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

In the matter of an appeal under and in terms of Section 331 of the Criminal Procedure Code Act No. 15 of 1979.

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

Complainant

Nurul Anwar Mohomed Jarook

Court of Appeal
Case No. CA 280/2014

Accused

Vs,

And Now Between

Nurul Anwar Mohomed Jarook

Accused-Appellant

High Court of Colombo
Case No. HC 806/ 2002

Vs,

The Attorney General of the Democratic Socialist Republic of Sri Lanka

Complainant-Respondent

Before : **S. Thurairaja PC, J &**
A.L. Shiran Gooneratne J

Counsel : Sharon Seresinghe Attorney-at-Law for the Appellant.

Janaka Bandara SSC for the Respondent.

Written Submissions : Accused Appellant - 08th December 2017.

Complainant Respondent-09th March 2018.

Argument on : 09th October 2018.

Judgment on : 30th October 2018.

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JUDGMENT

S. Thurairaja, PC. J

The Accused – Appellant, Nurul Anwar Mohomed Jarook (Hereinafter sometimes referred to as the Appellant) was indicted in the High Court of Colombo by the honourable Attorney General for possession of 3.32 grams of heroin (dicetyl morphine) which is punishable under Section 54 A (d) of the Poison, Opium and Dangerous Drugs Act. After the trial the Appellant was found guilty and sentenced to life imprisonment.

Being aggrieved with the said conviction and sentence the Appellant had appealed to the Court of Appeal and submitted following grounds of appeal (the following are re-produced from the written submission of the Accused-Appellant).

(1) When there were doubts in the chain of custody relating to the inward journey, the Learned High Court Judge has convicted the Accused-Appellant for possession of 3.32 grams of heroin.

(2) It is not safe to convict the Accused-Appellant when the Police Witnesses' evidence is not credible.

(3) When the original Government Analysts report has been misplaced/lost by the Police Narcotic Bureau (PNB) officers and the evidence was laid with a copy, the Learned High Court Judge did not consider the prejudiced caused to the Accused.

(4) The Learned High Court Judge has not considered the dock statement when giving the judgment.

It will be appropriate to consider the facts of the case before we proceed to analyse grounds of appeal.

According to the prosecution witnesses, on the 26th October 1999 Inspector of Police Bopitiyage Don Nihal Perera attached to the Police Narcotic Bureau (PNB) received an information from his personal informant regarding trafficking of drugs.

They have formed a team to conduct a raid and proceeded to Mattakkuliya area. After waiting for some time, they have changed the location and the informant had identified the Appellant of possessing of drugs. He moved away from the team and team proceeded to apprehend the Appellant. When they searched the Appellant, found a brown coloured substance weighed 8.6 grams of brown coloured powder which was suspected as heroin in his custody and he was taken into custody. The substance was sent to the Government Analyst for analysation, there it was found, it contained 3.32 grams of heroin (dicetyl morphine).

Considering the 1st ground of appeal that, when there were doubts in the chain of custody relating to the inward journey, the Learned High Court Judge has convicted the Accused-Appellant for possession of 3.32 grams of heroin, it is the evidence by the Court that the Inspector of Police B.D. Nihal Perera had the possession of the substance after it was taken from the Appellant. According to the witness, it was submitted to the Court that the substance was sealed in the presence of Appellant and it was handed over Sub Inspector Sunil Perera to be taken to Government Analyst. The Government Analyst received the same with seals intact.

The Inspector of Police Nihal Perera and Sub Inspector of Police Sunil Perera gave evidence in Court and their evidence were never challenged and contradicted regarding the custody of the production. It is evidence before the Court that the productions were properly sealed when the government analyst obtained it.

In **Perera vs. Attorney General (1998) ISLR 378** His Lordship Justice J.A.N. De Silva at page 380 remarked that,

"It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore it is correct to state that the most important journey is the inwards journey because the final Analyst report will be depend on that. The outward journey does not attract the same importance."

Considering all factors we are of the view that the chain of custody was not interfered. Accordingly, we find that there is no merit in this ground of appeal.

The 2nd ground of appeal is that, it is not safe to convict the Accused-Appellant when the Police Witnesses' evidence is not credible. It is a wrong concept to say that evidence of Police Officers' should not be accepted by the Court. It is the duty of the investigating officers to inform the Court by way of giving evidence of what they did. He is available for examination-in-chief, cross-examination and to be questioned by the Court. If any party challenge the witness, there is an ample of opportunity available at the trial stage. There, they can mark contradictions even sometimes elicit to the Court that his evidence cannot be accepted. Without doing any of these it is unfair to come to the Appellate Court and submit that the evidence of the Police Officers should not be accepted. It is our considered view, unless there is substantial material against the witnesses his evidence should not be rejected on someone's myths and believes.

In this case, the investigating officer and the other witnesses who was involved in the raid, gave evidence. The evidence was uncontradictory and unchallenged. I do not see any reason for not to accept the evidence of the witnesses who are Police Officers. Considering the evidence before the trial court, it is our view that there is no merit in this ground of appeal. Hence this ground also fails on its own merits.

The 3rd ground of appeal submitted by the Appellant is that, when the original Government Analysts report has been misplaced/lost by the Police Narcotic Bureau (PNB) officers and the evidence was laid with a copy, the Learned High Court Judge did not consider the prejudiced caused to the Accused (sic).

This issue was never taken at the trial proceeding before the original court. Further the Government Analyst was never questioned on this issue. It was the first time, it was taken up before the Court of Appeal.

When the substance was sent to the Government Analyst, it was received by Mrs. S. Thennakoon, Senior Assistant Government Analyst (as then). She had examined the substance and submitted a report to the Court.

Initially, this report was available; subsequently it was not available on record. The Government Analyst who examined the substance gave evidence at the trial proceedings before the High Court and testified that she received the parcel with seals were intact, weighed of 8.4 grams of brown coloured powder. She subjected the said powder for chemical analysation and found 3.32 grams of heroin. At the trial, she submitted a copy of the Report. Missing of the 1st copy in our view, will not cause any hindrance to the substantive case. The analyst herself was before the Court and testified of her finding. She can produce any number of originals under her signature. Therefore missing of the 1st copy of the Government Analyst Report will not create any doubt in this case. Accordingly, we find that this ground of appeal also fails on its own merits.

The last ground of appeal is that, The Learned High Court Judge has not considered the dock statement when giving the judgment. We perused the Judgment of the Learned Trial Judge, at page 287 to 290 the Learned Trial Judge had considered the dock statement of the Appellant. The Appellant had said that he is denying the charge and he was framed because of a previous incident on which his family members had complained.

It is our view that the Learned Trial Judge has adequately considered the dock statement and witnesses called by the defence. We do not find that the dock statement and the evidence for the Accused- Appellant created any reasonable doubt in the prosecution case.

In **Himachi Pradesh vs Thakuldass(1983) 2 Cri. L.JH. 1694 at 1701**,

> *"Whenever a statement of fact made by witness it not challenged in cross examination it has to be concluded that the fact in question is not disputed."*

Considering the last ground of appeal we find that the Learned Trial Judge had sufficiently considered the dock statement and all their materials before the Court. Hence we find no merit in this ground of appeal also.

After carefully considering we find that, there is no merit in all grounds of appeal accordingly, we dismiss the appeal and affirm the conviction and the sentence.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL