

180/2012

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

In the matter of an appeal against the  
Order of the High Court under section  
331 of the Code of Criminal Procedure  
Code Act No. 15 of 1979 as amended.

Subramaniam Punyamoorthy

**Accused-Appellant**

**C.A. Case No- 180/2012**

**H.C.Colombo Case No-2431/2005**

**V.**

The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondent**

**Before:- H.N.J.Perera, J &**

**K.K.Wickremasinghe, J.**

**Counsel:- Amila Palliyage for the Accused-Appellant**

**Shanil Kularatne S.S.C. for the Respondent**

**Argued On: 26.06.2015**

**Written Submissions:- 11.08.2015/06.10.2015**

**Decided On:-02.11.2015**

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

The accused-appellant was indicted before the High Court of Colombo for being in possession and trafficking of 813.39 grams of heroin punishable under sections 54 (A) and 54 (B) of the Poisons Opium and Dangerous Drugs Ordinance. After trial the Learned High Court Judge delivered judgment on 16.02.2012 and convicted the accused-appellant for both counts and sentenced him to death. Aggrieved by the said conviction and sentence the accused-appellant had preferred this appeal to this court.

According to the prosecution the witness No.1 A.S.P. Priyantha Liyanage had been to Police Narcotic Bureau on 14.12.2003 as an Inspector of police and upon an information received by I.P. Nihal Perera from one of his private informants a raid was arranged. The information received was that of transportation of heroin in a semi luxury CTB bus from Mannar to Colombo. Upon receipt of the said information a team of police officers attached to Police Narcotic Bureau including IP Nihal Perera, P.C 30762 Senaratne, P.C 23778 Priyantha, P.C 30204 Bandara, P.C 38514 Ekanayake, P.C 33911 Udagedera all dressed in civil left the station around 9.02.p.m in Jeep No H.P 2306, Van No H.D. 2726 and Motor Cycle bearing No 112-3224 with P.C 31618 Manjula and P.C 34511 Prasad as drivers.

As narrated by witness A.S.P Liyanage they first went near the Kochchikade Bridge and waited for about 3 ½ hours for the said bus to arrive and when the bus arrived directed the driver to follow the said bus. According to him all three vehicles had followed the said bus No.62-6166 upto Colombo Central Bus Stand and the bus was under surveillance until all the passengers were alighted. After some time they noticed the driver and the conductor getting off the bus and the

conductor went to the Rest Room which was situated at the middle of the building and the driver towards the entrance of the bus stand. He noticed the driver looking around the place and thereafter taking a telephone call from the payphone box which was outside the bus stand. Thereafter the driver returned up to the bus and then he saw a person wearing shorts approaching the driver. The driver spoke to the said person and thereafter got into the bus and came back again and got off the bus closing the door of the bus with a red shopping bag in his hand. The said witness A.S.P Liyanage has testified to the fact that the driver did not take anything inside the vehicle when he got inside the bus but came out of it with a red shopping bag in his hand. Thereafter the witness accosted the driver and identified themselves as police officers and checked the parcel he carried inside a red coloured shopping bag. He noticed a parcel inside the said red shopping bag wrapped in brown colour cello tape. And upon inspection realized that it contained heroin. The evidence establish the fact that along with the accused-appellant the officers had taken steps to arrest the other person who had come to meet the accused-appellant. The parcel that had been in the possession of the accused-appellant had contained 283.4 grams of heroin.

It is the position of the accused-appellant that the parcel containing heroin was not kept in his possession and the same was recovered by the N.B.Officers from inside the bus and not from his possession as alleged by the officers who arrested him. The prosecution led the evidence of two officers who participated in the raid in order to prove the case beyond reasonable doubt. The witness A.S.P. Liyanage's evidence is compatible with the evidence given by the witness P.S Senaratne.

The witness A.S.P Liyanage testifies as to the sealing of the productions and witness P.S.Senaratne also confirm the acts of the investigating office A.S.P.Liyanage with regard to the arrest, detection, sealing and handing over productions to witness I.P. Rajakaruna. I.P Rajakaruna the

officer in charge of productions speaks of taking over the custody of productions in this case on 15.12.2003 from witness Liyanage and duly handing over the sealed productions intact to K Navaratne the Assistant Government Annalyst at the Government Annalyst Department on 16.12.2003. The death and the qualifications of the said K. Navaratne former Assistant Government Annalyst had been admitted by the defence and the said admission had been recorded under section 420 of the Criminal Procedure Code at the trial. The prosecution had led the evidence of K.Sivarajah Government Annalyst and the said witness in his evidence confirms the receipt of the productions in a duly sealed state and testifies as to finding 813.3 grams of pure heroin in the parcel of powder tendered for analysis.

In this case the accused-appellant has not denied that the said raid was conducted by the PNB officers at the Central Bus stand. The accused-appellant had admitted the arrest by the police officers and also the recovery of heroin. It is the accused-appellant's position that he was sleeping inside the bus at the time of his arrest. He denied that he was arrested with a red colored shopping bag containing heroin just outside the bus as alleged by the prosecution. It was not suggested that the police had introduced the said heroin and had falsely implicated the accused-appellant in this case. It is not disputed that the PNB officers in fact had discovered heroin on this day. The accused-appellant's position was that it was not recovered from his possession but was discovered by the said officer somewhere inside the bus.

The learned trial Judge was satisfied with the evidence led by the prosecution and found the accused-appellant guilty and convicted him. The learned trial Judge has opined that the evidence of A.S.P. Liyanage was convincing. The defence has failed to mark a single contradiction in his evidence. In the instant case the evidence of the main investigating officer A.S.P. Liyanage has been more than satisfactory and could be

even acted without further corroboration. However, in this case witness Liyanage's evidence is corroborated by witness Senaratne as well and that evidence is creditworthy,

It is clearly seen from the judgment of the learned trial Judge that after analyzing the dock statement of the accused-appellant and the evidence of the witness A.M.Jawfer who was the conductor of the said bus, who was summoned to give evidence on behalf of the accused-appellant, he has totally rejected the said evidence given by the accused-appellant. The accused-appellant's position was that the parcel that contained heroin was recovered from inside the rear of the bus and not from his possession as alleged by the prosecution.

The accused-appellant did not dispute the arrest of the 2<sup>nd</sup> person by the PNB officers on the day of the incident on the basis of abetment. The accused-appellant in his dock statement has clearly stated that the PNB officers found the parcel from the rear of the bus after searching the said vehicle. But he has failed to name the exact location or a specific place. The defence witness A M Jawfer in his evidence has clearly stated that the bus was searched by the officials of the Bus Stand after it was parked at the bus stand. Further the said witness had stated that the bus was also searched by the security guards. It was his position that the bus had to pass several check points and was searched at a number of places before it arrived at the Colombo bus stand. Therefore there is no doubt that if there had been an unattended parcel in the bus it would have been found by the said official, the security guards and or by the officers who manned those check points on the way to Colombo. The accused-appellant throughout the trial has never denied the fact that the raid was conducted by the PNB officers. The position of the accused-appellant that the said parcel containing heroin was found inside rear of the bus is not consistent or substantiated by other evidence led in this case. Even the conductor of the bus A.M.Jawfer who was summoned by the defence

as a witness, clearly states that as soon as the bus entered the bus stand the officials searched the bus. Hence the argument of the accused-appellant that the said parcel containing heroin was recovered from the rear portion of the bus is not tenable. The learned trial Judge in his judgment had considered and given reasons why he rejects the defence evidence. The learned trial Judge cannot be faulted for disbelieving and rejecting the evidence of the accused-appellant in the said circumstances. The learned trial judge had carefully and patiently evaluated the evidence of the prosecution witnesses and had applied the laws relevant and had scrutinized evidence elicited with tests of probability and truthfulness.

It cannot be said that the learned trial Judge had rejected the defence version for trivial reasons. The learned trial Judge had carefully evaluated the evidence of the prosecution as well as the evidence led on behalf of the accused-appellant.

A court of appeal will not lightly disturb the findings of a trial Judge with regard to the acceptance or rejection of testimony of a witness unless it is manifestly wrong.

The Privy Council in *Fradd V. Brown & Company Ltd.*, 20 N.L.R at page 282 held as follows:-

“It is rare that a decision of a Judge so express, so explicit upon a point of fact purely is over ruled by a court of appeal, because the Courts of Appeals recognize the priceless advantage which a Judge of first instance had in matters of that kind, as contrasted with any Judge of a court of appeal; who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity so direct and so specific as these, a court of appeal will over-rule a Judge of first instance.”

I find that there is no material before this court to support the defence proposition that the accused-appellant did not have the exclusive possession of the heroin recovered.

In conclusion, for the reasons stated above I hold that the accused-appellant had failed to satisfy this court on any ground urged on his behalf that a miscarriage of justice had occurred. Therefore I dismiss the appeal of the accused-appellant and affirm the conviction and the sentence dated 16.02.2012 of the Learned High Court Judge of Colombo.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

k.k.Wickremasinghe, J

I agree.

**JUDGE OF THE COURT OF APPEAL**