

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

CA 35/09  
HC Welikada No. 207/06

Luvis Amarasaj alias Dubai Raja  
38/12A,  
Rathnam Road,  
Colombo 13

**Petitioner**

**Vs**

Hon. Attorney General  
Attorney General's Department  
Colombo 12

**Respondent**

**C.A.No.35/09**

**H.C. Welikada No.H.C.207/06**

**Before** : Rohini Marasinghe,J. and  
H.N.J.Perera,J.

**Counsel** : Amila Palliyage for the Accused-Appellant.  
Rohantha Abeysooriya SSC for the A.G.

**Argued and  
Decided on** : 03.10.2012.

**Rohini Marasinghe,J.**

The appellant had been charged with being in possession of a quantity of 102.8 grams of heroin contrary to section 54 (a) (d) of Poisons and Dangerous Drugs Ordinance of Act No.13 of 1984. The main contention of the appellant was that the trial Judge had failed to consider the defence of the appellant. The trial Judge appears to have rejected the defence raised by appellant as no alibi notice had been served on the prosecution according to Section 126 of Act No.14 of 2005. The Counsel for the appellant contended that the defence of the appellant was not one of alibi falling with Section 126 of Act No.13 of 1984. The defence of the appellant as seen from the cross examination of the witnesses of the prosecution was one of denial of the possession of heroin as alleged in the charge. Therefore, I am of the view that it was wrong of the trial judge to reject the defence on a wrong premise. The

State informs that in this circumstance it is unable to support the conviction.

Consequently, the conviction and sentence are set aside and re-trial is ordered. It is further directed that this appellant may be considered as a fit case to grant bail under these special circumstances. The case is directed to be heard by another Judge other than the judge who had heard this case and to conclude it expeditiously.

Re trial ordered.

**JUDGE OF THE COURT OF APPEAL.**

**H.N.J.Perera,J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

WC/-