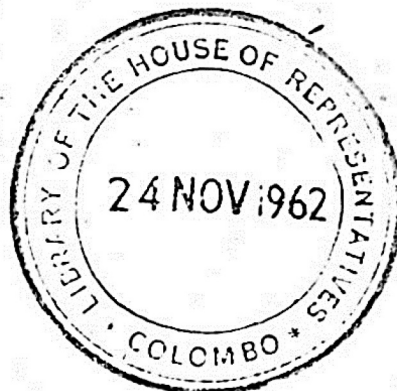


PARLIAMENT OF CEYLON

3rd Session 1962-63



Criminal Law Act, No. 31 of 1962

Date of Assent : November 14, 1962

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L. D.—O. 7/62.

AN ACT TO AMEND THE CRIMINAL PROCEDURE CODE, THE CRIMINAL LAW (SPECIAL PROVISIONS) ACT, NO. 1 OF 1962, AND TO MAKE SPECIAL PROVISIONS RELATING TO CERTAIN OFFENCES UNDER THE PENAL CODE.

[Date of Assent: November 14, 1962]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Criminal Law Act, No. 31 of 1962.

Short title:

2. The Criminal Law (Special Provisions) Act, No. 1 of 1962, is hereby amended as follows :—

Amendments to Act No. 1 of 1962.

(a) by the repeal of sections 4, 8, 9, 10 and 14, of that Act ; and

(b) by the repeal of paragraph (1), subparagraph (a) of paragraph (2), and paragraph (4), of section 5 of that Act.

3. Section 440A of the Criminal Procedure Code is hereby repealed and the following new section substituted therefor :—

Replacement of section 440A of the Criminal Procedure Code.

“Three Judges of the Supreme Court at Bar may try without jury in certain cases.

440A. (1) Notwithstanding anything to the contrary in any other written law or any other provision of this Code, the trial of any person for any offence punishable under section 114, section 115 or section 116 of the Penal Code shall be held before the Supreme Court at Bar by three Judges without a jury.

(2) In the following cases, that is to say,—

(a) in the case of any offence under Chapter VI of the Penal Code, other than an offence under section 114, section 115 or section 116 of that Code ; or

(b) in the case of any offence, other than an offence under Chapter VI of that Code, which, by reason of civil commotion, disturbance of public feeling or any other similar cause, the Minister of Justice may consider to be appropriately triable in the manner in this section provided,

*Minister decides
trial at
bar.*

the Minister of Justice may by Order under his hand direct that the trial of any person for such offence shall be held before the Supreme Court at Bar by three Judges without a jury.

(3) A trial before the Supreme Court under this section may be held either upon indictment, or upon information exhibited by the Attorney-General.

(4) Notwithstanding anything to the contrary in section 385 or any other law, the Attorney-General may exhibit to the Supreme Court informations in respect of any offences which are required by or under this section to be tried before the Supreme Court at Bar by three Judges without a jury.

(5) A trial before the Supreme Court under this section shall proceed as nearly as possible in the manner provided for other trials before the Supreme Court, subject to such modifications as may be ordered by the Court or as may be prescribed by rules made under the Courts Ordinance.

(6) A person committed for trial before the Supreme Court under this section shall not be admitted to bail by a Magistrate except with the authority of the Attorney-General.

(7) At any trial before the Supreme Court under this section, the Court, or the presiding Judge thereof, may give directions for the summoning, arrest, custody and bail of all persons charged before the Court by information exhibited under this section :

Provided, however, that any such person shall not be admitted to bail except with the consent of the Attorney-General.

(8) The trial of any person before the Supreme Court under this section may commence or continue in the absence of such person if the Court is satisfied that he is evading arrest, or absconding, or feigning illness.”.

 The following new section is hereby inserted immediately after section 440A of the Criminal Procedure Code, and shall have effect as section 440B of that Code :—

Insertion of
new section
440B in the
Criminal
Procedure Code

“ Special
provisions
regarding trials
at Bar before the
Supreme Court
under section 216
or section 440A
of this Code.

440B. (1) In every case of a trial at Bar before or by the Supreme Court under section 216 or section 440A of this Code, it shall be lawful for the Chief Justice to name the three Judges (of whom he may be one) before or by whom the trial shall be held.

(2) At any trial before or by the Supreme Court under section 216 or section 440A of this Code, the determination of any question before the Court shall be according to the opinion of the majority of the Judges.”.

5. The First Schedule to the Criminal Procedure Code is hereby amended as follows :—

Amendment of
the First
Schedule to
the Criminal
Procedure Code.

- (1) in the entry in the Third Column of that Schedule relating to section 113B of the Penal Code, by the substitution, for the words “ if arrest ”, of the words “ if arrest for the offence ” ;

- (2) in the entry in the Third Column of that Schedule relating to section 114 of that Code, by the substitution, for the words "Shall not", of the word "May"; and
- (3) in the entry in the Third Column of that Schedule relating to section 123 of that Code, by the substitution, for the words "Shall not", of the word "May".

Special provisions regarding certain matters.

6. The following provisions shall have effect in regard to the amendments made in the Criminal Procedure Code and the Criminal Law (Special Provisions) Act, No. 1 of 1962, by this Act, and the direction, information, and nomination reproduced in the First Schedule, the Second Schedule, and the Third Schedule, respectively, to this Act :—

- (a) the said direction, information and nomination, shall be deemed, for all purposes, to have had, and to have, no force or effect in law ;
- (b) the Minister of Justice shall not have, and be deemed never to have had, any power or duty to nominate the Judges for the trial at Bar without a jury of the persons named in that information in respect of the offences specified in such information ; and
- (c) any action, proceeding, or thing instituted, commenced or initiated by, or by virtue of, the said direction, information or nomination and pending or incompleated on the date of the commencement of this Act shall be deemed, for all purposes, never to have been instituted, commenced or initiated.

First Schedule

DIRECTION UNDER SECTION 440A OF THE CRIMINAL PROCEDURE CODE AS AMENDED BY SECTION 4 OF THE CRIMINAL LAW (SPECIAL PROVISIONS) ACT, NO. 1 OF 1962.

To the Honourable the Chief Justice of the Supreme Court of the Island of Ceylon.

I, Samuel Peter Christopher Fernando, Minister of Justice, by virtue of the power vested in me by Section 440A (1)(a) of the Criminal Procedure Code, as amended by Section 4 of the Criminal Law (Special Provisions) Act, No. 1 of 1962, do hereby direct that the trial of the following persons, to wit,

- (1) Don John Francis Douglas Liyanage
- (2) Maurice Ann Gerard de Mel
- (3) Frederick Cecil de Saram
- (4) Cyril Cyrus Dissanayaka
- (5) Sidney Godfrey de Zoysa
- (6) Gerard Royce Maxwell de Mel
- (7) Wilmot Selvanayagam Abraham
- (8) Bastianpillai Ignatius Loyola
- (9) Wilton George White
- (10) Nimal Stanley Jayakody
- (11) Anthony John Bernard Anghie
- (12) Don Edmond Weerasinghe
- (13) Noel Vivian Mathysz
- (14) Victor Leslie Percival Joseph
- (15) Basil Rajandiram Jesudasan
- (16) Victor Joseph Harold Gunasekera
- (17) John Anthony Rajaratnam Felix
- (18) William Ernest Chelliah Jebanesan
- (19) Terrence Victor Wijesinghe
- (20) Lionel Christopher Stanley Jirasinghe
- (21) Vithanage Elster Perera
- (22) David Senadirajah Thambyah
- (23) Samuel Gardner Jackson
- (24) Rodney de Mel

in respect of the following offences under Chapter VI of the Penal Code, to wit,

- (1) That on or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places, they with others did conspire to

wage war against the Queen and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read with Section 114 of the Penal Code.

(2) That on or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places, they with others did conspire to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.

(3) That on or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places, they with others did prepare to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No.1 of 1962,

be held before the Supreme Court at Bar by three Judges without a Jury.

Given under my hand this 23rd day of June, 1962, at Colombo.

(Sgd.) SAM P. C. FERNANDO,
Minister of Justice.

Second Schedule

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

INFORMATION

Information exhibited by Her Majesty's Attorney-General.

The Queen

vs.

- (1) Don John Francis Douglas Liyanage
- (2) Maurice Ann Gerard de Mel
- (3) Frederick Cecil de Saram
- (4) Cyril Cyrus Dissanayaka
- (5) Sidney Godfrey de Zoysa
- (6) Gerard Royce Maxwell de Mel
- (7) Wilmot Selvanayagam Abraham
- (8) Bastianpillai Ignatius Loyola
- (9) Wilton George White
- (10) Nimal Stanley Jayakody
- (11) Anthony John Bernard Anghie
- (12) Don Edmond Weerasinghe
- (13) Noel Vivian Mathysz
- (14) Victor Leslie Percival Joseph
- (15) Basil Rajandiram Jesudason
- (16) Victor Joseph Harold Gunasekera
- (17) John Anthony Rajaratnam Felix
- (18) William Ernest Chelliah Jebanesam
- (19) Terrence Victor Wijesinghe
- (20) Lionel Christopher Stanley Jirasinghe
- (21) Vithanage Elster Perera
- (22) David Senadirajah Thambyah
- (23) Samuel Gardner Jackson
- (24) Rodney de Mel

Defendants.

This 23rd day of June, 1962.

BE it remembered that Douglas St. Clive Budd Janszé Esquire, Queen's Counsel, Her Majesty's Attorney-General for the Island of Ceylon, who for Her Majesty in this behalf prosecutes, gives the Court to understand and be informed that—

- (1) On or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places within the jurisdiction of this Court, the

defendants abovenamed with others did conspire to wage war against the Queen and did thereby commit an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read with Section 114 of the Penal Code.

(2) At the time and places aforesaid and in the course of the same transaction the defendants abovenamed with others did conspire to overthrow otherwise than by lawful means the Government of Ceylon by law established and did thereby commit an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.

(3) At the time and places aforesaid and in the course of the same transaction the defendants abovenamed with others did prepare to overthrow otherwise than by lawful means the Government of Ceylon by law established and did thereby commit an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.

WHEREUPON Her Majesty's Attorney-General prays the consideration of the Court here in the premises, and that due process of law may be awarded against the defendants abovenamed, in this behalf to make them answer to Our Sovereign Lady the Queen touching and concerning the premises aforesaid.

(Sgd.) D. JANSZÉ,
Attorney-General.

Third Schedule

**NOMINATION MADE BY THE MINISTER OF JUSTICE UNDER SECTION 9
OF THE CRIMINAL LAW (SPECIAL PROVISIONS)
ACT, No. 1 OF 1962.**

WHEREAS I, SAMUEL PETER CHRISTOPHER FERNANDO, Minister of Justice, have on the Twenty-third day of June, 1962, issued a direction under Section 440A of the Criminal Procedure Code as amended by Section 4 of the Criminal Law (Special Provisions) Act, No. 1 of 1962, requiring that the trial of the following persons, to wit,

- (1) Don John Francis Douglas Liyanage
- (2) Maurice Ann Gerard de Mel
- (3) Frederick Cecil de Saram
- (4) Cyril Cyrus Dissanayaka
- (5) Sidney Godfrey de Zoysa
- (6) Gerard Royce Maxwell de Mel
- (7) Wilmot Selvanayagam Abraham
- (8) Bastianpillai Ignatius Loyola
- (9) Wilton George White
- (10) Nimal Stanley Jayakody
- (11) Anthony John Bernard Anghie
- (12) Don Edmond Weerasinghe
- (13) Noel Vivian Mathysz
- (14) Victor Leslie Percival Joseph
- (15) Basil Rajandiram Jesudasan
- (16) Victor Joseph Harold Gunasekera
- (17) John Anthony Rajaratnam Felix
- (18) William Ernest Chelliah Jebanesan
- (19) Terrence Victor Wijesinghe
- (20) Lionel Christopher Stanley Jirasinghe
- (21) Vithanage Elster Perera
- (22) David Senadirajah Thambyah
- (23) Samuel Gardner Jackson
- (24) Rodney de Mel

in respect of the following offences under Chapter VI of the Penal Code, to wit,

- (1) That on or about the 27th day of January, 1962, they with others did conspire to wage war against the Queen and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read with Section 114 of the Penal Code.

(2) That on or about the 27th day of January, 1962, they with others did conspire to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.

(3) That on or about the 27th day of January, 1962, they with others did prepare to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962,

be held before the Supreme Court at Bar by three Judges without a Jury :

NOW THEREFORE, I, SAMUEL PETER CHRISTOPHER FERNANDO, Minister of Justice, in pursuance of the power vested in me by Section 9 of the Criminal Law (Special Provisions) Act, No. 1 of 1962, do hereby nominate

- (1) THE HONOURABLE THUSEW SAMUEL FERNANDO, C.B.E., Q.C.
- (2) THE HONOURABLE LEONARD BERNICE DE SILVA
- (3) THE HONOURABLE PONNUDURAI SAMY SRI SKANDA RAJAH

Judges of the Supreme Court of the Island of Ceylon, to be the three Judges who shall preside over the trial of the aforementioned persons to be held in pursuance of the aforementioned direction.

Given under my hand this 23rd day of June, 1962.

(Sgd.) SAM P. C. FERNANDO,
Minister of Justice.

TO THE HONOURABLE THE CHIEF JUSTICE,
COLOMBO.