hypothalmus gland complex arrests the release of cortisol and causes lack of cortisol in blood which helps to boost blood pressure. Blood pressure drops leading to insufficient oxygen reaching brain cells; if this occurs sufficiently long, it would cause permanent brain damage. Suppression of the hypothalmus would also retard the pituitary gland function of releasing glucose into the blood, in which event blood sugar (an essential nutrient to the brain cells) is affected.

ASSESSMENT OF DR. ABEYSURIYA'S OPINION

The Trial Judges correctly guided themselves with the statement that if the defence position at least created a reasonable doubt the accused would be entitled to an acquittal and proceeded to evaluate the opinion in great detail analysing and testing the data relied upon by Dr. Abeysuriya.

The learned Judges observed that Dr. Abeysuriya was the only doctor who gave this opinion and the other doctors were not specifically cross-examined on it. While that remark is relevant, I will not consider it to be a matter which would cause prejudice to the

defence since their task is very light namely, to create a reasonable doubt in the prosecution version. On the basis of what has been set out above, I think that the trial Judges themselves were aware of this.

As to his knowledge as a Neurosurgeon to speak out on the subject under reference, Dr. Abeysuriya told the Court that Surgeons required a knowledge of diabetics and other associated conditions and also sugar metabolism which is controlled by the hypothalmus pituitary glands. The Court observed that Dr. Abeysuriya did not support his opinion with any medical book or publication. Under cross-examination he referred to a document. This document was not produced and marked by the defence and so the prosecution marked it P49. He said that he was guided by this document, and that Mrs. Peiris's case was a rare condition and that he has had no previous experience of this condition.

BASIS OF DR. ABEYSURIYA'S OPINION

As a factual basis for the opinion that Mrs. Peiris suffered from a depressive illness the defence relied on the following material:–

(1) A letter written by Mrs. Peiris to the appellant (1D1) and letters written by Malrani to the appellant (1D2 – 1D6) before Mrs. Peiris returned to the country some of which allege ill-treatment by Mihiri, her daughter with whom she was staying in Wales. In 1D1 Mrs. Peiris says "I have been heavily tortured by Mihiri. I am disturbed". In her letters Malrani informs as follows:

(i) "Mum does not know when she is to come back. Staying with them is awful. Mum says she can't come back alone" 1D4;

(ii) "Mum is being ill-treated by Akki; she is in tears all the time; akki pouncing on mum at every turn; she hates mum; does not even see to her food; mum did not sleep; akki told her to go to the doctor" 1D3;

(iii) "Mum is upset, I don't show it in case she gets depressed" 1D2.

(2) The failure of a marriage proposal for Malrani with a person named Raj in Colombo at about this time regarding which Malrani showed much interest, as evidenced by her letters 1D5 and 1D6;

(3) The presence of Dalrene Ingram in the Vicarage which she used to visit even though by the time Mrs. Peiris returned to the country she had been settled elsewhere in an annex by the appellant;

(4) As was submitted to us at the hearing by Mr. Obeysekera, PC, Mrs. Peiris had been telling the Mendises about the middle of January '79 that she was depressed and felt lonely after her children left. Two of them namely Mihiri and Malrani had come to Sri Lanka and stayed in the Vicarage with their parents.

The defence also relied on the following medical data in respect of Mrs. Peiris which I have referred to in detail earlier in this judgment:–

(1) 10.12.78 treatment by Dr. Weerasena for anxiety.

(2) 15.01.79 drop in her blood pressure and treatment at Durdans Hospital by Dr. Sathanandan.

(3) 29.01.79 P24 GTT at Glass House, said to be proof of reactive hypoglycaemia.

(4) P13 Dr. Weerasena's letter of admission to the hospital on 31.01.79 also said to be proof of reactive hypoglycaemia.

(5) BHT entries on Mrs. Peiris carrying the history of her illness and in particular the drop in blood pressure at 12.30 p.m. on 31.01.79 to 60/40.

Mr. Obeysekera, PC. placed great reliance on the fact that unlike in the case of Russel whose blood pressure was not affected, Mrs. Peiris suffered a severe drop in her blood pressure during her illness and submitted that this is evidence of a depressive illness or at least it must raise a reasonable doubt in the prosecution case.

THE OPINION OF THE HIGH COURT AT BAR

In order to facilitate the appreciation of the treatment of this subject by the High Court, I have earlier in this judgment set out all the events which occurred from the time Mrs. Peiris returned to the country until her death along with some of the comments or conclusions of the trial Judges, where appropriate. I shall now examine the several conclusions of the Judges on the basis of which they totally rejected Dr. Abeysuriya's opinion.

P49

It is an article presented by one B. J. Corell in 1969 and published in the British Medical Journal at P49. It concerns an experiment done on 16 severely depressed patients in Australia selected from mental institutions to measure the cortisol level in blood (normal level being between 5-25%).

(a) in the depressed state after inducing hypoglycaemia by lowering the blood sugar level below 45mg% by insulin injection;

(b) in the recovered state months later, the recovery being done by electric shock.

BLOOD SUGAR LEVEL

Before insulin injection, the fasting blood sugar level of patients was 85mg%. After insulin administration, it was seen that in 12 patients blood sugar level fell below 30mg% or 45mg%. In

others, it did not fall below 45mg%. After recovery the fasting blood sugar level was 78mg%, giving rise to the observation that in the depressed state the fasting blood sugar level is higher than on recovery.

CORTISOL LEVEL

In 60% of the severely depressed patients with induced hypoglycaemia, cortisol level remained normal indicating that there would be no fall in blood pressure. Only in 4 patients (25%) the criteria was satisfied and the cortisol level was low.

The learned Solicitor-General in his written submission comments that P49 does not support Dr. Abeysuriya's theory and on the contrary establishes that patients withstand hypoglycaemic attacks in their depressed state better than in their recovered state; and further that Dr. Abeysuriya admitted in evidence that he had never come across nor read of a case where patients became unconscious from causes attributed solely to depression, a condition which he was compelled to admit, Mrs. Peiris had.

COURT'S ASSESSMENT OF DR. ABEYSURIYA'S OPINION BASED ON P49

(1) P49 is an experiment on severely depressed mental patients in conditions of induced hypoglycaemia by injection of insulin; it is not even authority for proposition that severe depression causes spontaneous reactive hypoglycaemia; at least it shows that very rarely such patients can have a low cortisol level and blood pressure collapse.

(2) In any event according to Dr. Sathanandan, Mrs. Peiris was not severely depressed; she was given a mild drug Tofranil at Durdans and recovered in 4 days. Hence P49 has no application to her.

(3) P49 cannot be used to support Dr. Abeysuriya's modified opinion that severe to moderate depression causes reactive hypoglycaemia. His view that even moderate depression can affect hypothalmus activity is also not supported by P49 and is speculation or conjecture on his part.

(4) The defence pointed out to table 9:3 page 202 of Marks and Rose on Hypoglycaemia where depressive psychosis is shown along with several other diseases to co-exist with reactive hypoglycaemia. This does not mean that reactive hypoglycaemia is caused by depressive psychosis.

(5) Dr. Abeysuriya's opinion on Mrs. Peiris is unsupported by his experience or by any medical textbook or publication and hence it is not an expert opinion, and is therefore irrelevant. The Court accepted the opinion of the medical experts called by the prosecution that the cause of reactive hypoglycaemia is unknown.

I am in agreement with these conclusions.

P24 GLASS HOUSE TEST RELIED ON BY DR. ABEYSURIYA

I have previously set out the details of this test. Dr. Abeysuriya said on P24 alone he could say that Mrs. Peiris had reactive hypoglycaemia provided that the necessary preconditions are satisfied. He rejected EPGH 124 EGTT done on her at the hospital on 08.02.79 which shows a normal curve (fasting level 81mg% and after 5 hours, 81mg% and not going below this, at any stage) EPGH 124 negatives reactive hypoglycaemia. The reason for rejecting it was that 7 hours before the test the patient had been given Horlicks. But he relies on P24 regarding which there is no evidence whether pre-conditions are satisfied. It was done at a private lab having no lab control. Once blood is drawn the patient is sent to the verandah. The test was booked by the appellant who is supposed to have received instructions regarding fasting. In the circumstances, the Court thought that Dr. Abeysuria's evidence is contradictory.

The prosecution led evidence of P24 to prove deliberate manipulation of the test by the appellant. Having held that the various acts on his part in relation to P24 were deliberate, the Court concluded that considering the lack of evidence as to satisfaction of preconditions and the conduct of the appellant, the possibility of manipulating the blood sugar is ever present; the conduct of the appellant is dishonest, secretive, unreliable and hence P24 cannot represent a true, uninduced, spontaneous fall in blood sugar. Dr. Nagaratnam said that a fall in blood sugar can be induced; Dr. Abeysuriya admits that this is possible: P24 is unreliable to base an opinion and hence the medical opinion expressed by Dr. Abeysuriya relying on P24 is unreliable and is of no value.

The Court has indeed used very strong language which appears on first blush to place an unwarranted burden on the accused. Had this matter rested on P24 alone, it might constitute a misdirection; but this is not so, for the evaluation of P24 has to be in the context of the entire case which is bristling with items of guilty conduct on the part of the appellant. Viewed in that light, I see no objection to the rejection of P24 as being unreliable in forming the basis for the expert medical opinion of the magnitude attempted by Dr. Abeysuriya.

P13 LETTER OF ADMISSION; P21 BHT EPGH 10C EPGH 11B RELIED UPON BY DR. ABEYSURIYA

As appears in the facts set out earlier, Dr. Weerasena issued P13 solely on the history given over the phone by the appellant. The history given to Dr. de Silva and recorded in the BHT is also what the appellant told that doctor. The appellant has tutored all these documents to make it appear that Mrs. Peiris had reactive hypoglycaemia. On 31.01.79 he told Rev. Mendis that Mrs. Peiris was sleeping when she had in fact collapsed. He told Dr. Silva a half-truth if not a falsehood when he said that Mrs. Peiris had fluctuating levels

of unconsciousness from 6.00 p.m. on 20.01.79. She was only drowsy and saw Rev. & Mrs. Mendis off at about 7.30 p.m. When the appellant phoned Dr. Weerasena on 31.01.79 he did not inform that Mrs. Peiris was unconscious.

The High Court Judges accepted that P13 and the BHT entries contain what the appellant said and not the observations of doctors. The Court also held that the history given in P13 is false and concluded that the history so provided is unreliable and unsafe to be acted upon to express an expert medical opinion. The Court concluded that Dr. Abeysuriya's opinion that Mrs. Peiris suffered from an uninduced reactive hypoglycaemia is irrelevant. I am in agreement with this conclusion.

WAS MRS. PEIRIS MODERATELY DEPRESSED? WAS HER DEPRESSION DUE TO A MENTAL OR PHYSICAL CAUSE?

The High Court at Bar considered this question before finally rejecting Dr. Abeysuriya's opinion. The Judges observed that this doctor who expressed the opinion that Mrs. Peiris was probably moderately depressed on 31.01.79 had never seen her before that day. He only inferred it from the history available to him. The Court then analysed the evidence.

Mrs. Peiris was a teacher and a retired school Principal who enjoyed good health throughout. She was well and happy until she went on the world tour on 04.02.78. The defence relied on the letters 1D1-1D6 written whilst she was in the U.K. with Mihiri and on the failure of Malrani's marriage proposal as indicating a cause of depression leading to collapse of blood pressure.

The letters undoubtedly disclose a state of acute conflict and harassment suffered by Mrs. Peiris; but Malrani says that they were commonplace incidents in a family which were quickly forgotten; and

that her mother was not mentally depressed. In considering this evidence the Court observed that Mihiri, Malrani and Munilal were all in the U.K., employed, a matter of pride for the deceased; and that in December 1978 Mihiri came to Sri Lanka and stayed in the Vicarage. On 04.01.79 the deceased wrote a letter (2D1) to her children in Wales which does not indicate any mental illness. The Court accepted Malrani's evidence. I would add, another item of evidence indicating that the deceased was not mentally depressed on account of her problems with Mihiri but had forgotten them. That is in the middle of January '79 she had told Mendises that she was depressed; and that after her children had gone she was lonely. This evidence was relied upon by Mr. Obeysekera, PC., to support the opinion that she was mentally depressed. The children referred to are Mihiri and Malrani and the evidence shows that the deceased was very much attached to them; so if she was depressed it was not due to any grudge against Mihiri.

As regards the failure of the marriage proposal, the Court pointed out that it was a proposal brought by the appellant and that after consideration Malrani and Mrs. Peiris had rejected it. As such, it was not a cause of mental depression.

