

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

The Attorney General of the Democratic
Socialist Republic of Sri Lanka.

Complainant

**Court of Appeal
Case No. CA 73/2008**

Vs,

Kalinga Chaminda Silva

Accused

And Now Between

Kalinga Chaminda Silva

Accused-Appellant

**High Court Colombo
Case No. 677/2006**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Complainant-Respondent

**Before : S. Devika de L. Tennekoon, J &
S. Thurairaja PC, J**

**Counsel : Shanaka Ranasinghe PC with Niroshan Mihindukulasuriya
for the Accused-Appellant
H.I. Pieris DSG for the Complainant- Respondent**

**Argued on : 7th September 2017 and 13th September 2017
Written Submissions on : 20th September 2017**

Judgment on : 29th September 2017

Judgment

S.Thurairaja PC, J

The Accused appellant was found guilty for possessing 36.15 grams of Heroin, punishable under Section 54(A) (d) of the Poison Opium and Dangerous Drugs Ordinance, and sentenced to life imprisonment. Being aggrieved with the said conviction and sentence the accused appellant had preferred an appeal to this court.

Both counsel for the Accused appellant and the Respondent made oral and written submissions.

The accused appellant had raised the following grounds of appeal;

- i. Contradiction per-se and inter-se were not considered by the trial Judge.
- ii. The chain of evidence regarding the production was not properly established.
- iii. Dock statement of the accused was not accepted or rejected by the trial judge.

As per the available materials before the court, it appears that Inspector of Police (IP) Liyanage who was attached to the Police Narcotics Bureau (PNB) received an information on the 13th December 2002. He formed a 10-member team from the officers who were attached to the PNB, after fulfilling the formalities, proceeded for this operation. It was at Ingurukade junction at Grandpas, Colombo 14 area. They went to that place and laid ambush for the accused to come there. The informant was also with the IP, he pointed at a three-wheeler and told them that is the vehicle on which the accused is travelling. The officers stopped the three-wheeler and searched the vehicle and the accused, there they found the accused was hiding a parcel under his underwear. On their preliminary investigation it was suspected of Heroin and was taken into custody. The team continued with the investigation and proceeded to his and his Brother in Law's house. They didn't find anything illegal there and they returned to the bureau. IP Liyanage had the custody of the accused and the production at all times until he returned to the PNB and commenced the formalities. Initially he had done the field test and confirmed the substance to be of heroin. When it was weighed it was 144.6 grams. This was properly sealed with the Investigating Officers personal seal and the Thumb impression of the accused. This production was sent to the Government Analyst and it was found that it contained 36.15 grams of Diacetyl Morphine (Heroin).

At the trial before the High Court of Colombo, the prosecution led the evidence of 3 Police officers who were involved in the investigations and the Government Analyst

also marked P1 to P19. When the defence was called the accused opted to make a Dock Statement and called two witnesses including his wife. Both Counsels for the accused and the State made submissions. After giving reasons, the learned trial judge found the accused guilty and imposed the minimum mandatory sentence of Life Imprisonment.

Keeping in mind the grounds of appeal put forward by the Counsel for the appellant, it warrants us to consider all evidence submitted at the trial court.

This was a raid conducted by IP Liyanage of the Police Narcotics Bureau, who had received information with which he had commenced the investigation. Counsel for the accused appellant brings to the notice of the court that this witness originally said that the information is about this accused and subsequently the book entry showed the information was about the brother in law of the accused.

ප්‍රශ්නකරුගේ ඔත්තුව අනුව මොකක්ද තමාට දැනගැනීමට ලැබුණේ :

උදැන ගැනීම :ට ලැබුණා කොළඹ ඉගරු කඩේ හංදිය අසල වරාය පිවිසුම් මාර්ගය අයිනේ ,14 වායන්ත යන අයගේ මස්සිනා වන වමින්ද යන මන්ද්‍රුණි පදිංචි ප්‍රි .කුඩා වත්තක් තියෙනවා 2002 ජාවාරම් කරන බවත් වමින්ද යන අය සිමබන්ධයෙන් වූ තොරතුර දුන්නේ.12.13 වන දින ජාවාරම් කිරීමට සූදානම්ව සිටින බවත්8 උදේ ,-මෙය සුදුවීමට තිබෙන බවත් එය ,අතර 9 .පෙන්වා දීමට පුලුවන් බවත් දැනගැනීමට ලැබුණා

ප්‍රයත්න කියලා තමා ගරු අධිකරණයට කියන්න ඔය තොරතුරේ සඳහන් වෙන්නේ ප්‍රි :
?කෙනෙකුගේ නමක් නේද

උඵහෙමයි:

ප්‍රයත්න නමැත්තාගේ පදිංචි ස්ථානය පිළිබඳ එම තොරතුරේ සටහන්වී වගේම ප්‍රි : වෙනවාද?

උඵහෙමයි:

ප්‍රඵම තොරතුරේ කොහේවත් සඳහන් වන්නේ නැහැ විත්තිකරුගේ පදිංචිය පිළිබඳව සඳහන් :
?වන්නේ නැහැ

උසටහන් බලන්න ඕන :

(සාක්ෂිකරු සටහන් පරීක්ෂා කර බලයි)

ඵහෙමයි විත්තිකරුගේ ස්ඵර පදිංචිය පිළිබඳව තොරතුර ලියලා නැහැ.

ප්‍රකෙටියෙන් කිව්වොත් මහත්මයාට ලැබිව :ඵව තොරතුර අනුව ප්‍රයත්න කියන තැනැත්තාගේ නම ප්‍රයත්න පදිංචි ස්ථානය පිළිබඳ ඔත්තුවේ සඳහන් වෙනවා?

උඵහෙමයි :

Further some issues were raised about the three-wheeler.

According to the prosecution witness, it was revealed that the informant was with them and he showed the accused and the three-wheeler. PNB team arrested the accused and the drugs were found in the under pants of the accused. Given this circumstance, the difference the counsel claims cannot be considered to affect the findings of the learned trial judge.

Considering the evidence of the prosecution witnesses I do not think that the trial judge had any materials against the prosecution to entertain a reasonable doubt.

The counsel for the accused appellant submits that the chain of production was not established; hence the conviction cannot be sustained and the accused is entitled to be released is the next ground of appeal.

The production was recovered by IP Liyanage, from the time of recovery until it was sealed he categorically says that this production and the accused were in his custody. They have gone in search of the accused's cousin; even at that time both were under his custody. The production and the accused were brought to the Bureau where the production was properly weighed and sealed. The accused was formally taken into custody. The productions were properly inventoried and handed over to the reserve from there it had reached the Government Analyst who confirmed that the productions were with proper seal and unbroken at the time they received.

Considering the line of questioning and suggestion there is no reason for the trial judge to suspect a break in the chain of production.

The accused appellant raises the last ground of appeal that the trial judge had not considered the dock statement. Perusing all the evidence before the High Court and the spelled-out reasons by the trial judge, we find that the learned trial judge had considered the defence substantially before he came to a conclusion. We should be mindful when a judge who has a trained judicial mind and experience cannot give all the details he had considered to come to his conclusion. If we expect reasoning for every issue in a case however trivial it maybe then it will be practically impossible for the judges to write such a lengthy judgment with such work load in our courts. This does not mean that the judge can give just one-word judgements to the issue at hand. It is in the nature of justice for a person (appellant) to reasonably expect reasoning for a judge's conclusion to a particular issue.

Carefully considering the arguments presented by both counsels I find that there is no material contradiction and break of chain of production to vitiate the conviction. Further the learned trial judge had substantially considered the evidence for the defence including the dock statement. Therefore, this court finds that there is no

merit on the grounds of appeal of the accused appellant. Accordingly, the appeal is dismissed and the conviction and sentence is affirmed.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J
I agree,

JUDGE OF THE COURT OF APPEAL