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

In the matter of an Appeal made
under Section 331 of the Code of
Criminal Procedure Act No.15 of
1979

CA 228/2018

HC/ COLOMBO/ 7604/2014

Benedict Selvaraja Vijaya
Baskaran alias Viji

Accused-Appellant

vs.

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

Complainant-Respondent

BEFORE : **Devika Abeyratne J**
P. Kumararatnam J

COUNSEL : **Mr Isuru Somadasa AAL for the Appellant.**

**Mr.Janaka Bandara SSC for the
Respondent.**

ARGUED ON : 02/02/2021
30/04/2021

DECIDED ON : 16/07/2021

JUDGMENT

P. Kumararatnam J

The above-named Accused-Appellant (hereinafter after referred to as the Appellant) was indicted by the Attorney General under Sections 54(A) (b) and 54(A) (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for Trafficking and Possession respectively of 7.93 grams of Heroin on 29th January 2014 in the High Court of Colombo.

After the trial the Appellant was found guilty on both counts and the Learned High Court Judge of Colombo has imposed life imprisonment on the first count on 18th of July, 2018. The Learned High Court Judge had refrained from imposing sentence on the second count.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic. During the argument he was connected via zoom from prison.

On behalf of the Appellant following Grounds of Appeal are raised.

1. The Learned Trial Judge has failed to consider the fact whether the chain of Inward Journey was established by the prosecution, amounting to a doubt whether the parcel containing substance which was sent to the Government Analyst could have been swapped or contaminated.
2. Whether the prosecution has failed to prove beyond reasonable doubt the Inward Journey of the productions.

Background of the case

On 29/01/2014 a police party headed by IP Chandana Ranasinghe from Colombo Crime Division had conducted a raid in Mattakkuliya area with the assistance of IP Wasantha, PS 529 Botheju, PS 33936 Bandara, PS 30065 Palitha, PC 61115 Perera, PC 61178 Chaturanga, WPC 8041 Anusha and PCD 1407 Bandara. During the raid the Appellant was arrested as he walked towards the police vehicle in a suspicious manner. When he was subjected to a body check a pink colour cellophane bag was recovered from his right-side trouser pocket.

As the police suspected that the substance in the cellophane bag could be heroin, the Appellant was arrested and the cellophane bag along with the substance was weighed. The said parcel weighed about 25.180 grams.

The investigating officer had duly sealed the production in front of the Appellant and handed it over to reserve duty officer PS 28675 Ramyakumara under production number 141/2014.

IP Wasantha Kumara who had assisted the raid had corroborated the evidence given by IP Chandana Ranasinghe.

The production was in the safe custody of the officers who held reserve duty until the production was sent to the Government Analyst Department on 30/01/2014.

According to Government Analyst Report 7.93 grams of pure Heroin had been detected in the said parcel.

After the conclusion of prosecution case the Learned Trial Judge had called for the defence and the Appellant had decided to make a dock statement. In his dock statement he had taken up the position that he never carried any illegal substance as alleged by the prosecution.

In every criminal case the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person. In the case of this nature the prosecution not only need to prove the case beyond reasonable doubt but also ensure, with cogent evidence that the inward journey of the production has not been disturbed at the all-material point.

In the case of **Mohamed Nimnaz v. Attorney General** CA/95/94 held:

“A criminal case has to be proved beyond reasonable doubt. Although we take a very serious view in regard to offences relating to drugs, we are of the view that the prosecutor should not be given a second chance to fill the gaps of badly handled prosecutions where the identity of the government analysis for examination has to be proved beyond reasonable doubt. A prosecutor should take pains to ensure that the chain of events pertaining to the productions that had been taken charge from the Appellant from the time it was taken into custody to the time it reaches the Government Analyst and comes back to the court should be established”.

In the first appeal ground the Appellant contends that the Learned Trial Judge has failed to consider the fact whether the chain of Inward Journey was established by the prosecution, amounting to a doubt whether the parcel containing substance which was sent to the Government Analyst could have been swapped or contaminated.

In his second ground the Appellant contends that whether the prosecution has failed to prove beyond reasonable doubt the Inward Journey of the production.

As the Appellant challenges the accuracy of inward journey of the production in both of his Appeal grounds, the counsel for the Appellant had mainly argued that the prosecution had failed to establish the inward journey of the production beyond reasonable doubt and thereby the conviction is bad in law and unsafe.

According to chief investigation officer PW01 IP Chandana Ranasinghe, after the arrest the substance found in the possession of the Appellant was weighed properly and handed over to the reserve duty police officer PW08 PS 28675 Ramyakumara under production receipt number 141/2014. He had received the same at 18.35 hours on 29/01/2014 and after proper documentation he had handed it over to Officer in Charge of production room PW10 IP Piyapala. IP Piyapala in his evidence admitted this position.

But on 30/01/2014 at 11.30 hours PW11 PS 36112 Niroshan Jayasinghe had handed over the production number 141/2014 to PS 529 Boteju to be taken to the Government Analyst Department. Hence the Learned Counsel for the Appellant had submitted that without an entry whatsoever to show that IP Piyapala had handed over the production bearing number 141/2014 to PW11 PC 39112 Niroshan Jayasinghe, under whose authority PW11 had released the production to PS 529 Boteju to be taken to the Government Analyst Department. Hence, he argues that this is a discontinuation in the chain of custody of production.

According to PW10 IP Piyapala he had only put an entry stating that he had received the production number 141/2014 from PW08 PS 28675 Ramyakumara on 29/01/2014 and had safely kept the same in the production room of the Colombo Crime Division. In the cross examination he had admitted that there is no entry with regard to handing over the said

production to PW11 Niroshan Jayasinghe. According to him a spare key has been given to PW11 Niroshan Jayasinghe to handle the production in his absence and this was the practice continued for a long time. He admitted that there was no written authority available to substantiate his claim. According to him this was an understanding that existed between him and PW11 Niroshan Jayasinghe only. No evidence presented as to whether any higher officer including the Officer in charge of CCD was aware of this arrangement.

PW11 PC 39112 Niroshan Jayasinghe in his evidence admitted that when he handed over the production to PW05 PS 529 Boteju, according to the record the Officer in Charge of the production room was PW10 IP Piyapala. Further when he handed over the said production to PW05, he was not officially assigned duties to handle the productions in the production room of Colombo Crime Division. According to him on verbal instructions of IP Piyapala he had opened the production room and handed over the production number 141/2014 to PW05. He had not made any entries in the information book to corroborate his position. Further no documentary evidence produced to establish that the PW11 was assigned duties to handle production either in writing or verbally by higher officers of Colombo Crime Division.

It is very important to consider at this stage whether the above-mentioned deviation in handling productions in drug related matters cause any reasonable doubt over the prosecution case as claimed by the Appellant. To consider this issue it is very important to discuss our Higher Court's approach with regard to handling evidence pertaining to productions in drug related matters.

In **Faiza Hanoon Yoosuf v. Attorney General** CA/121/2002 it was held that:

“In effect the first ground of appeal is that the prosecution failed to establish the nexus between the Heroin detected and what was produced in court. In court, the prosecution must prove the chain of custody. This must be done by establishing the nexus between the heroin detected and what was handed over to the Government Analyst for examination and report. The prosecution must prove that, what was subjected to analysis is exactly the same substance that was detected in that particular case. In this regard the inward journey of the production plays a dominant role and is most significant”.

In **Perera v. Attorney General** [1998] 1 Sri.L.R 378 it was held:

“It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to 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 inward journey because the final analyst report will depend on that”.

In **Mahasarukkalige Chandani v. Attorney General** CA/213/2009 decided on 30/06/2016 His Lordship Justice Malalgoda held that:

“As observed by this court the inward journey of a production in a case where the charges are mainly based on the identity and the quantity of productions recovered from the custody of the suspect, the prosecution has a responsibility to establish this aspect of the case without

leaving any gaps before the trial court. In this regard the seals said to have been placed on the production at the time the production was handed over to the reserve has a significance. The said seals have to be intact at every point of time the custody is changed and finally it should be observed by the person who breaks such seals in order to commence his investigation. If it can be established at least, that the said seals were observed by the receiving officer and the removing officer who removed the production from the police station as intact and by the Government Analyst that he observed the same seal intact, when parcel was opened, that could have been considered as sufficient for this court to conclude that the prosecution has established the inward journey to the satisfaction of court”.

In the case **of Koushappis v. The State** of WA [2007] WASCA 26; (2007) 168 A Crim R 51 at para 85 the court held:

“Whilst the safe custody of critical exhibits such as these ought to be readily proved by clear and specific evidence rather than being left to inference, having regard to the way the case was conducted on both sides, the evidence here was such in my view, as to allow the jury to be satisfied beyond reasonable doubt that the drugs that were analysed... were in fact those seized by police from the appellant’s house”;

The above cited judgments clearly demonstrate how important the chain of custody evidence is in a drug related offence. Further it gives the clear direction as to how that evidence should be presented to the satisfaction of the trial court. Every piece of evidence needs a proper analysis to decide without any doubt where it came from and who had access to it without any deviation in routine practice.

In this case the police evidence pertains to chain of custody shows an unprecedented deviation from their usual practice. The explanations given by both PW11 PC 39112 Niroshan Jayasinghe and PW10 IP Piyapala cannot be considered as reasonable as their actions are not endorsed by the officer-in-charge or any other higher officer in the Colombo Crime Division at that time. Hence it is quite clear that the police had not properly handled the chain of inward journey of the production in this case.

Chain of custody issues are very important in cases involving drugs. The prosecution has to present undisputed evidence to prove the chain of custody of the production. Further the prosecution has to prove that the item presented at the trial is the same item that was in the possession or taken from the accused. Allowing the Court to base its decision on evidence that is tainted, unreliable or has been tampered with it would undermine the integrity of the judicial system. Further the Court is not the place to correct mistakes done by the investigating officers.

In the case of **Sinniah Kalidasa v. The Hon. Attorney General** CA/128/2005 BASL Criminal Law 2010 Vol.111 page 31 in which Justice Ranjith Silva quotes E.R.S.R. Coomaraswamy in the Law of Evidence Volume 2 Book 1 at page 395 dealing with how police evidence in bribery cases should be considered;

“In the great many cases, the police are, as a rule unreliable witnesses. It is always in their interests to secure a conviction in the hope of getting a reward. Such evidence ought, therefore, to be received with great caution and should be closely scrutinized”

Ranjith Silva J states;

“By the same token the same principles should apply and guide the judges in the assessment of the evidence of excise officers in narcotic cases. Judges must not rely on a non-

existent presumption of truthfulness and regularity as regards the evidence of such trained police or excise officers”.

In this case evidence presented by the prosecution revealed a gross violation of handling of production by the police witnesses. They have deviated from their routine practice. Due to this the prosecution has failed to present sufficient and clear evidence to prove the chain of inward journey as advanced by the counsel for the Appellant.

Due to aforesaid reasons, we set aside the conviction and sentence imposed by the Learned High Court Judge of Colombo dated 18/07/2018 on the Appellant. Therefore, he is acquitted from both charges.

Accordingly, the appeal is allowed.

The Registrar is directed to send a copy of this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J

I agree.

JUDGE OF THE COURT OF APPEAL