

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

Hon Attorney General
Attorney General's Department
Colombo 12.

COMPLAINANT

VS

Meerasaibo Mansoor

ACCUSED

C.A. Application No. 61/2016

H.C. Anuradhapura Case No. 73/2013 **AND NOW**

Meerasaibo Mansoor

ACCUSED – APPELLANT

VS

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

COMPLAINANT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya

COUNSEL

: Dr. Ranjith Fernando for the

Accused – Appellant

Shanaka Wijesinghe DSG

For the Attorney general

ARGUED ON

: 20th June, 2017

DECIDED ON

: 04th August, 2017

Deepali Wijesundera J.

The accused appellant was indicted in the High Court of Anuradhapura under *section 54 a (c) of Act no. 13 of 1984* for possession of heroin, and under *section 54 a (b)* of the said Act for trafficking of heroin. He was convicted for life imprisonment on both charges after trial. This appeal is from the said conviction and sentence.

The story of the prosecution is that on 25th of November 2010 a police party lead by prosecution witness Chief Inspector Ruwan Kantha have left the police station on receipt of some information and had conducted the raid on the 27th. They have stopped a lorry at Pubbogama Junction, the driver has opened the door and run away with the ignition key. The passenger the appellant, was searched and heroin was recovered tucked into his sarong and he was arrested.

The evidence of the Chief Inspector Ruwan Kantha shows the vehicle was driven to the Police Station using another key which the appellant's learned counsel said is not probable. On perusal of evidence I find that this item of evidence has not been challenged in the trial court, therefore that argument fails.

In Sarwan Sing vs State of Punjab 2002 AIR 111 it was held that *“it is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination, it must follow that the evidence tendered on that issue ought to be accepted.”*

In Motilal vs State of Madya Pradesh 1990 CCLJ NOC 125 MP it was held, *“absence of cross examination of prosecution witness of certain facts leads to inference of admission of that fact.”*

Appellant while giving evidence has taken up the position that while he was at home Asanka came with another person and left a parcel at his house. Thereafter the person who came with Asanka opened the parcel and arrested the appellant. The learned counsel for the appellant argued that the learned High Court Judge has referred this as an alibi but it is not an alibi which amounts to a misdirection. He also stated due to these the appellant did not get a fair hearing. This argument of the learned counsel is not correct, the learned High Court Judge has concluded that he would not analyse the evidence of the appellant on the basis of an alibi whilst doing so he has properly analysed the evidence placed before him and has concluded that the evidence of the defence does not create a doubt on the prosecution evidence. I find that this observation is correct.

In King vs Marshall 51 NLR 157 it was held;

“An alibi is not an exception to criminal liability, like a plea of private defence or grave and sudden-provocation. An alibi is nothing more than an evidentiary fact, which, like other facts relied on by an accused, must be weighed in the scale against the case for the prosecution.”

Considering the totality of the evidence presented by the prosecution I find that they have discharged their burden to prove their case beyond reasonable doubt. For these I find that the learned High Court Judge has analysed the evidence applying several tests properly. Therefore I am not inclined to set aside a well considered judgment.

For the afore stated reasons I decide to affirm the judgment dated 09/06/2016 and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL