

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

Court of Appeal Case No : CA Writ/278/2013

Thelge Arachchilage Dayaratne

Petitioner

Vs.

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

Respondents

C.A.278/2013 **H.C. Polonnaruwa No.49/2010**

Before : **S.Devika de L. Tennakoon, J and
S. Thuraija, P.C. J**

Counsel : Indica Mallawaratchy for the Accused Appellant.
Chethiya Gunasekara DSG for the Respondent.

**Argued and
Decided on:** 24.01.2018

S. Thuraija, P.C. J

Accused Appellant is present in Court produced by the Prison Authority.

Counsel for the Accused Appellant made submissions and raises a ground of appeal saying that the prosecution has failed to prove the ingredient of the charge. Elaborating the ground of appeal she submits that the weapon alleged to have used was not identified by the virtual complainant. Therefore the charge failed. Learned Deputy Solicitor General makes submissions and submits that he is supporting the conviction and the sentence.

This incident had occurred on the 12.12.2005. The virtual complainant was travelling from Batticaloa to Katunayake Airport to pick up a passenger. On the way at Welikanda he was stopped by a torch signal. When they stopped the vehicle the Accused Appellant had diverted them to

a by-road and robbed the mobile phone and cash from them. Due to the urgency and the importance, the virtual complainant had gone directly to the Airport.

It was revealed before the Court that the Accused Appellant had stopped the police vehicle in a similar manner and the Officer in Charge of the police station had arrested the Accused Appellant almost close proximity to the first incident. When the Accused Appellant was checked they found an automatic weapon, a mobile phone and cash in his possession. He was taken to the police station and the police were investigating into the issue.

The virtual complainant on the way returning from Airport to his home at Batticaloa, proceeded to Police Station of Welikanda and lodged a complaint. There he was shown the mobile phone and the cash. The virtual Complainant identified the mobile phone and the amount of cash.

The Accused Appellant was tried before the High Court of Polonnaruwa. There, the prosecution witnesses submitted that the Accused Appellant had robbed them on a gun point. The virtual complainant had submitted to Court that he can identify the type of the weapon and not the particular weapon. He said that it is a weapon which is similar to a weapon used by the police officers. When the weapon recovered shown to him he could not identify that is the weapon being used for that robbery. The counsel for the Appellant submits this brakes the prosecution by not proving the ingredient. Reading the evidence of all witnesses it clearly shows

that the witnesses were very genuine and they have not been tutored by any means because the witness could identify the type of the weapon and not the exact weapon. In our view the exact weapon can be identified by the serial number. A person who is maintaining the serial number or a ballistic expert attached to the Government Annalist Department, after doing test firing of the weapon. In this case the weapon comes within the definition of the Firearms Act and which is not challenged by any party during the trial nor in appeal.

Considering all the available material especially the judgment, the Judge has considered all necessary ingredients of the charge and the available evidence. Therefore we have no reason to interfere with the judgment. Therefore we dismiss the appeal. Further regarding the sentence the accused has been given the minimum mandatory sentence under the relevant Act. Therefore we have no reason to interfere with the sentence. Accordingly the appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Devika de L. Tennakoon, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Lwm/-