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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979.

Court of Appel No:
CA/HCC/0144/23
High Court of Kandy
Case No: HC/196/2014

Muramudali Gedera Malaka Mihira Bandara

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL : **Amila Palliyage with Sandeepani Wijesooriya, Savani Udugampola, Lakitha Wakishta Arachchi and Subaj De Silva for the Appellant.**

Anoopa De Silva, DSG for the Respondent.

ARGUED ON : 22/07/2024

DECIDED ON : 21/11/2024

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter after referred to as the Appellant) was indicted by the Attorney General before the High Court of Kandy 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 2.80 grams of Heroin on 25th May 2013.

After the trial the Appellant was found guilty on both counts and the learned High Court Judge of Kandy has imposed life imprisonment for both counts on 07th of June, 2023.

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

The Counsel for the Appellant informed this Court that the Appellant had given his consent to argue this matter in his absence. Hence, argument was taken up in his absence but he was connected via Zoom platform from prison.

On behalf of the Appellant, the following Grounds of Appeal were raised.

1. The learned High Court Judge erred in law by failing to consider the inconsistencies of evidence presented by the prosecution.

2. The learned High Court Judge erred in law by failing to consider the vital discrepancy with regard to the quantity of Heroin recovered from the Appellant.
3. The judgment of the learned High Court Judge is void of any reasoning and lack basic principle of law.

PW1, SI/Jayananda, was the Officer-in Charge of the Anti-Corruption Unit of the Kandy Police Station when he conducted this raid. While he and his team were engaged in daily routine duty, they had received an information from the Bogambara Prison about the discovery of Heroin by a prison Jailor. PW1 had gone to the Bogambara Prison at 13:40 hours along with a police team and had met PW11, Karunaratne, the Chief Jailor at the Prison. They had been escorted inside the prison to meet PW10, Jailor Dissanayake who had handed over the Appellant along with an envelope. PW10 had seen three cellophane parcels inside the envelope. The contents were put onto a white paper and weighed. 11 grams of substance were found in all three parcels. As such, the Appellant was arrested for possession of Heroin (diacetylmorphine). The production was entered into production register under No.133/13 and handed over to PW7, PC Seneviratne. The Appellant's statement was recorded at the Bogambara Poison before the police party set off from the prison. On their way, PW1 and his team had conducted two more raids, arrested two other persons, and had handed them over to the reserve police officer along with the Appellant.

PW2 PC Herath Banda was called by the prosecution to corroborate the evidence of PW1.

On the day of the arrest of the Appellant, PW10, Jailer Dissanayake had been entrusted with the duty of managing people who had come to visit the inmates. The Appellant who was a Jail Guard had come to enter the prison on that day. Having felt suspicious, PW10 had checked the Appellant in the presence of the Chief Jailor at the Chief Jailer's Office. Upon searching, a cellophane bag with small packets suspected to be Heroin was discovered

from the person of the Appellant. Initially the detected substance was sealed temporarily by using the prison seal. Thereafter the Appellant and the suspected Heroin packets were handed over to the police who came to the prison upon being informed by the Chief Jailer.

In his dock statement, the Appellant took up the position that he was never in possession of any dangerous drugs as claimed by the prosecution. Further he was never shown any parcel that was allegedly to have been recovered from him. Nothing was sealed nor weighed in front of him.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond reasonable doubt. There is no burden on the Appellant to prove his innocence. This is the "Golden Thread" as discussed in **Woolmington v. DPP** [1935] A.C.462. In this case Viscount Sankey J held that:

> *"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt…… If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner…..the prosecution has not made out the case and the prisoner is entitled to an acquittal.*

In trials of this nature, the prosecution not only need to prove the case beyond reasonable doubt but should also ensure, with cogent evidence that the inward journey of the production has not been disturbed at the all-material points.

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 the first ground of appeal the Appellant contended that the learned High Court Judge had not considered the glaring inconsistencies between the evidence presented by PW1, PW2 and PW10.

