

Trial Monitoring report

About the case: Hijaz Hisbulla's case

Case no. : HC 78/21

Courts: High court of Puttalam

Date of hearing: 2025.05.02

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 Garihagama	
Police (CID / TID etc.)	CID Colombo / TID	
Accused / Suspects	1. Hijaz Hisbulla 2. Mohommad Shakeel	
Lawyers for accused / suspects	For 1 st accused Mr. Asith Siriwardhana AAL with President Counsel Nalinda Indrathissa For 2 nd accused Chalana Perera	
Aggrieved party	-	
Lawyers for aggrieved party	-	
Supporters of accused / suspects	-Sumiri Fernando	
Supporters of aggrieved party	-	
Others	-	

3. What happened in court hearing?

- On behalf of the 1st accused, the cross examination was started from the Prosecution witness No. 58 – Mr. M.R. Dayananda.
- The cross-examination of Prosecution Witness No. 58 focused on the manner in which the Criminal Investigation Department (CID) obtained statements from Malik and whether standard procedures were followed. It was revealed that there was no entry in the CID's information book for the date 2020/04/21 that recorded who brought Malik and his brother to the CID or who returned them afterward. As a result, it was not possible to confirm that Malik and his brother were brought to the CID at 9:00 AM on that day as claimed.

- Despite having 22 years of service in the Police Department, Witness No. 58 demonstrated unfamiliarity with important procedural regulations concerning the recording of oral statements of the witnesses. Notably, when Malik was shown photographs of deceased attackers and arrested suspects, the CID failed to record how many photographs were shown, from whom the photographs were obtained, or from which departments or officers they originated. Furthermore, it was revealed that some of the photographs had been taken after they were arrested, raising concerns about the timing and legality of the identification process.
- A book written in English was shown to the Prosecution Witness No. 58 during the cross examination. It contained Police Department Order No. 8(iv), which explicitly prohibits the showing of photographs to a person at the time of arrest. According to this regulation, photographs should be shown beforehand, followed by a proper identification process. However, the evidence showed that Malik had been shown approximately ten photographs in direct contradiction to this procedural requirement.
- Witness No. 58 stated that he recorded Malik's oral statement on 2020/04/21 in Sinhala, claiming that he transcribed Malik's spoken words and later allowed him to read the statement. He also stated that the process took approximately four and a half hours. Nonetheless, this raised further concerns about the accuracy of the translation and whether Malik fully understood and verified the recorded content.
- Almost at the cross examination, it was significant that procedural irregularities, including gaps in documentation, breaches of departmental regulations, and questionable handling of the identification process. These deficiencies call into question the reliability of the statement attributed to Malik.
- Then after on behalf of the 1st accused, the cross examination was finished and as the counsel of the 2nd accused was not present on that day the next date was fix for cross examination from the Prosecution witness No. 58 – Mr. M.R. Dayananda on behalf of the 2nd accused.
- On the previous day, two dates—02/05/2025 and 09/05/2025—were fixed for trial. However, when the matter was taken up on 02/05/2025, the court re-fixed the next trial date for 16/05/2025.

4. Any significant observations inside court room and outside?

5. Next date & time:

- On 16/05/2025 for cross examination from the Prosecution witness No. 58 – Mr. M.R. Dayananda on behalf of the 2nd accused.

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 re-affirmed 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.