

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

In the matter of an appeal against an
order of the High Court under Sec.
331 of the Code of Criminal
Procedure Act No. 15 of 1979.

Francis Raja Bernard Anthony
Periyakkaraisal, Pesalai
Presently in Prison, Anuradhapura.
Accused – Appellant

Case No. CA 217/10

HC Vavuniya Case No. 1892/2005 **Vs**

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

Complainant – Respondent

BEFORE : Deepali Wijesundera J.
L.U. Jayasuriya J.

COUNSEL : W. Srikantha with S. Panchadsaram
For the Accused – Appellant
P. Kumararatnam D.S.G. for the
Attorney General

ARGUED ON : 22nd September, 2017

DECIDED ON : 25th October, 2017

L.U. Jayasuriya J.

The accused appellant was indicted in the High Court of Vavuniya for possession and trafficking of heroin amounting to 1327 grams and after trial convicted for both counts and sentenced to life imprisonment. This appeal is from the said conviction.

Prosecution Witness No. 1 on receipt of information had erected a road block at zone no. 6 to search vehicles, on the day in question proceeding towards Medawachchi. Prosecution Witness No. 1 has stopped the vehicle in question driven by the appellant ten minutes after erecting the said road block. There were three occupants travelling in the front of the vehicle and Prosecution Witness No. 1 had ordered all of them to alight from the said vehicle. He had noticed a cloth bag on the driving seat.

The appellant had taken the said bag and got down. Prosecution Witness No. 1 while searching the said bag had found cloths inside the bag and with them he had found another bag containing heroin. All three passengers were arrested after the detection and taken to the police station.

Prosecution Witness No. 1 has stated that the parcel of heroin was kept in his custody after sealing the same from the 15th till the 17th when he handed over the productions to court. The counsel for the appellant argued that Prosecution Witness No. 1 has kept production with him for 33 hours without handing them over to the reserve officer and further stated that there was a possibility of tampering with the productions.

The counsel for the respondent argued that this was the only detection made by those police officers and therefore it was the only parcel of heroin they had in the police station. We find that this incident had taken place while a civil war was raging in the Northern Province and therefore the police officers did not have facilities and therefore one can come to the conclusion since the productions were properly sealed it was kept in safe custody until it was handed over to the courts with seals intact.

The counsel for the appellant argued that the first witness for the prosecution had stated that he did not search the vehicle while the others testified that the vehicle was searched by Prosecution Witness No. 1. But we find that Prosecution Witness No. 1 while giving evidence had said he instructed the other officers to search the vehicle while he was checking the driver. (vide page 62 of the brief).

We hold that this is not a contradiction which goes to the root of the case since the incident has taken place in the year 2004 and the evidence was given in the year 2008.

The learned counsel for the appellant citing the judgment in **Devindaralage Nihal vs AG CA 125/2008** decided on 02.05.2010 referred to a passage in the said judgment, *“to obtain contradictions inter-se is the only way out for an innocent accused to make contradiction per-se, where trained and experienced government officials such as police officers given evidence, is seriously impossible and is a task next to impossibility in view of the fact that an official conducting a raid is more often than not is resourceful in strategy and inevitably an experienced officer with a lot of infinitely and cunning”*.

We find that this judgment has been overruled by the Supreme Court Judgment S.C. Appeal No. 154/10 and therefore this argument of the appellant fails. The position taken up by the appellant was that one Bapa wanted to travel in the said vehicle and thus it would have been that person who planted this bag containing heroin. This was never suggested to Prosecution Witness No. 1 in the High Court. He further stated that the police recovered the said bag and put the same into the appellant's bag.

As the check points were a common site along these roads it is hard to believe that a driver of a vehicle would have been so negligent and therefore the defence put forward by the appellant has no merit.

For the afore stated reasons I decide that the appeal has no merit and therefore I am not inclined to set aside a well considered judgment. The judgment dated 08/12/2010 is affirmed.

The appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL