

**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  
No. 15 of 1979 read with Article  
138 of the Constitution of the  
Democratic Socialist Republic of  
Sri Lanka.

The Democratic Socialist  
Republic of Sri Lanka

**C.A. Case No. HCC-273/19**

**High Court of Panadura**

**Case No. 3392/2016**

**Complainant**

**Vs.**

Palamandige Roshan Maheel  
Fernando

**Accused**

**AND NOW BETWEEN**

Palamandige Roshan Maheel  
Fernando

**Accused -Appellant**

**Vs.**

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

**Respondent**

**BEFORE :** **K. PRIYANTHA FERNANDO, J (P/CA)**  
**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** Mohan Sellapperuma with Sandeepani Wijesooriya  
for the Accused-Appellant.  
Wasantha Perera, DSG for the Respondent.

**WRITTEN SUBMISSIONS**

**TENDERED ON :** 01.02.2021 (On behalf of the Accused-Appellant)  
05.03.2021 (On behalf of the Respondent)

**ARGUED ON :** 14.10.2022

**DECIDED ON :** 10.11.2022

**WICKUM A. KALUARACHCHI, J.**

The accused-appellant was indicted in the High Court of Panadura for trafficking and possessing 3.98 grams of Heroin, offences punishable under Section 54A(b) and 54A(d) of the Poisons, Opium and Dangerous Drugs Ordinance. After trial, the learned High Court Judge of Panadura convicted the accused-appellant of both charges and sentenced him to life imprisonment. This appeal has been preferred against the said convictions and the sentences.

The learned Counsel for the appellant and the learned Deputy Solicitor General for the respondent made oral submissions at the hearing of this appeal. Prior to the hearing, written submissions have been filed on behalf of both parties.

The learned Counsel for the appellant has stated two grounds of appeal in his written submissions.

1. That the learned trial Judge failed in applying the correct legal principles when rejecting the defence evidence.
2. The Learned Trial Judge erred in law by failing to consider the credibility of the evidence of prosecution witnesses.

However, at the hearing of the appeal, the learned counsel for the appellant informed the court that he would base his arguments only on the issue whether the appellant was the correct person to be arrested for the offences.

The accused-appellant was taken into custody by the police officer, PW-3 while traveling in a bus. However, this was not a raid carried out by police officers. PW-3 had got onto the bus to go to Moratuwa. The appellant was also a passenger on the bus. Whilst on the bus, PW-3 had noticed that this passenger who was seated in front of him and holding a black bag was behaving in a suspicious manner. He opened and searched the bag and found heroin in pink colour small cellophane bags. PW-3 identified the said passenger as the appellant. He had arrested the appellant, asked the driver of the bus to stop the bus at the nearest police station, and then produced him to the Headquarters Inspector of Panadura Police Station (PW-1).

After the prosecution case was closed, the accused-appellant gave evidence. The appellant admitted that he traveled on the said bus. The position that he took up was that an unknown woman handed over a bag to PW-3, then PW-3 asked him whether it was his bag, stopped the bus, and took him to the Panadura Police Station. Accordingly, the appellant denied that he had the bag which contained lumps of heroin with him.

One of the contentions of the learned Counsel for the Appellant was that the conductor or the driver of the bus was not called in evidence to corroborate PW-3's evidence. PW-1 has stated in his evidence that he thought that it was not necessary to record their statements. Therefore, it is PW-3's testimony against the appellant's testimony that must be considered in the analysis of the evidence regarding the incident.

The learned counsel for the appellant formulated his arguments on the basis that the appellant's version was more probable and, thus, it created a reasonable doubt on the prosecution case. The learned counsel for the appellant contended that the evidence of PW-1 and PW-3 was contradictory in respect of the colour of the small bags that contained heroin lumps. He also pointed out that there is a contradiction *per se* in PW-3's evidence with regard to the place where the appellant was seated. While contending that there is an issue in the evidence regarding the stopping of the bus by traffic police before this incident, the learned counsel drew the attention of the Court to the fact that PW-3 had no sufficient time to search the parcel, as he explained. It is to be noted that all these issues need to be considered only if there were issues as to whether PW-3 arrested the appellant on the bus and handed him over to the Panadura Police with the parcel that contained heroin. In this case, the appellant admitted in his evidence that PW-3 produced him to the HQI of the Panadura Police Station with the parcel that contained heroin. The appellant only disputes the fact of having the heroin parcel with him. His position was that the said parcel was in the possession of PW-3 but only on suspicion, he was produced to the police with the parcel. Therefore, the aforesaid matters of where the appellant was seated on the bus, and how the traffic police stopped the bus, are immaterial in determining this appeal. The colour of the small bags that contained heroin lumps and whether there was sufficient time for PW-3 to search small heroin bags were also not important to consider because

the appellant admitted in his evidence that when the HQI took out what was in the bag and searched, he found that it was heroin (Page 347 of the appeal brief).

Furthermore, the learned counsel for the appellant contended that a statement of PW-3 had not been recorded by the HQI of the Panadura Police Station, and if his statement had been there, the defence counsel could have cross-examined him on the facts of the said statement and pointed out discrepancies between the statement and his evidence. The learned Deputy Solicitor General stated that PW-3 had made his notes regarding this incident. The learned High Court Judge has considered this and his view was that not recording a statement is a flaw, but it is not a decisive factor. I agree with the view of the learned High Court Judge because the learned defence counsel was entitled to the notes of PW-3 as there was no other first information regarding this matter. Although PW-3 was a police officer, he did not search the parcel or arrest the appellant in the course of his official duties. This incident occurred while he was traveling on the bus after finishing his duties for the day. Therefore, his statement could have been recorded as the first information about this incident. However, no prejudice has been caused to the appellant, as he was entitled to the notes made by PW-3.

Under these circumstances, there was no reason to doubt PW-3's testimony. However, it should be considered whether the appellant's evidence would cast reasonable doubt on the prosecution's case. The learned High Court Judge has decided that the two charges against the appellant have been proved beyond a reasonable doubt and no reasonable doubt has arisen due to the improbable defence version. The contention of the learned DSG for the respondent was also that the defence version was improbable.

A vital matter to be considered is that PW-3 had no reason whatsoever to implicate the appellant for this offence falsely. Even the appellant did not suggest that there was a reason for PW-3 to implicate him. The appellant was an unknown person to PW-3. It was suggested to PW-3, on behalf of the appellant that the appellant was produced to the Panadura Police only on suspicion. According to the appellant's testimony, when an unknown woman handed over a bag to PW-3 and got off the bus, PW-3 sat down on a seat and asked the appellant whether this was his bag. (Page 357 of the appeal brief). It is strange and highly improbable that PW-3 took a bag from an unknown woman and asked the appellant, who was near him, whether this was his bag. There is no reason or basis whatsoever for PW-3 to ask that question from the appellant because the said bag was given to him by an unknown woman and the appellant had no connection to that, according to the appellant. Hence, it is apparent that it is improbable that the incident would happen the way the appellant described it.

In addition, according to the appellant, after inquiring whether it was the appellant's bag, PW-3 arrested the appellant, stopped the bus, and took the appellant to the Panadura Police station. So according to the way the appellant describes the incident, PW-3 had not searched what was in the parcel. Without knowing what was in the parcel, there was no reason for PW-3 to arrest the appellant and produce him at the police station. Hence, this is a highly improbable story.

Apart from that, it is apparent that the unknown woman who handed over the parcel knew that the parcel contains heroin or some illegal substance. That is why she had slowly got down from the bus. So, if she wanted to hand over the heroin in order to traffic heroin, there was no reason for her not to hand over the heroin directly to the person to whom she wanted to hand it over. Also, it is improbable that a woman who wanted to hand over a parcel of heroin to someone involved in their illegal activities would hand it over to an unknown

person when there was no obstacle to handing it over directly to the person concerned. Therefore, as correctly concluded by the learned High Court Judge, the improbable defence version casts no doubt on the prosecution version that PW-3 arrested the appellant while the appellant was in possession of the parcel of heroin.

As the two charges of trafficking and possessing heroin have been proved beyond reasonable doubt for the reasons stated above, I hold that the learned High Court Judge's decision to convict the appellant for the two counts against him is correct.

Accordingly, the judgment dated 11.10.2019, the convictions and sentences are affirmed.

The appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

K. Priyantha Fernando, J (P/CA)

I agree.

**JUDGE OF THE COURT OF APPEAL**