The Court held that the presence of Dalrene in the Vicarage was not a cause of irritation to Mrs. Peiris. Thus in 2D1 she says "fortunately Dalrene looks after the marketing". The Court found an explanation for this disposition in the representation which the appellant had made to Mrs. Peiris (which she had accepted) that the angel had asked him to look after Dalrene and her family.

The findings of the High Court is that on her return to the country Mrs. Peiris had no cause for anxiety but it was the appellant who confused her with his statements on claimed supernatural powers; that at Durdans Hospital her blood pressure picked up to 150/90 on dextrose infusion and she recovered in 4 days; that the appellant

gave to Durdans a false history of acute depression without disclosing that she had blackouts; and that on the basis of that history Dr. Sathanandan was misled into diagnosing endogenous reactive depression.

The Court also referred to the evidence of Dr. J. G. C. Peiris who said that the appellant had requested him to issue a letter that Mrs. Peiris was a depressed hypochondriac, prone to treating herself with drugs. Dr. Peiris said that he knew her to be a perfectly normal person in all the years he knew her and declined to give such a letter.

The Court noted that on 31.01.79 too on admission Mrs. Peiris's blood pressure was 100/60 which was near normal. No doubt it dropped to 60/40 but it picked up with dextrose infusion and at 3.30 a.m. on 01.02.79 it was again 100/60 whilst sugar was 82mg% (normal) and remained so until her death.

The Court held that the cause of Mrs. Peiris's depression was a physical and not a mental cause; and hence Dr. Abeysuria's opinion was unreliable and irrelevant as expert testimony and rejected it. I am in agreement with this finding.

CAUSE OF IRREVERSIBLE BRAIN DAMAGE AND UNCONSCIOUSNESS – HYPOGLYCAEMIA

After rejecting Dr. Abeysuriya's opinion the trial Court confirmed the prosecution version that the cause of irreversible brain damage and unconsciousness which led to the deceased's pneumonia and death was hypoglycaemia and that her condition was not attributable to any organic illness. Here the Court referred to medical evidence which has a bearing on the phenomenon of Mrs. Peiris suffering a drop in her blood sugar. The evidence is that hypoglycaemia of about 12 hours could affect vesomotor centres of the brain which causes

blood pressure to drop when blood flow and oxygen to the brain is reduced causing shock. Hypoglycaemia begins when the sugar drops to 50mg%-40mg% depending on the age and condition of the person; and prolonged hypoglycaemia causes permanent brain damage.

Considering the entirety of the evidence, I do not think that the fact that (unlike in the case of Russel) Mrs. Peiris suffered a drop in blood pressure during her illness is vital in determining the cause of brain damage to Mrs. Peiris. As the Court observed the drop in her blood pressure on 31.01.79 was a sudden drop between 12.15 p.m. and 12.30 p.m. which cannot be attributed to a mental cause as she was unconscious at that time. On dextrose infusion, she regained the near normal blood pressure level which she had at the time of admission and retained it until death.

CAUSE OF HYPOGLYCAEMIA

Having previously eliminated all natural causes of hypoglycaemia, the Court proceeded to hold that the cause was an outside agency such as euglucon. As regards the absence of scientific evidence of a blood test for the presence of anti-diabetic drugs in Mrs. Peiris's system, the Court observed that the doctors were not aware of such a test which was known to the Government Analyst and that in any event it was a matter for the police, to whom the doctors had conveyed their suspicion. No such test had been done but the prosecution had placed sufficient material to draw the inference that there was in fact anti-diabetic drugs present in the deceased's body.

HOMICIDE

The Court ruled out both suicide and accident, particularly in view of the fact that Mrs. Peiris had become unconscious on 15.01.79 and again on 31.01.79 which would make suicide or accident highly

improbable. The Court held that the prosecution had proved beyond reasonable doubt that Mrs. Peiris was murdered as a result of the administration of an anti-diabetic drug and that her death amounts to homicide. I am of the view that this finding is warranted by the evidence.

CASE AGAINST THE APPELLANT

The Court held that it was the appellant and no one else who administered the drug. This finding was supported by the following material:

(1) The appellant was a diabetic and Dr. Weerasena had prescribed euglucon for him in 1976. He knew much about hypoglycaemia and blood sugar levels. This is the evidence of Dr. Dayasiri Fernando, Dr. Joseph and Dr. E. V. Peiris whom he had consulted about blood sugar. He also had with him the book P40 entitled "Body, Mind and Sugar". Between 22.09.78 and 11.12.78 he had purchased 80 tablets of 5mg euglucon.

(2) The evidence of Malrani that in December she saw the appellant giving pills to the deceased; and on consuming them she got drowsy. At the Durdans Hospital the deceased had told Myrtle Mendis that she did not know whether she was too weak to take all these drugs. Myrtle Mendis then asked the appellant why the deceased should take all these drugs. The appellant told her they are on doctor's orders. The Court accepted the evidence of these witnesses.

(3) Whenever the appellant gave pills the deceased became drowsy. This shows that instead of the anti-depressant drugs given for raising her mood, the appellant was giving her anti-diabetic drugs.

(4) Even after the consultation with Dr. Weerasena the deceased continued to be ill. She collapsed twice in December but the appellant did not have her treated until her admission to Durdans on 15.01.79. He was going into trances and making statements in order to psychologically condition the deceased's mind into accepting that she was ill and unlikely to recover.

(5) The appellant misled the Durdans Hospital by failing to disclose her bouts of unconsciousness; instead he gave a history of depressive illness. He then obtained P24, a manipulated GTT and P13 the letter of Dr. Weerasena and thereafter misled the General Hospital to the belief that the deceased had reactive hypoglycaemia.

(6) At the hospital the appellant made every endeavour to prevent dextrose infusion to the deceased saying that sugar was bad; he next attempted unsuccessfully to obtain a false certificate from Dr. J. G. C. Peiris stating that the deceased was a hypochondriac prone to treating herself with drugs.

The Court then referred to the evidence of Professor Jayasena and Dr. Nagaratnam about the drug euglucon which if given to a normal person would lower the blood sugar causing permanent brain damage and unconsciousness and death. The Court concluded that the appellant had developed an association with Dalrene Ingram and had chosen to murder the deceased by the gradual and systematic administration of an anti-diabetic drug; and that the prosecution had proved beyond reasonable doubt that the appellant had murdered his wife. In the result, the appellant was found guilty of murder on count 4 of the indictment.

ASSESSMENT OF THE CASE FOR THE APPELLANT

I have examined the case for the appellant in considerable detail in deference to the strenuous submissions made by the learned President's Counsel who appeared for the appellant and for the reason that some aspects of the case do not appear to have been examined at length by the Court below. Having considered every issue very carefully, I see no merit in the complaint that the Court of Appeal erred in confirming the finding of the trial Judges.

It was submitted to us that the trial Judge erred in their finding in respect of the extended GTT done at the Glass House, *inter alia*, in view of the possibility that the receptionist who took the booking for the test on the phone (and who did not testify at the trial) made a mistake in recording the booking as for a normal GTT; if so the adverse inferences made against the appellant for changing the test are unwarranted. I cannot agree. That booking was on the 27th. But the evidence of Nimal Soyza another receptionist is that on the 29th when the appellant came in, he asked for a GTT ESRH; the witness was not shown the letters P11 and P22 which the doctors had issued specifying the test; and that some time after the test started, the appellant requested for an extended GTT for four hours. The High Court has considered the evidence and reached certain findings of facts and I see no justification to interfere with those findings.

In the earlier part of this judgment, I have considered in detail, all the other points made on behalf of appellant and agreed with the findings of the High Court. Those findings have been affirmed by the Court below. Finally, I have to consider the complaint of the appellant that he has been denied a fair trial on account of prejudice caused by the pooling of evidence. I hold that as in the case of the conviction under count 2 of the indictment, here too no such prejudice has been caused; there is ample evidence to warrant the appellant's conviction for the murder of Mrs. Peiris; and the appellant has not been denied a fair trial on account of prejudice caused by the pooling of evidence. Accordingly, I affirm the judgment of the Court of Appeal in respect of count 4 of the indictment.

CONCLUSION

The judgment of the Court of Appeal dismissing the appeal of the appellant on counts 2 and 4 of the indictment is affirmed and this appeal is dismissed.

WADUGODAPITIYA, J. - I agree.

P. R. P. PERERA, J. – I agree.

Appeal dismissed.