PW1 in his evidence took up the position that the weighing of the production was done in front of the Appellant inside the prison. According to him when he was on routine duty at Kandy Town, at about 1.30 p.m., he had received the information from the prison regarding suspicious activity. As no scale was available at the Kandy Police Station, he had borrowed the weighing scale from the Police Welfare Shop. The relevant portion of the proceeding is re-produced below:

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ප්‍ර : ඒ නිසා තමයි ඔබ ඒ සම්බන්ධයෙන් විශේෂයෙන් සැලකිලිමත් වෙලා පොලිස් ස්ථානයට නැවත ගිහින් පොලිස් ස්ථානයේ තිබෙන ඉලෙක්ට්‍රොනික් තරාදිය රැගෙන ආවෙ ?

උ : පොලිස් ස්ථානය අසල තිබෙන සුභසාධක වෙළඳසැලේ තිබ්බ තරාදිය තමයි ගෙනාවේ. අපට කිරා බැලීමේ තරාදියක් එවැනි උපකරණයක් අපට හඳුන්වා දීලා නැහැ.

Although he had taken the weighing scale from the Police Welfare Shop, he had failed to check its accuracy. Further, although PW1 said that he went to the prison with the scale and weighed the substances in front the Appellant and the prison officials, in the B Report filed in the Magistrate Court of Kandy he had mentioned that the substances were weighed at the welfare shop. This was marked as a contradiction - V1. The relevant portion of the proceeding is re-produced below:

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උතුමාණෙනි මෙම අවස්ථාවේ දී 2013.05.26 වෙනි දින සාක්ෂිකරු විසින් හඳුනා ගන්නා ලද මහනුවර මහෙස්ත්‍රාත් අධිකරණයේ අංක බී. 25464/13 දරණ මුල් තොරතුරු වාර්තාවේ 02 වෙනි පිටුවේ 02 වෙනි ඡේදයේ සඳහන් "මෙම අත්අඩංගුවට ගන්නා ලද සැකකරු ද, නඩු භාණ්ඩ ද සමඟ මහනුවර පොලිස් ස්ථානයේ සුභ සාධන සමූපකාර වෙළඳ සැලට පැමිණ එහි පාවිච්චි කරනු ලබන මිණුම් තරාදිය පරීක්ෂා කර බලා එහි නිවැරදි භාවය තහවුරු කරගෙන මා විසින් එම අත් අඩංගුවට ගත් හෙරොයින් ප්‍රමාණය කිරා බැලීමේ දී " කියන කොටස වි. 1 වශයෙන් සලකුණු කිරීමට අවසර සිටිනවා.

PW10, the Jailer who handed over the Appellant to PW1 and his team confirmed that the police had not weighed substances inside the prison. The relevant portions of the proceedings are re-produced below:

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ප්‍ර : ඊට පස්සේ ඒ ගෙනියන්න කලින් ඒ ස්ථානයේදී කිරා බැලීමක් වුනා ද ?

උ : නැහැ.

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ප්‍ර : පොලිසියෙන් ආව නිලධාරීන් ඔය සැක කටයුතු ද්‍රව්‍ය තිබුන බෑග් කඩලා එලියට ගත්තා ද?

උ : ඒ කට්ටිය කැඩුවේ නැහැ.

The above-mentioned contradiction clearly supported the defence version and the dock statement of the Appellant.

The learned Counsel for the Appellant had pointed out another glaring contradiction of the evidence given by PW1 and PW2. According to PW1 after arresting the Appellant he and his team had gone to a hotel situated in Hantana and arrested three more people before the Appellant was brought to the police station. The relevant portions of the proceedings are re-produced below:

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ප්‍ර : ඉන්පසු මහත්මයා නැවත නඩු භාණ්ඩ සමඟ පොලිස් ස්ථානයට ගියා ද?

