

Trial Monitoring report

About the case: Hijaz Hisbulla's case

Case no. : HC 78/21

Courts: High court of Puttalam

Date of hearing: 2024.10.04

Author (s) of report: Sumiri FernandoAAL

1. Who was in courts:

Who	Names / other information	Comments
Judge (s)	Nadee Aparna Suwandurugoda	
Attorney General's Dept.	DSG Lakmini Girihagama DSG Sudarshana de Silva	
Police (CID / TID etc.)	CID Colombo / TID	
Accused / Suspects	1. Hijaz Hisbulla 2. Mohommad Shakeel	
Lawyers for accused / suspects	For 1st accused Asitha Siriwardhena AAL with with Miss Piyumi Senevirathne AAL For 2nd accused Chaminda Athukorale AAL	
Aggrieved party	-	
Lawyers for aggrieved party	-	
Supporters of accused / suspects	-Sumiri Fernando	
Supporters of aggrieved party	-	
Others	-	

3. What happened in court hearing?

-The Prosecution witness No. 46 was released temporally.

-The prosecution witness No. 58 and 59 were presented as per summons issued in last date.

- Lead the Evidence in Chief of prosecution witness No. 58 – Mr. M.R. Dayananda (officer of the Crime Intelligence Unit of the CID)

- Mainly, the questions were directed about the,

1. Duration that the witness worked in the Crime Intelligence Unit of the CID, experience and under whose orders did he worked?
2. Knowledge about the Al Suharia Madrasa School at Puttalam regarding the Easter attack.
3. When he started the investigations on the Al Suharia Madrasa School at Puttalam subject to the Save the pearl organization?
4. Why he went to Mattakkulia area to record the evidence of some students?
5. What kind of health measurements he followed when questioning such students during the Corona period?
6. Why he decided to go to Mattakkuliya to obtain evidence instead of bringing them to the CID?
7. With whom and at what time the witness went to mattakkuliya?
8. In which place, the evidence of Mohomad Malic was obtained”
9. Why he decided to bring Mohomad Malic to the CID to obtain evidence?
10. When and at what time Mohomad Malic was brought to the CID?

- The state counsel marked a sealed envelope cover as ‘Pa 4” and another envelop cover which was inside the “Pa 4” envelop cover marked as “Pa 4(a)”.
- Then after, when the state counsel was going to mark the photo album which was inside the Marked envelop cover “Pa 4 (a)”, the counsel for the 1st accused objected to lead evidence based on that photo album as the accused party was not given the copy of that photo album even though they requested it several times and also, by not given a copy of photo album before trial, the counsels cannot take instructions from theirs client. And also, as per the best evidence rule the correct person that the photo album should be showed and ask questions is Prosecution Witness No. 1 (Mohomad Malic) as it was the photo album which showed him at the investigation, Prosecution Witness No. 1 is the person who put his signature on that album and it was he only can give evidence whether he identified the persons in that album at the investigation and who are they? If the learned High Court judge allows to mark that photo Album, it violates the orders of the departments.
- For the aforesaid objection, the state counsel recorded her application by denoting the state counsel did not intend to ask questions based on the photos of the said Album what she intended was to show the note which noted down by the Prosecution Witness No. 58 and confirm it’s authenticity.
- For that objection and its cross objections, the learned High Court judge given a separate calling date to deliver an Order regarding marking the said Photo Album to this case.
- And also, the learned High Court judge ordered to the state counsel to handover a copy of the said album to the accused party two weeks before the trial.
- Apart from that, the learned High Court judge ordered to number the entire album and put open court seal on each page of that album in front of the court register before the presence of all parries before take its photocopies.
- The Prosecution witness No. 58 – Mr. M.R. Dayananda was ordered to appear in the court on next date.

- The Prosecution witness No. 59 was released temporally.
- Calling date- 13/12/2024 for aforesaid order.
- Trial date 10/01/2025 for further trial.

4. Any significant observations inside court room and outside?

5. Next date & time:

Calling date- 13/12/2024 for aforesaid order.
Trial date 10/01/2025 for further trial.

Guidelines / points to consider – before / during / after:

General:

1. Familiarize with the case before going – by reading, asking. Survivors / victim families who go to courts are often good sources
2. Check the language of court hearings – in and around Colombo, it's a mixture of Sinhalese and English. In North and East, it's mostly Tamil
3. Sound system is not good in most courts and observers (public) will find it difficult to listen. Lawyers can be upfront and much easier to listen.
4. Except for lawyers, electronic equipment, bags are not allowed in most court rooms – shops outside offer storage, but at own risk (friendly lawyers can take your phone in, if you have an arrangement to hand over / collect before the trial)
5. Writing notes (with pen on paper) is allowed inside courts, during hearings (This was reaffirmed by three judge bench on 9th January 2020 in High Court no. 3 in Colombo, during trial on Welikada massacre case)
6. Talking is not allowed during the court hearings

Content of report:

7. Write the note the same day (or as soon as possible) - before you forget
8. Whose present in court - try include actual names and positions – but if you don't know and couldn't find out, write as much as you know. Absence of key persons (e.g. one of accused / judge / AG's dept. representative, police etc. is important to be noted. Changes of significant persons are also important to be noted)
9. What happened in actual hearing – try check with other friendly observers, lawyers, survivors / victim families etc.
10. Significant Observations – the atmosphere in and outside the court room can also have a bearing on the case. The way different parties to the case relate to each other, the way supporters of different parties behave, anything that you think may have bearing on the case. Particular attention to any form of intimidation of survivors, victim families, witnesses, lawyers and others.