

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

C.A.86/2012

H.C. Kandy Case No: 125/2006

Nishshanka Pathiranalage Gamini Nishshanka
No:16,
Ogasta Watte,
Kandy.

Appellant

Vs.

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

Respondent

C.A. 86/2012

H.C. Kandy Case No: 125/2006

Before : Sisira J. de Abrew, J. (Acting P/CA) &
P.W.D.C. Jayathilaka, J.

Counsel : Amila Palliyage for the Accused-Appellant.
Rohantha Abeysuriya DSG. for the Respondent.

Argued &

Decided on : 05.12.2013

Sisira J. de Abrew, J. (Acting P/CA)

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted for being in possession of 2.43 grams of heroin. Learned trial Judge imposed life imprisonment on him. Being aggrieved by the said conviction and sentence he has appealed to this Court. According to the version of prosecution, the accused-appellant was arrested at Gatambe junction. According to C.I. Daluwatta, he arrested the accused-appellant as he got down from a Kandy bound bus. He was waiting at Gatambe junction on an information received by him. When he arrested the accused-appellant he found a parcel containing heroin inside his right side trouser pocket.

There were 200 small packets inside the parcel which was found in the trouser pocket of the accused-appellant. Government Analyst confirmed the net weight of the heroin was 2.43 grams.

2- The version of the accused-appellant who gave evidence ~~and~~ is quite different from the prosecution version. According to the accused-appellant he with two of his friends was coming from Thusitha Cinema hall in Peradeniya. He was after liquor. In front of Thusitha Cinema hall, two people came in a three wheeler. The accused-appellant and his two friends exchanged words with two people who came in a three wheeler. The accused-appellant did not know that the two people were Police officers. Thereafter the accused-appellant and two of his friends were taken to the Police Station by the two people who came in the three wheeler. Accused has not given clear evidence as to how he and his two friends were taken to the Police station. But it appears that they were taken in the same three wheeler. This was the summary of the evidence of the accused-appellant. The question that arises is as to how these two unknown people took the accused-appellant and his two friends to the Police station. The accused-appellant does not say that he received any injuries from the two people who came. If they were taken in the same three wheeler, it is difficult to understand as to how 5 people travelled in the same three wheeler when there has been an exchange of words between the two parties. If this was the situation, in my view, it was difficult for the three wheeler driver to take all 5 people inside the three wheeler. The version of the accused-appellant, when I consider all these matters cannot be accepted. The said version of

the accused-appellant does not create any reasonable doubt in the prosecution case. Learned counsel submitted that the version of the accused-appellant had been suggested to the prosecution witnesses. When we analyse the evidence of the accused-appellant, his evidence cannot be believed and is not culpable of creating any reasonable doubt in the prosecution case. We have considered the evidence led at the trial. We see no reason to interfere with the judgment of the learned trial Judge. We therefore affirm the conviction and the sentence and dismiss the appeal.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/