
**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 298/2015

HC/ COLOMBO/ 6898/2013

Hawupe Liyanage Prasanna
Madhushanka

Accused-Appellant

vs.

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

Complainant-Respondent

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

COUNSEL : **Mr.Amila Palliyage with Mr.Nihara
Randeniya, Ms.Sandeepani Wijesooriya,
Mr.Duminda De Alwis and Ms.Ruwanthi
Doralagoda Attorneys-at-Law for the
Appellant.
Mrs.Harippriya Jayasundara ASG for the
Respondent.**

ARGUED ON : **15/07/2021**

DECIDED ON : **30/07/2021**

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 8.64 grams of Heroin on 17th October 2011 in the High Court of Colombo.

After trial the Appellant was found guilty on both counts and the Learned High Court Judge of Colombo has imposed life imprisonment on both counts on 15th of June, 2015.

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. Inward journey of the production is not proved beyond reasonable doubt by the prosecution.
2. Case for the prosecution fails the test of probability.

Back ground of the case.

On 17/10/2011 IP Thushara Sampath Pushpakumara attached to Police Narcotic Bureau had received information from PS 26878 Obeysekera about the trafficking of Heroin by a person called Dematagoda Shanka. He with 06 other police officers attached to Police Narcotic Bureau had left for the raid after completing all necessary formalities. The team had left the bureau at 6.50am and reached Kotikawatta around 7.45am as per the information.

The team had waited near the Kotikawatta Crematorium and the informant had arrived around 8.30am and had met Sgt.26878 Obeysekera and had re-confirmed that the Appellant was planning to traffic drugs on that day. The police party had waited there till 13:20 hours and the informant had called Sgt 26878 Obeyekera and had asked them to meet him near the Cargills Food City situated on Gothatuwa road and they had therefore waited at the car park till the arrival of the informant. The informant had arrived and informed them that the Appellant would be coming from his home for the transaction and asked the witness and PS 26878 Obeysekera to wait on the Galkotuwa Road. Accordingly, the witness and PS 26878 Obeysekera had walked to Galkotuwa Road junction and waited. After some time, the informant had showed a person who was wearing a denim trouser and a shirt coming along the Galkotuwa Road and left the place. The witness and PS 26878 Obeysekera after identifying themselves stopped the Appellant and did a body search. In his right trouser pocket, a parcel covered in a grocery bag was found and upon further examination powder like substance was detected in that parcel. Further a cell phone, a purse and Rs.200,000/= cash in Rs.2000/= denomination were found in his possession. On a field examination the substance found in the possession reacted for Diacetyl Morphine alias Heroin. Hence the Appellant was arrested for possession of Heroin around 13:50 hours. Thereafter he was taken to Cargills Food City car park in a three-wheeler. From there he was taken to his house situated off Galkotuwa Road for further investigation. As the house search did not

reveal any illegal substance, the police party concluded their investigation and returned to the Bureau at 16:45 hours.

At the Police Narcotic Bureau, the Heroin was properly weighed and sealed after obtaining the thumb impression of the Appellant. The parcel was weighed approximately 107grams and was marked as production number 159/11. The money which had been recovered from the Appellant was also sealed and marked as production number 160/11. The witness had handed over the parcels to the reserve police officer IP/Rajakaruna. At the trial he had identified the production and the Appellant properly. For this raid the assistance of the Police Special Task Force was also sought by the officers of the Police Narcotic Bureau.

PW09 PS Obeysekera who had received the information and participated in the raid along with PW01 had properly corroborated the evidence of PW01 without any contradiction or omission.

IP/Rajakaruna to whom the productions were handed over by PW01 had given evidence and confirmed that he handed over the same to the Government Analyst on 28/10/2011 and identified the production and the Government Analyst Receipt which had been marked as P5 in the trial. In the receipt the Government Analyst had confirmed that the productions pertaining to this case had been handed over by PW06 IP/Rajakaruna with seals intact.

PW08 Assistant Government Analyst Mrs. Jayasekera had given evidence and confirmed that the parcel marked as P1 had contained 8.64 grams of pure Heroin. The Government Analyst Report was marked as “Y” at the trial. Her qualifications and expertise in the field of narcotics have been admitted under Section 420 of the Code of Criminal Procedure Act No. 15 of 1979 by the defence.

After the closure of the prosecution case defence was called and the Appellant had made a dock statement and totally denied the charge. He

further said that he was arrested at his residence and he had been wrongly connected to this case as his father was known for being engaged in drug transactions.

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 serious view in regard to offences relation 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 good 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 **Perera V. Attorney General** [1998] 1 Sri.L.R it was held:

“ the most important journey is the inward journey because the final analyst report will depend on that”.

In **Witharana Doli Nona v.The Republic of Sri Lanka** CA/19/99 His Lordship Justice Abrew remarked thus;

“It is a recognized principle that in drug related cases the prosecution must prove the chain relating to the inward

journey. The purpose of this principle is to establish that the productions have not been tampered with. Prosecution must prove that the productions taken from the accused Appellant was examined by the Government Analyst”

Therefore, proving the chain of custody is a very important task for the prosecution. If investigating officers do not do their duty properly, the chain of custody can be successfully challenged at the trial. This is because the prosecution always relies on evidence gathered by police officers in cases of this nature.

In the first ground of appeal the Appellant takes up the position that the Inward Journey of the production has not been proved beyond reasonable doubt by the prosecution. Thereby the learned counsel for the Appellant argues that the conviction is bad in law and unsafe.

According to chief investigation officer IP Pushpakumara, after coming to the Police Narcotic Bureau the substance found in the possession of the Appellant was weighed and sealed properly and handed over to PW09 IP Rajakaruna. This evidence has been properly corroborated without any contradiction by PW09. It is apparent that PW09 had not mentioned the name of the officer from whom he has received the production No.159/11. But in his evidence, he has very correctly mentioned that the same production had been handed over to the Government Analyst. Failure to mention the name of the officer from whom he received the production will not occasion any impact on the prosecution case as in this case the same person who received the production had handed it to the Government Analyst with all seals intact.

Further the Counsel for the Appellant brought to the notice of the court that in the proceedings at page 99, the last answer of PW09, is typed as that he had handed over the production at 14:16 hours to a person called Ratnapala at the Government Analyst Department. The Government Analyst in her

evidence confirmed at page 179 of the brief that the production pertaining to this case had been received from IP Rajakaruna of Police Narcotic Bureau on 28/10/2011. In the receipt which had been marked as P05 the Government Analyst has remarked that the parcel marked as P1 was properly sealed. Considering this evidence, it appears that the stenographer who had taken down the evidence of PW09 wrongly mentioned the name of Ratnapala as the person who received the production at the Government Analyst Department. This error was not corrected by the prosecution before passing the judgment. This error has no effect on the prosecution case as the Government Analyst confirmed that she had received the production from IP Rajakaruna of the Police Narcotic Bureau.

Considering the evidence presented by the prosecution with regard to Inward Journey, I conclude that with all material points considered there is no break in the chain of production in its inward journey as advanced by the counsel for the Appellant. Therefore, I conclude that the first ground of the Appellant is devoid of any merit.

In the other ground of appeal, the counsel for the Appellant contends that the case for the prosecution fails the test of probability.

In the case of **Wickremasuriya v. Dedoleena and others** 1996 [2] SLR 95 Jayasuriya J held that;

“A judge, in applying the Test of Probability and Improbability relies heavily on his knowledge of men and matters and the patterns of conduct observed by human beings both ingenious as well as those who are less talented and fortunate”

His Lordship further held that;

“If the contradiction is not of that character, the Court ought to accept the evidence of witnesses whose evidence is otherwise cogent, having regard to the Test of

Probability and Improbability and having regard to the demeanour and deportment manifested by witnesses. Trivial contradictions which do not touch the core of a party's case should not be given much significance, especially when the 'probabilities factors' echoes in favour of the version narrated by an applicant"

In Iswari Prasad v. Mohamed Isa 1963 AIR (SC) 1728 at 1734 His Lordship held that;

"In considering whether evidence given by a witness should be accepted or not, the court has to examine whether he is, in fact, an interested witness and to inquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is -whether there is a ring of truth surrounding his testimony."

Justice Mackenna "Discretion", The Irish Jurist, Vol.IX (new series), 1 at 10 has said;

"When I have done my best to separate the true from the false by these more or less objective tests, I say which story seems to me the more probable, the plaintiff's or the defendant's, and If I cannot say which, I decide the case, as the law requires me to do in defendant's favour."

Guided by the above cited judgments and writing now I consider the second ground of appeal advanced by the Appellant in this case.

In this case the Learned High Court Judge has considered all evidence adduced by both the prosecution and the defence. The Judge had the advantage of observing the demeanour and deportment of the witnesses. According to PW01 they had received the information at about 5.35am on 17/10/2011. After constituting a team, they had left the Police Narcotic

Bureau at around 6.50am and reached Kotikawatta at around 7.45am. The informant had arrived there at 8.30am and re-confirmed the trafficking of Heroin by the Appellant. At around 13:15 hours the informant had called PW02 and asked them to meet him near Cargills Food City on Gothatuwa Road. The police team came there in five minutes time and PW01 and PW02 had met the informant at 13:25 hours. The informant told them that the Appellant was coming from his house for the business and asked them to be at Galkotuwa Road junction. While waiting there, the informant had shown a person coming towards Galkotuwa junction as the Appellant. After establishing their identity, the Appellant was searched by PW01 and PW02 who found the substance in his possession. He was arrested at 13:50 hours and brought up to their vehicle in a three-wheeler and taken to his house which is situated off Galkotuwa Road for further investigations.

Learned counsel for the Appellant drawing our attention to pages 76,77,78,109,112,115,117,118 of the brief argues that above mentioned evidence is not probable and cannot be believed. He further submitted that the Appellant was not arrested at Galkotuwa Road junction but he was arrested at his residence. Although the information was specific the raiding team had obtained the address from the Appellant after his arrest. Hence the counsel for the Appellant argues no such incident happened as claimed by the prosecution.

In this case the investigating officers had received information that the Appellant was leaving his house with Heroin. No specific time was mentioned. But the police team had waited almost six hours to complete their task. Considering their evidence there is no improbable evidence considered during the trial. Their evidence pertaining to the raid was clear, cogent and was devoid of any contradiction or ambiguity. Their evidence is not challenged at all. Considering all the circumstances their action cannot be faulted at any stage of the raid.

This ground of appeal also fails as the Learned High Court judge very correctly acted on the overwhelming evidence adduced by the prosecution.

Considering all the evidence presented during the trial, we conclude that the prosecution has proved the case beyond reasonable doubt. We further conclude that this is not an appropriate case in which to interfere with the decision of the Learned High Court Judge of Colombo dated 19/06/2015. Hence, we dismiss this appeal.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

DEVIKA ABEYRATNE, J

I agree.

JUDGE OF THE COURT OF APPEAL