

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

In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act.

Sedu Raveendran

Accused-Appellant

C.A Appeal No: CA 96/2011

H C Puttalam Case No 11/09

Vs.

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent

BEFORE : Deepali Wijesundera J.

L.U Jayasuriya J.

COUNSEL : Dr. Ranjit Fernando for the Accused-Appellant

Hiranjana Peries D.S.G for the A.G

ARGUED ON : 19th September, 2017

DECIDED ON : 11th October, 2017

L.U Jayasuriya J.

The Accused Appellant was indicted in the High Court of Puttalam for trafficking and possession of heroin amounting to 2.6248 kg and after trial he was convicted for the second count and sentenced to life imprisonment. He was acquitted on the first count.

This appeal is from the said conviction and the sentence.

According to the prosecution, PW1 has pursued the bus in which the accused was travelling on receipt of some information and has boarded the bus from Paniadiya bus stand along with two other officers in civil attire.

When PW1 went towards the rear seats of the said bus, he has observed a person seated at the back who was fitting the description given by the informant, trying to bend down with a travelling bag on his lap.

PW1 has taken the said bag and recovered heroin. Thereafter the Appellant was arrested along with two other passengers seated on either side of him.

The driver of the said bus has testified that the Appellant had a black travelling bag similar to X1 when he got into the bus from Al Aksha Junction.

After the case for the prosecution was closed, the Appellant has given evidence on his behalf and has admitted that he along with three others boarded the said bus at Al Aksha Junction but testified that one of them carried the said black coloured bag.

He admitted that the said bag was lying under his seat when the Police questioned and arrested him.

The following grounds were urged by the counsel for the Appellant.

- (1) The Learned High Court Judge failed to evaluate evidence to satisfy himself that the Accused Appellant did in-fact have “Exclusive Possession” of the drugs.
- (2) The Learned High Court Judge erred in Law in rejecting the evidence of the Appellant on oath without assigning any reasons.
- (3) The Learned High Court Judge erred with regard to “Burden of Proof” by stating the Appellant was unable to establish his innocence.

Now I advert to the first ground. The counsel for the Appellant argued that the law has set out that for possession to be criminal in a drug case, it must be actual conclusive and cannot be constructive possession and cited **Bandara Vs. Haramanisa 21 NLR 141**. In that case, beef was found in the house occupied by father and son and evidence was not forthcoming as to who was responsible and the appeal was allowed on that basis.

However, in the case at hand the bag containing heroin was recovered from the lap of the Appellant although the Appellant in his evidence, stated that the bag containing heroin was recovered from beneath his seat, it is highly improbable that a passenger would travel in a bus where some suspicious bag was lying under his seat as a civil war was raging in the country at that point of time. Therefore, the first ground urged by the learned counsel for the Appellant fails.

The Learned High Court Judge has noted at page 18 of the judgment that the evidence given on oath by the Appellant is not credible and when observing his demeanor, it was clearly visible that he was uttering

falsehood in the witness stand. Therefore, I hold that the second ground of appeal also has no merit.

Although the final ground of appeal urged by the counsel for the Appellant has some merit it has not caused any substantial miscarriage of justice as the prosecution has presented cogent evidence to prove the case for the prosecution beyond reasonable doubt and the misdirection on the part of the Learned High Court Judge is curable under proviso to Section 334(1) of the Code of Criminal Procedure Act.

For the foregoing reasons the judgment and the sentence dated 18.09.2008 is affirmed and the Appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL