

**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 section 331 of  
the Code of Criminal Procedure Code Act No  
15 of 1979.

K.M. Abdul Majeed alias Master Raheem

**Accused-Appellant**

**Court of Appeal Case No:**

**CA-HCC-161/2016**

*HC of Batticaloa Case No:*

*HC 2805/2011*

**Vs.**

The Hon. Attorney General

Attorney General's Department,

Colombo 12.

**Respondent**

**Before:** Menaka Wijesundera, J.

B. Sasi Mahendran, J.

**Counsel:** Indica Mallawaratchy for the Accused-Appellant

Madhawa Tennakoon, DSG with Nishantha Nagaratnam, SC for the  
Respondent.

**Written**

**Submissions:** 20.10.2017 and 17.06.2022 (by the Accused-Appellant)

**On** 04.12.2017 and 16.03.2021 (by the Respondent)

**Argued On :** 06.07.2023

**Decided On :** 04.09.2023

**B. Sasi Mahendran, J.**

The Accused Appellant (hereinafter referred to as the Accused) was indicted at the High Court of Batticaloa for the following counts:

- a) For being in possession of a T-56 gun without a license, an offence punishable under Section 22(3) read with Section 22(1) of the Firearms Act No.33 of 1966 as amended by Act No. 22 of 1996.
  
- b) At the same time and course of the same transaction for the possession of 29 live bullets without lawful authority under Section 9(2) read with Section 27(1)(a) of Explosives Act No. 21 of 1961. As amended by Act No. 33 of 1969.

Prosecution led evidence from ten witnesses, marking productions P1 to P7, and closed their case. The Accused had given a dock statement After the conclusion of the trial, the Learned High Court Judge pronounced the Accused guilty of both counts, For the 1<sup>st</sup> Count- he was imposed life imprisonment, and for the 2<sup>nd</sup> Count - 2 years of rigorous imprisonment and a fine of 10,000 LKR.

Being aggrieved by the aforesaid conviction and sentence, the Accused preferred this appeal to this Court.

**The Following are the Grounds of Appeal set out by the Counsel in the written submission:**

1. Conviction is untenable as the prosecution has not established exclusive possession on the part of the Appellant.
2. Evidence of PW/10 namely Gamini Jayantha is self-contradictory, erratic, and wholly unreliable casting a serious doubt in the prosecution case.
3. The Learned Trial Judge had totally failed to address his judicial mind to the serious infirmities in the evidence of PW10 namely Gamini Jayantha.
4. Conflict of evidence between PW10 namely Gamini Jayantha and PW9 namely Chandrasegara creates a serious doubt in the prosecution case.
5. The Learned Trial Judge has been totally oblivious to the aforementioned contradictory evidence between PW10 and PW9.
6. Evidence relating to the identification of the T56 weapon is infirm and the prosecution has failed to establish its identity beyond reasonable doubt.

According to PW1, Chief Inspector Mahindasiri, on the 14th day of June 2009, acting upon credible information furnished by Police Constable 65042 Thaha (PW7), a search operation was launched targeting the residence of the Accused. Subsequent to interrogation and the recording of the Accused's statement, a T-56 firearm bearing serial number 4015699 was recovered. This weapon was accompanied by 29 rounds of 7.62mm caliber ammunition and two magazines, all of which were concealed within a rice bag and buried under the floor of a hen cage situated within the Accused's premises. It is pertinent to note that the said firearm and associated articles exhibited signs of oxidation; specifically, the serial number of the weapon was partially obscured, though digits 0, 6, and 9 remained discernible. This evidence was later challenged by the defense, and the Accused denied any allegations pertaining to the aforementioned firearm.

The Accused and the recovered items were taken to the police station and handed over to Police Constable 64265 Karunasena, subsequent to their entry in the production record under number 102/2009.

The evidence of PW6, P.C 55693 Karupaiyah Ambalagan, corroborates that of PW1. According to PW6, at approximately 12:30 p.m. on the same date, an individual named Amsar was arrested for illegal possession of a T-56 firearm and a magazine. While transporting Amsar in the police jeep, PW1 informed the officers that another arrest specifically, of one Abdul Majeed or Master Raheem (the Accused) was to be conducted for a similar offense. Pursuant to this directive, the Accused was arrested at his residence, and the aforementioned T-56 firearm and ammunition were recovered.

PW7, Police Sergeant 65042 Mohamed Thaha, revealed that on the specified date, a total of three firearms were recovered from different individuals.

Inspector of Police Gamini Jayantha, identified as PW10, testified that he received the impounded T-56 firearm, bearing serial number 4015899, along with two magazines and 29 rounds of ammunition, on the 24th of September 2009. This production was received from the officer in charge of production at the police station, whose identity and service number were conspicuously absent in the Production Record (PR) book.

On the following day, 25th of September 2009, PW10 handed over these items to the Government Analyst Department, for which he received a receipt bearing the

reference number CF/373/09. He noted that the firearm was not in a packed condition at the time of this handover. Furthermore, PW10 stated that he had affixed his signature to the production register to acknowledge this handover; however, this register was not produced before the court for examination or corroboration.

During cross-examination, PW10 initially indicated uncertainty regarding whether the productions were packed and sealed as one parcel. However, when later questioned by the court, he recanted his prior statement, asserting that he had in fact packed it as a single parcel. Later he stated that P.C 31235 Ranjith (PW9) had taken custody of the production to hand it over to the Government Analyst Department.

When we peruse this witness's evidence it is evident that he has contradicted his own evidence by giving a different version. The Learned Trial Judge had failed to consider this evidence.

PW9 testified that upon receiving instructions from PW1, he was responsible for delivering the packaged evidence, registered under production PR 102/2009, to the Government Analyst Department. He performed this task on the 25th of September 2009 and obtained a corresponding receipt. Interestingly, he also confirmed that this production was previously handed over to the Magistrate Court on the 4th of August 2009, under B report no. B/813/09. This adds another layer of complexity to the case, as the production was reportedly packed in such a manner that the contents were not visible, creating further uncertainties in the chain of custody.

Further in his cross examination, he testified that when the productions were handed over to the Court on 4/08/2009 they were packed separately.

Upon analysis, it is evident that a glaring discrepancy exists between the testimonies of PW1, PW9 and PW10 regarding the T-56 gun's serial number and the conditions under which the evidence was maintained. PW10 asserts that he handed over a T-56 gun bearing the serial number 4015899 to the Government Analyst Department on the 25th of September 2009. This evidence is in direct conflict with the earlier account provided by PW1, who stated that the serial number of the confiscated T-56 gun was 4015699.

When this discrepancy was flagged for the court's attention, the Learned Trial Judge dismissed this objection. The ruling stated that establishing the chain of custody was not critical to the case since the recovered production was a firearm.

The Learned Trial Judge's conclusion that the chain of custody is inconsequential due to the nature of the recovered production being a firearm is flawed. This is a precarious position to adopt, especially when the very purpose of forwarding the recovered item to a government analyst was to ascertain its categorization under the Firearms Ordinance.

We are mindful that for these reasons our courts are insisting that there should be evidence to prove the chain of custody.

One of the most glaring irregularities, in this case, is the differing serial numbers cited by PW1 and the individual who had taken the firearm to the Government Analyst. PW1 claimed that the recovered T-56 gun bore the serial number 4015699, whereas the later record by the Government Analyst indicated the number as 4015899. This divergence in serial numbers is not a trivial matter; it goes to the heart of the case's integrity.

Shockingly, this discrepancy was not given due consideration by the Learned Trial Judge. Instead, it appears that this substantial infirmity was summarily dismissed, without a proper investigation into why such a glaring inconsistency was present in the first place.

We hold that this discrepancy totally goes to the root of the case, for the above-said reason we hold that the prosecution has failed to prove the case beyond reasonable doubt. Therefore, we set aside the conviction and sentence imposed by the High Court of Batticaloa on the 25<sup>th</sup> of July 2016. Accordingly, the appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**