

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

In the matter of an Appeal against an order of High Court under Section 331 on the Code of Criminal Procedure Act No. 15 of 1979 read with Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka  
PLAINTIFF

Democratic Socialist Republic of Sri Lanka  
**PLAINTIFF**

**Vs**

**Vs**

Ranathunga Arachchilage Ranjith  
Chandrathilake  
No. 13, Wijaya Mawatha  
Veyangoda.  
**ACCUSED**

Ranathunga Arachchilage Ranjith  
Chandrathilake  
No. 13, Wijaya Mawatha  
Veyangoda.  
**ACCUSED**

**Case No. CA 241/2017**

**HC (Colombo) Case No. HC 7821/15 AND NOW BETWEEN**

Ranathunga Arachchilage Ranjith  
Chandrathilake  
No. 13, Wijaya Mawatha  
Veyangoda.

**ACCUSED – APPELLANT**

**Vs**

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

**RESPONDENT**

**BEFORE**

: Deepali Wijesundera J.

: Achala Wengappuli J.

**COUNSEL**

: Weerasena Ranahewa with

Surangi Sandamali for the  
Accused – Appellant.

A.R.H. Bary S.S.C. for the  
Attorney General.

**ARGUED ON**

: 25<sup>th</sup> July, 2018

**DECIDED ON**

: 06<sup>th</sup> August, 2018

**Deepali Wijesundera J.**

The appellant was indicted in the High Court of Colombo for an offence punishable under section 367 of the Penal Code. After trial he was convicted under section 395 and sentenced to five years RI. He was acquitted on the first and second charges.

The appellant had been working for the Rupavahini Corporation on a technical job. The appellant was arrested on suspicion for theft of some copper metal rods. The metal was recovered from a scrap metal shop. The owner of the said shop has identified the appellant and has said that he brought pieces of copper to sell to his shop, on several occasions.

The learned counsel for the appellant argued that the metal taken into custody from the shop was not proved as stolen property from the Rupavahini Corporation by the prosecution. The owner of the metal shop (vide page 136-137 of the brief) has stated in evidence that the appellant came to his shop on several occasions to sell pieces of metal. He has identified the appellant as the person who came to sell piece of metal rods. On this evidence the first point of argument of the appellant's counsel fails.

The next point of argument was that the conviction was bad in law as it was not proved by the prosecution that the goods recovered were stolen property. He cited the judgment in **AG vs Dewapriya Walgamage and another 1990 2 SLR 212**. This judgment is not relevant to the instant case.

The appellant's counsels' next point of argument was that section 395 conviction is bad in law. He said to be a habitual offender it has to prove that he did this habitually. Citing the definition in the Oxford Dictionary the counsel argued the word habitual means "done constantly" or "as a habit, regular usual, given to a special habit". The owner of the Metal shop from where P1 and P2 were recovered has given evidence to say that the appellant came to his shop several times with pieces of metal to sell. This shows that the appellant has been going to this shop to sell metal constantly.

The argument that the prosecution failed to prove that the ball of copper marked as P2 was made out of the 32 meter long cable which was alleged to have been stolen from the Rupuvahini Corporation by the appellant. He argued that the learned High Court Judge failed to consider this and shifted the burden of proof to the appellant. He cited the judgment in **Gunasekera vs AG 79 NLR 348** and interpreting section 114 (f) of the Evidence Ordinance said evidence which could be and not produced would if produced be unfavorable to the person who withholds it. This argument is totally out of context to this case.

The appellant in his Dock statement has made a total denial when there has been a strong prima – facie case against him. The appellant has failed to explain on the third charge for which he was convicted.

On perusal of the judgment given by learned High Court Judge it is quite clear that the learned High Court Judge has carefully analysed the evidence placed before the High Court. This court is not inclined to set aside a judgment which has been delivered after careful consideration.

For the afore stated reasons we affirm the judgment and the conviction dated 08/06/2017 and dismiss the appeal.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Achala Wengappuli J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**