

**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 and in terms of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

The Hon. Attorney General

Attorney General's Department,  
Colombo 12.

**Complainant**

**Vs**

Selliah Sathis Kumar  
No.177, Vivekananthanagar,  
Kilinochchi.  
[Presently at Remand Prisons,  
Anuradhapura.]

**Accused and two others**

**C. A. Case No. : 94 /2011**

**H. C. Vavuniya Case No. : 2037/2009**

**And Now between**

Selliah Sathis Kumar  
No.177, Vivekananthanagar,  
Kilinochchi.  
[Presently at Remand Prisons,  
Anuradhapura.]

**Accused-Appellant**

**Vs**

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

**Complainant Respondent**

**BEFORE** : **M.M.A.Gaffoor, J &**  
**K. K. Wickramasinghe, J**

**COUNSEL** : AAL M.A.Sumanthiran P.C. for the Accused- Appellant.  
PC Sarath Jayamanne ASG for the Attorney General.

**ARGUED ON** : 14<sup>th</sup> September 2016

**DECIDED ON** : 13<sup>th</sup> June 2017

**K. K. WICKRAMASINGHE, J.**

The Accused Appellant (herein after referred to as the Appellant) was indicted in the High Court of Vavuniya along with two other accused. When the indictment was read over to three Accused they had pleaded 'not guilty' to the indictment and accordingly the trial was commenced before the learned High Court Judge.

The Accused Appellant was convicted for the following charges and accordingly sentenced to life imprisonment on each charge. The other two accused were acquitted from all charges as the learned trial judge was of the view that they were not connected with the alleged offences.

Charges against the accused appellant are as follows:

- (1.) For committing offence of transporting dangerous substances on or about 28<sup>th</sup> of January 2008 within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36(5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.

- (2.) On the same date, time and during the course of the same transaction, for committing offence of Possession of dangerous substances within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36 (5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.
- (3.) On the same date, time and during the course of the same transaction, for committing offence of concealing and transporting RDX weight of 2 kilos and 700 grams concealed in a wooden block within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36(5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.
- (4.) On the same date, time and during the course of the same transaction, for committing offence of possession of RDX weight of 2 kilos and 700 grams concealed in a wooden block within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36 (5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.
- (5.) On the same date, time and during the course of the same transaction, for committing offence of concealing and transporting RDX weight of 1 kilo and 800 grams in a hydraulic jack within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36(5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.
- (6.) On the same date, time and during the course of the same transaction, for committing offence of possession of RDX weight of 1 kilo and 800 grams in a hydraulic jack within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36(5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.
- (7.) On the same date, time and during the course of the same transaction, for committing offence of concealing and transporting RDX weight of 1 kilo and 180 grams in a pair of sandle within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36(5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.

- (8.) On the same date, time and during the course of the same transaction, for committing offence of possession of RDX weight of 1 kilo and 180 grams in a pair of sandals within the jurisdiction of High Court of Vavuniya, which is punishable under rule 36(1) read with rule 36(5) of the Emergency Regulations No. 1 of 2005 issued under the authority of the Gazette Extraordinary No. 1405/14 dated 13<sup>th</sup> August 2005.

Learned Counsel for the accused appellant raised following grounds of appeal during the argument;

1. The accused appellant was not of actual and exclusive possession of the ammunition that was recovered from the vehicle.
2. The prosecution failed to establish that the accused had the necessary knowledge (mensrea) in transporting the ammunition.

Facts of the case:-

The accused appellant was the driver of the vehicle belonged to the Kilinochchi Regions Director of Health Service at the time of incident. First accused was the Public Health Inspector of the aforesaid health department. On or about 28<sup>th</sup> January 2008, the above mentioned vehicle, a lorry bearing No. EP JC 2597 was stopped at the army check point in Tekkawatte at around 5 p.m. At the time of detection the 2<sup>nd</sup> accused was driving the vehicle. The 1<sup>st</sup> accused was seated at the joint passenger seat and the 3<sup>rd</sup> accused was also seated at the adjoining passenger seat.

According to the available evidence the 2nd accused had started the journey while the other two joined him there after. At first the 3<sup>rd</sup> accused boarded from the same place and the 1<sup>st</sup> joined them after they reached Vavuniya. When the vehicle was stopped all three accused were asked to come outside the lorry carrying their belongings, National Identity cards and the driving licence. When they were checked the 1<sup>st</sup> accused was carrying nothing and the 3<sup>rd</sup> was carrying a map of main cities. The accused appellant was carrying a sunshine rose colour shopping bag in his hand (when he was getting down from the vehicle).

When Chief investigating officer, Sub Inspector of Police Kapila Kumara(PW1) checked the above mentioned shopping bag he had found a pair of sandals of an unusual weight with newly put stiches on it. It was found to be concealed with ammunition which was covered by a carbon foil. Further at the time of detection, the accused appellant was observed to be panic and sweating.

When the vehicle was further examined by PW1, three wooden blocks and hydraulic jack were hidden behind the driver's seat. It was suspected to be bombs and therefore called the army bomb disposal unit. Thereafter the items mentioned in the charges were found inside one wooden block and the hydraulic jack. The above mentioned evidence was corroborated by PS Disanayake who was also on duty at the Vavuniya Thekkawattha vehicle check point. Witness Sampath who was a soldier on duty corroborated the other two witnesses with regard to the other ammunition concealed inside sandals and the wooden block. Government Analyst and two other officers also corroborated the above mentioned evidence.

When the defence was called, all three accused gave evidence in court and denied the allegation. According to the appellant, he was asked to drive the vehicle according to the duty chart given by the administration officer. On their way they refilled fuel and there after the vehicle was checked at the Thekkawatta check point where he was arrested and questioned by intelligent officers on the ground that suspicious thing were found inside the vehicle. He further mentioned that he placed his signature on a document written in Sinhala language due to fear.

In his evidence in court he claimed that he was only driving the vehicle assigned to him by the subject clerk of the Killinotchchi Regional Health Centre and he was not responsible for all the things inside the vehicle. He had not denied the discovery of ammunition from the vehicle which he was driving.

Learned counsel for the accused appellant argued that the accused appellant was merely a driver and he was assigned to the duty on that vehicle only on that date. Therefore he did not have any opportunity of planting explosives in the vehicle. Further stated, that somebody else would have planted the same. Through number of judicial precedents, the court had established that the proof of mensrea is not essential to cases involving statutory offences with strict liability.

In the case of **Perera Vs Munaweera (56 NLR 433)** ,As stipulated in sec. 8(1) where the weight of a loaf of bread was in question, court considered whether mens rea is required to impose liability upon a person who had breached sec. 8(1) of the Control of Prices Act. Section 72 of the Penal Code which enacts that "*nothing is an offence which is done by any person . . . who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it*" applies to all offences alike, including every statutory offence whose definition does not contain a particular state of mind or knowledge as one of its

*elements. In the latter case the accused will be entitled to an acquittal if he can prove on a balance of probability that by reason of a mistake of fact, and not by reason of a mistake of law, he had in good faith believed himself to be doing something which was not prohibited by law".*

In the case of **Perumal Vs Arumugam (40 NLR 532)** It was held that the absence of knowledge is no ground of defence in cases relating to strict liability.

In the case of **Shanmugarajah Vs Republic of Sri Lanka (1990) 2 Sri LR 57**, the accused was arrested at the passenger terminal in Katunayake in Katunayake Airport for the possession of heroin concealed in the bottom of a suitcase. The court held that the accused had the knowledge as to what he was carrying in the suitcase and should have overseen the legal consequences of such act.

It is pertinent to note that the appellant categorically stated that explosives were not introduced by the Police and similarly neither the 1<sup>st</sup> accused nor the 3<sup>rd</sup> accused. Anyway he attempted to say that he was not responsible for all the things found in the vehicle. Further the appellant being the driver of the vehicle he had the exclusive control over the vehicle as well as the substances found inside the vehicle. Therefore the appellant could not deny the liability for the ammunition found in the pair of sandals, hydraulic jack and in the wooden block.

Though the counsel for the appellant submitted that the vehicle had passed two other check points and the explosives were not detected at those places and therefore creates a reasonable doubt. It is a known fact that the vehicles carrying bombs had exploded in Colombo though those vehicle passed so many check points.

During cross examination, the prosecution had totally demolished the evidence of the accused appellant by test of probability.

According to the ruling in the case of **Perera Vs Munaweera 56 NLR 433**, the prosecution in a criminal case is bound to prove his case beyond reasonable doubt. The commission of the prohibited act and it is not required in addition to establish that the accused acted with any specific intention or knowledge.

The appellant never mentioned that he was going to hand over the vehicle to any other person and further he did not mention about his return trip.

Therefore it is evidentially proved by the prosecution beyond reasonable doubt, the actus reus of the alleged offence. The prosecution had also proven the knowledge of the appellant of the existence of ammunition in the vehicle. Therefore the prosecution has amply demonstrated that the accused was transporting and possessing ammunition with knowledge. (As decided in the case of **Talasingham Vs Muttiah 39 NLR 140**)

As per in the case of **Banda Vs Haramanis 21 NLR 141**, it was **held** that, *"possession to be criminal must be actual and exclusive, for criminal liability does not attach to constructive possession where property is found in a house in the possession of more than one inmate, none of them could be said to be in possession of it for the purpose of this offence unless there is evidence of exclusive conscious control against them"*.

The question of possession was dealt with in the case of **Siddick Vs Republic of Sri Lanka [2005] 1 SLR 383** too.

In the case of **Shanmugarajah Vs Republic of Sri Lanka (1990) 2 Sri Lr 57**, the Accused was arrested at the passenger terminal in Katunayake Airport for possession of heroin concealed in a bottom of a suitcase. Court held that the accused had the knowledge as to what he is carrying in the suitcase and should have overseen the legal consequences of such act.

By considering above, it is abundantly clear that there is no reason to reverse the conviction or sentence imposed by the learned High Court Judge and thereby we affirm the conviction and the sentence.

Hereby the Appeal is dismissed.

Judge of the Court of Appeal

M.M.A. Gaffoor, J.

I Agree

Judge of the Court of Appeal