උ : නැහැ ස්වාමිනි. එම කටයුතු අවසන්ව නැවත පණිවිඩයක් ලැබුණා පුද්ගලික ඔත්තුකරුවන් විසින් හන්තාන ප්‍රදේශයේ හෙරොයින් මත් ද්‍රව්‍ය අඩංගු කිහිප දෙනෙක් හන්තාන හෝටලය අසල ඉන්නවා කියා. මා ඉන් අනතුරුව වෑන් රථයක් ගෙන්වාගෙන එම නිලධාරීන් කණ්ඩායම සමඟ ස්ථානයට යෑමට පෙර පුද්ගලයින් අත්අඩංගුවට ගැනීමට කණ්ඩායම සමඟ ගියා.

ප්‍ර : මහත්මයා එතකොට බන්ධනාගාරයෙන් පිටත් වෙලා ගියේ වැටලීමට ද?

උ : එහෙමයි.

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ප්‍ර : ඊට පස්සේ මහත්මයා නැවත පොලිස් ස්ථානයට ගියාට පස්සේ මේ නඩු භාණ්ඩ සහ සැකකරු සම්බන්ධයෙන් ගත් පියවර මොනවාද ?

උ : මම මේ සැකකරුවන් සියලු දෙනා ස්ථානයට රැගෙන ගියාට පස්සේ තොරතුරු පොතේ සටහනක් යොදා මූලස්ථාන පොලිසියේ උපසේවයේ සිටි පොලිස් සැරයන් 18693 නිලධාරියාට සැකකරු සහ දේපල කුවිතාන්සි 133/13 ට ඇතුලත් භාණ්ඩ සහ අනික් සැකකරුවන් 03 දෙනාට සහ අනික් සැකකරුවන් 03 දෙනා සහ එම සැකකරුවන්ට අදාල භාණ්ඩත් දේපල කුවිතාන්සියට ඇතුලත් කර භාර දුන්නා.

This position was contradicted by PW2, who was called to corroborate the evidence of PW1. According to PW2, after the arrest of the Appellant all had come to the police station and he had remained in the police station with the Appellant. PW1 had kept the production in his locker and taken the key with him. The relevant portions of the proceedings are re-produced below:

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ප්‍ර : ඔබ කියන්නේ මෙම සැකකරු බන්ධනාගාරයේ අත්අඩංගුවට ගෙන කෙලින්ම ආවේ පොලිස් ස්ථානයට ?

උ : ඔව්.

ප්‍ර : පොලිස් ස්ථානයට පැමිණ සැකකරු සහ නඩු භාණ්ඩ භාර දීමක් කලා උප සේවයට ?

උ : එම අවස්ථාවේ දී භාර දුන්නේ නැහැ සැකකරු අංශයේ තබා ගත්තා මා සහ තවත් නිලධාරීන් කණ්ඩායමක් සමඟ සැකකරු සිටියේ.

ප්‍ර : මොන අංශයේ ද ?

උ : දූෂණ මර්දන අංශයේ.

ප්‍ර : දූෂණ මර්දන අංශයේ රැඳෙව්වා ?

උ : ඔව්.

ප්‍ර : උප සේවයට භාර දුන්නේ නැහැ ?

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ප්‍ර : නමුත් ඔබට විශ්වාසයි එම අවස්ථාවේ දී භාර දුන්නේ නැහැ කියලා ?

උ : නැහැ.

ප්‍ර : ඉන් පස්සේ නැවත වැටලීම් සඳහා ඔබත් පිටව ගියා ද ?

උ : නැහැ.

ප්‍ර : ඔබ එම අංශයේ සිටියා ?

උ : ඔව්.

ප්‍ර : සැකකරු එම අංශයේ සිටියේ ?

උ : ඔව්.

ප්‍ර : එතකොට නඩු භාණ්ඩ කොහේ ද තිබුනේ ගෙනාපුවා ?

උ : නඩු භාණ්ඩ ස්ථානාධිපති තුමා විසින් එතුමාගේ නිල කාමරයේ ලාච්චුව ලොක් කර යතුර අරගෙන ගියා.

Material contradictions create serious doubts as to the truthfulness of a witness. Further it affects the prosecution case significantly and render the testimony unreliable. Therefore, it is the profound duty of a judge to assess whether the discrepancies undermine the overall credibility of the witness. Further the judge must determine its impact on the case.

In number of cases the Apex Court of Sri Lanka repeatedly held that "serious contradictions which go to the root of the case render the prosecution evidence unreliable."

Hence, the above noted contradictions are very serious in nature and will affect the integrity of the prosecution's case.

In the second ground of appeal, the Appellant takes up the position that there is a discrepancy in the weight of Heroin said to have recovered from the Appellant and the Government Analyst Report. The Counsel for the Appellant contends that the learned Trial Judge misdirected himself by failing to analyse the discrepancy in weight of the substance allegedly recovered which disturbs the production chain. He further submits that this is a substantial fact, which the prosecution has to prove beyond reasonable doubt.

This ground of appeal has direct impact on the first ground of appeal. According to PW1, the recovered substances was weighed at the prison in front of PW10 Jailer Dissanayake. But PW10 in evidence admitted that the said substances were not weighed inside the prison premises.

Further, according to both PW1 and PW2 the substances was weighed using a scale obtained from the police welfare shop. The gross aggregate weight of the substance was 11 grams. Weighing such a meagre amount in a welfare shop scale raises very serious doubts as to accuracy as most of the items sold, at a welfare shop is over 100 or 250 grams.

When the productions were taken to the Government Analyst Department, a notable difference had been noted in the parcel. According to the Government

Analyst Report the weight of parcel was mentioned as 12.84 grams. This is 1.84 grams in excess to the original weight. Hence the Appellant argues that the weight difference creates a serious doubt in the prosecution case as the weight difference is very significant.

When this Court invited the Respondent to explain regarding weight discrepancy transpired from the evidence, the Deputy Solicitor General following the best traditions and highest standard admitted the weight discrepancy in the production and further added that she is unable to explain the reason.

Further, although PW1 said that the production was in his custody until he returned to the police station with the Appellant, PW2 had said that the Appellant was directly brought to the police station, was kept under the custody of PW2 until the return of PW1. Another significant item of evidence revealed by PW2 is that PW1 had stored the production recovered from the Appellant in his personal locker until he returned to the police station after concluding another raid.

This clearly shows that PW1 was handling the substances recovered from the Appellant in a dangerous and unsafe manner. This position of the Appellant clearly supports the weight discrepancy in the substance recovered from the Appellant and sent to the Government Analyst Department for analysis.

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 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 afore-mentioned judgments clearly highlight the critical importance of chain of custody evidence in drug-related offenses. They provide clear guidance on how this evidence should be presented to satisfy the trial court. Each piece of evidence requires thorough analysis to ascertain its origin and who had access to it, ensuring no deviations from standard practice.

In cases revolving around drugs, chain of custody issues is of critical importance. The prosecution must present undisputable evidence to establish the chain of custody of the exhibits. Additionally, they must prove that the item presented at trial is the same item originally in the possession of or taken from the accused. Relying on tainted, unreliable, or tampered evidence would undermine the integrity of the judicial system.

In this regard, the learned High Court Judge had made general comments about weight discrepancy in his judgment. In absence of the evidence led regarding this particular point; the comment made by the learned High Court Judge has no doubt caused great prejudice to a fair trial.

The evidence placed by the prosecution with regard to the inward journey of the products creates a serious doubt on the conviction against the Appellant. Further, the evidence given by prosecution witnesses consists of contradictions and improbabilities.

Considering the two grounds of appeal discussed above, it clearly supports the stance taken by the Appellant in defence as well as in his dock statement and certainly affects the root of the case. Hence, I decided not to address the third ground of appeal.

Therefore, I set aside the conviction and sentence imposed by the learned High Court Judge of Kandy dated 07/06/2023 on the Appellant. Therefore, he is acquitted from all the charges.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

Sampath B. Abayakoon, J

I agree.

JUDGE OF THE COURT OF APPEAL