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

In the matter of an application made in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979 read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No. HCC 0014/2023

The Democratic Socialist Republic of Sri Lanka

Complainant

HC Badulla
Case No. HC/256/05

Pathirana Mudiyanselage Medhagedara
Navarathna Banda
No. 582/1, Dambepitiya,
Ulpathagama, Hasalaka

Accused

AND NOW BETWEEN

Pathirana Mudiyanselage Medhagedara
Navarathna Banda
No. 582/1, Dambepitiya,
Ulpathagama, Hasalaka

Accused – Appellant

Vs

Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent

Before : R. Gurusinghe J.
&
Mayadunne Corea J.

Counsel : Sri Lal Dandeniya
for the accused-Appellant

Janaka Bandara,D.S.G.
for the Respondents

Argued on : 20/11/2024

Decided on : 29/01/2025

JUDGMENT

R. Gurusinghe J

The accused-appellant was indicted in the High Court of Badulla for being in possession of an offensive weapon, a live hand grenade, which is an offence punishable under section 2 (1) (d) of the Offensive Weapons Act No. 18 of 1966.

After trial, the Learned High Court of Badulla convicted the appellant of the charge and imposed a fine of Rs. 7,500/- and a default term of 6 months simple imprisonment and 6 years rigorous imprisonment.

Being aggrieved by the aforesaid conviction and the sentence, the appellant appealed to this court. The main grounds of appeal argued on behalf of the appellant are that:

1. The prosecution had failed to establish exclusive possession in the appellant of the alleged offensive weapon, the hand grenade.

2. The evidence of PW1 was not corroborated and therefore the case against the appellant was not proved beyond reasonable doubt.

The position of the appellant is that though there were about 15 officers in the police team whom the prosecution allegedly recovered a hand grenade, only PW1 and the accused had gone into the house and recovered the hand grenade. As such, there was no corroboration regarding the recovery of the hand grenade.

The other argument is that, the house in which the hand grenade was allegedly recovered was the house of the mother of the accused. The accused was residing in a separate house on the same land. Some other people also had access to the place where the grenade was recovered.

When considering the above contentions, no reason arose or was pointed out by the appellant to doubt the evidence of PW1. The evidence of PW1 was not impeached by the appellant. The position of the appellant is that the police had not brought him to his house at any time after the arrest. However, this position was not suggested or put to PW1 during the cross-examination. Further, there was no any suggestion to PW1, that the police had introduced a hand grenade and concocted the case against the appellant.

Counsel for the appellant has made the following suggestion to PW1.

m%: මම විත්තියෙන් යෝජනා කරනවා ඔබ ඔය කියන නිවසට යන අවස්ථාවේ විත්තිකරු සිටියේ නෑ, විත්තිකරුත් එක්ක තමයි ඔය නිවසට ගියේ කියලා?

උ: ඔව්.

The above suggestion negates the position of the appellant that the police had not brought him to his house at any time after the arrest. PW1 had been acting under the instruction of the Deputy Inspector General of Police,

Central Province. In this circumstance, it is apparent that the position taken by the appellant in his evidence is an afterthought.

The police have recovered the hand grenade in consequence of the information received from the appellant. PW1 stated that in the appellant's statement, the appellant had revealed that he had kept a hand grenade in a locker which was kept in his room. PW1 said that he, along with a police team, brought the appellant to his house at Ulpathagama. Only the mother of the appellant was there in that house at that time. PW1 further said that the room said to be belonged to the appellant was locked at that time. There was a cupboard kept in the living room, and the appellant showed the key to the locked room in the drawer of that cupboard. When the room was opened using that key, the appellant went inside the room and took out a key hidden under the mattress of his bed. PW1 had opened the locker using that key and a hand grenade was found in the locker. The appellant knew exactly where the keys to his locker were. Especially the key to the locker was kept at a specific place inside the locked room.

The prosecution called all the relevant witnesses to prove the chain of custody of the offensive weapon, the hand grenade, from its recovery to the bomb disposal unit and thereafter from that place to the Government Analyst. Further, the prosecution called PW9, who was a member of the police team who recovered the hand grenade in the locker at the appellant's house. He stated that after the arrest he recorded the statement of the appellant. He also said that the appellant was arrested near Oruthota Bridge in Teldeniya. He also noted that he went to the appellant's house along with about fifteen police personnel led by PW1. He said PW1 went inside the house with the appellant, and when he was coming out from the appellant's house, PW1 had the hand grenade. In cross-examination, there was no suggestion that PW9 was giving false evidence. Further, there was no suggestion to this witness that PW1 introduced the hand grenade or that the police carried a hand grenade to the appellant's house. The position of the appellant is that the police had not come to his house. However, this

position was not suggested or put to PW9 during the cross-examination.Though there was no requirement for corroboration, PW9 corroborates the evidence of PW1.Section 134 of the Evidence Ordinance provides that "no particular number of witnesses shall in any case be required for the proof of any fact".

In the case of Kumar *De Silva and two others vs, Attorney General [2010] 2 Sri LR 169*, Sarath de Abrew J. noted that;

> *"Credibility is a question of fact, not of law. The acceptance or rejection of evidence of witnesses is, therefore, a question of fact for the trial Judge. Evidence must be weighed and never countered; in reviewing the veracity of a witness, appellate Courts enforce certain rules and guidelines as they do not have the benefit of observing and questioning the witnesses first land."*

In the case of Dharmasiri vs. Republic [2010] 2 Sri LR 241Sisira de Abrew J said,

> *"Credibility of a witness is mainly a matter for the trial Judge, Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the credibility of a witness unless such findings of trial Judge are manifestly wrong."*

In the case of *Attorney General vs.Devundarage Nihal* SC/Appeal 154/2010 decided on 03.01.2019, Aluwihare, PC J.,quotes the following paragraph from *Sir John Woodruff and Syed Amir Ali (Law of Evidence1st edition, Vol. I page 601 – 603)*

> *"Sir John Woodruff and Syed Amir Ali (Law of Evidence1st edition, Vol. I page 601 – 603) says that:*
> *"It is open to the court to accept the evidence of a police officer and to convict the accused on the basis thereof, if the evidence of the police officer is trustworthy and reliable. If the court feels that the uncorroborated testimony of the police officer by itself is capable of*

inspiring confidence there is nothing forbidding the court from acting upon the same. The law does not require that such evidence should be corroborated. In prosecution under the prevention of Corruption Act 1947, the testimony of police officials cannot be rejected merely because they are interested in the success of the prosecution. In another case, the investigation officer was not investigated. This cannot be said to have prejudiced the defence […]

A court cannot reject the evidence of witnesses, merely because they are government servants, who, in the course of their duties or even otherwise might have come into contact with investigating officers and who might have been requested to assist the investigating agencies. Even in cases where officers who, in the course of their duties, generally assist the investigating agencies, there is no need to view the evidence with suspicion as an invariable rule. […]

The evidence of witnesses cannot be judged on the basis of their being officials, and non-officials simply because they are officers, they cannot be said to be interested or uninterested. The merit of the evidence is to be considered and not the persons who come to depose. […]

The credibility of public officers should not be doubted on mere suspicion and without acceptable evidence. Presumption that person acts honestly applies as much in favour of Police as of other persons. It is not proper judicial approach to distrust and suspect them without proper ground. There is no principle of law that without corroboration by independent witnesses, their testimony cannot be relied upon. ……

Investigating officer's statement, if reliable, can be relied upon. […]

The evidence of an official witness has to be weighed in the same scale as any other testimony. ……"

In the same judgment, the following case was quoted;

In the case of <u>Vadivelu Thevar Vs. State of Madras SIR S C 614</u> the Indian Supreme Court observed: -

"On a consideration of the relevant authorities and the provisions of the IEA 1872, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example, in the case of a child witness whose evidence is that of an accomplice or of an analogous character. (Emphasis is mine)

(3) Whether corroboration of the testimony of a single witness is or is not necessary must depend upon the facts and circumstances of each case, and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the judge before whom the case comes.

In *Devundarage Nihal* case, considering the above-mentioned case laws, Aluwihare, J. has decided as follows*;*

For the reasons set out above, I hold that

(a) An accused can be convicted on a single witness in a prosecution based on a police detection, if the judge forms the view that the evidence of such witness can, with caution, be relied upon, after probing the testimony.

(b) Corroboration is not sine qua non for a conviction in a police detection case, if the judge, after probing, is of the opinion that the witness is credible and the evidence can be acted upon without hesitation."

In this case, the appellant gave evidence and stated that he was arrested on 02-11-2003, and the police had kept him at the police station. On 09-11-2003,he was produced before the Magistrate of Kandy. The appellant has

given evidence in case No. HC 2738/07 in the High Court of Kegalle, where he stated that he was arrested by the police on the 27th Monday of October 2003 while he was travelling in a bus plying from Hasalaka to Vasgamuwa. The prosecution marked this contradiction. It is clear that the appellant has taken up two different positions regarding his arrest.

When considering the evidence of the prosecution as a whole, we find them to be reliable. No reason arose to doubt the credibility of the evidence of PW1.The evidence of the appellant does not create a reasonable doubt in the prosecution case. We see no reason to interfere with the judgment of the learned High Court Judge. For the reasons stated above, the appeal of the appellant is dismissed. We affirm the judgment and the sentence.

Judge of the Court of Appeal.

Mayadunne Corea J.
I agree.

Judge of the Court of Appeal.