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 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/HCC/0382/2018

Sonnadaralage Chintaka Suranga

High Court of Colombo
Case No: HC/7049/2013

Accused-Appellant

Vs.

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

Complainant-Respondent

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

COUNSEL : **Tenny Fernando with H. Silva for the Appellant.**
Suharshi Herath, DSG for the Respondent.

ARGUED ON : **10/07/2024**

DECIDED ON : **22/10/2024**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Colombo under Sections 54(A) (d) and 54(A) (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for Possession and Trafficking of 3.42 grams of Heroin (diacetylmorphine) on 08th January 2012.

The prosecution had called 04 witnesses in support of their case and marked production P1-11. When the defence was called, the Appellant had made a dock statement and closed his case.

After the consideration of evidence presented by the prosecution and the defence, the Learned Trial Judge found the Appellant guilty on 1st count and has sentenced him to life imprisonment on 07/11/2018. The Appellant was acquitted from 2nd count.

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 was connected via Zoom platform from prison.

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

1. That the Learned Trial Judge failed to analyse the improbabilities of the prosecution version and thereby the conviction is unsafe.
2. That the Learned Trial Judge failed to analyse inter se and per se contradictions of the prosecution witnesses which creates a reasonable doubt on the prosecution case.
3. That the Learned Trial Judge misdirected himself by failing to correctly analyse the dock statement in line with the defence eversion.

Background of the case.

On 08/01/2012 SI/Gayantha attached to the Police Narcotics Bureau upon receiving an information had gone to Campbell Car Park at Borella with a team of police officers. As per the informant, the Appellant would be arriving near the main gate of the Oval Play Ground with drugs. At the location, spotted a person matching with the information standing there wearing a yellow-coloured T-Shirt and black coloured three-quarter trouser. When he reached him with PW2 PC 9036 Mahinda and inquired, his suspicious conduct led to further inquiry. When he was subjected to a body check a parcel with a brown coloured substance had been detected from his right-side trouser pocket. As the substance recovered from the Appellant reacted for Heroin, the Appellant was arrested immediately and brought to the Police Narcotics Bureau. At there, the substance was weighed in front of the

Appellant. The gross weight of the substance had been 24 grams and the same had been sealed and handed over to the reserve police officer PW9, SI/Rajakaruna under PR No.91/2012 at 20.35 hours.

PW2, PC 9036 Mahinda had corroborated the evidence given by PW1 on every aspect including on minute details put in the police Information Book.

To prove the chain of custody witness PW09, SI/Rajakaruna was called. The Government Analyst report was admitted under Section 420 of the Code of Criminal Procedure Act. Hence, the Government Analyst Report was marked as P9. Thereafter, the prosecution had closed the case. When the Learned Trial Judge had called for the defence, the Appellant made a dock statement and closed the case for the defence.

In every criminal case the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person and this burden never shifts. Hence an accused person has no burden to prove his case unless he pleads a general or a special exception in the Penal Code.

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 in 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...."*

In **the Attorney-General v. Rawther** 25 NLR 385, Ennis, J. states thus: [1987} 1 SLR 155

> *"The evidence must establish the guilt of the accused, not his innocence. His innocence is presumed in law, from the start of the case, and his guilt must be established beyond a reasonable doubt".*

Per Viscount Simon in **Stirland v. Director of Public Prosecution** [1944] AC (PC) 315,

> *"A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties"*

At the hearing the Learned Counsel for the Appellant commenced his augment by combining the first and second grounds of appeal together. In those grounds the Appellant contended that the Learned Trial Judge failed to consider that the prosecution version did not pass the test of probability and erred in both facts and law when concluding that the prosecution proved the case beyond reasonable doubt without considering inter se and per se contradictions between PW1 and PW2.

In this case PW1 had vividly given evidence as to how the raid was conducted after the information he had received while on duty. Acting on that information, he had successfully arrested the Appellant who was totally a stranger to him. The Learned Counsel strenuously placed his submission on the time factor consumed for the entire raid and reporting back to the police station.

As correctly pointed out by the Learned Deputy Solicitor General, PW1 and PW2 had clearly explained that after the arrest of the Appellant at 20:00 hours and returned to the station at 20:35 hours. Though the exact time is not mentioned and the time referred to as 21.20 hours is not the time, but it was the time they entered their notes in the Information Book. This position had been very clearly explained during the trial by the witnesses. The Learned High Court Judge had very accurately discussed and analysed the evidence pertaining to time consumption for the entire raid and accepted the prosecution position which clearly demonstrate that the prosecution had

passed the test of probability of the prosecution case sans any inter se or per se contradiction.

The next point that the Counsel for the Appellant argued about going to the raid without a police driver. Two police officers including PW2 could drive the vehicle at that time. Although other police officer could drive the vehicle, PW2 only had the police licence to drive the vehicle. As such PW2 had drove the vehicle and stopped at convenient place and went to arrest the Appellant. After arrest, PW1 and PW2 took the Appellant in a three-wheeler up to the place where their vehicle was parked. This is not an unusual happening considering the nature of the case. Further, as the people of the area gathered in large numbers, they had evacuated the Appellant in a three-wheeler without keeping him at the place of arrest. They had properly entered notes in the Information Book after the raid.

Bradford Smith, Law Commission, WWW.smithlitigation.com 2014 states that:

> *"Good police note taking is important for two reasons. First, it invariably bolsters the credibility of the police officer giving evidence. Second, it promotes the proper administration of criminal justice by facilitating the proof of facts".*

Hence, the Learned Counsel for the Appellant had failed to the satisfy any merit under these appeal grounds.

In the final ground of appeal, the appellant contend that the Learned Trial Judge did not evaluate the defence evidence from the correct perspective and rejected the same in the wrong premise.

The Appellant in his dock statement submitted that he was wrongly joined to this case by PW1. According to him on the date of incident while returning

from temple, a person namely Chamara Srimal had called him to have a word. While both were talking a police jeep had come arrested both took them to the Police Narcotics Bureau. A lady namely Shanika was also in the jeep. He alleged that he was connected to this case with the Heroin recovered from Chamara Srimal.

Even though the dock statement of an accused has less evidential value our courts never hesitated to accept the same when it creates a doubt on the prosecution case.

In **Don Samantha Jude Anthony Jayamaha v. The Attorney General** CA/303/2006 decided on 11/07/2012 the court held that:

> *"Whether the evidence of the defence or the dock statement is sufficient to create a doubt cannot be decided in a vacuum or in isolation because it needs to be considered in the totality of the evidence that is in the light of the evidence for the prosecution as well as the defence."*

In **Kathubdeen v. Republic of Sri Lanka** [1998] 3 SLR 107 the court held that:

> *"It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt."*

In this case the Learned Trial Judge had very correctly and extensively discussed and analysed the dock statement of the Appellant and correctly concluded that the dock statement of the Appellant not created any doubt against the overwhelming evidence of the prosecution. He has correctly given

reasons as to why he rejects the defence evidence. Thereby, the Learned High Court Judge had considered all the evidence placed in its correct perspective and arrived at the finding to convict the Appellant. Hence, this ground also sans any merit.

In this case PW1 and PW2 are key witnesses. Their evidence is clear, cogent, and unambiguous. The court considering all other evidence presented by the prosecution, without any hesitation relied on that evidence and convicted the Appellant. Further their evidence has passed the probability test.

As the prosecution had proven this case beyond reasonable doubt, I affirm the conviction and the sentence imposed by the Learned High Court Judge of Colombo dated 07/11/2018 on the Appellant. Therefore, his appeal is dismissed.

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

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL