

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

Munasinghe Arachchilage  
Chamalie Perera,

Accused-Appellant.

C.A. Appeal No. 38/2011  
H.C. Colombo No. 4931/2009

-Vs-

Republic of Sri Lanka.

Respondent

Before: : **W. L. R. Silva, J &  
H.N. J. Perera, J.**

Counsel: : **Anil Silva PC with Neranjan  
Jayasinghe for the Accused-  
Appellant**

**C. Gunasekera SSC for the  
Attorney-General.**

Argued &  
Decided on: : **14.06.2012**

**Ranjith Silva, J**

In this case the accused-appellant was indicted for trafficking  
Heroin. After trial she was found guilty and was convicted

and sentenced to death. We find that the Judge has convicted her on two counts of trafficking. The first count ought to have been for possession of Heroine . In any case we note that even for a single charge of trafficking , a sentence of death could be imposed.

The reasoning behind imposing the sentence of death, as it appears to me is the large quantity of heroine involved that is 23.2 grams of heroine. Even in the judgment, it appears that the Judge found her guilty for trafficking on both counts whereas one of the charges should have been for possession. The sections are properly mentioned in both charges. Therefore the irregularity with regard to the framing of charges could not have caused any serious prejudice to the accused-appellant in this case. In any case the sentence given is the death sentence and that was within the competence and was one that could have been imposed on the charges. The main thrust of the defence case was that due to the rejection,

by the appellant, of an improper advance made by a particular police officer called Herath, the Police manipulated and fabricated this false charge against the accused-appellant. Apart from this bare assertion there is nothing to substantiate this accusation. On the other hand there is nothing to show that this particular Herath was a police officer or that this particular police officer had any hand in the framing or fabricating the charges against the accused whether this police officer was attached to the police station or where that particular police officer was stationed is a mystery. In the first place there is nothing to decide that there was a police officer by the name of Herath in that area. If this was a fabricated case it is conceivable that the police introduced 23 grams of heroine. On the other hand the defence version is that the heroin was not introduced by the Police but was a quantity of heroine brought by a person called Inoka and kept at Siththy Farina's place. Siththy Fareena was summoned as a witness for the defence. In her evidence at page 185 she had

acknowledged in cross examination that she had not uttered anything about Inoka to the Police and that she claimed ignorance. She had given evasive answers to the questions put concerning Inoka.

To begin with the defence case was that once in the past the appellant was charged with for being in possession of 38 bottles of illicit arrack and that the police fabricated that case against her because she did not consent to the improper advances made by the so called Police officer Herath. Once again that is not probable and is highly improbable because, if that was the case, the police need not have introduced 38 bottles of illicit arrack. It is quite unbelievable that the police will go to the extent of fabricating a case against the accused-appellant introducing 38 bottles of illicit arrack.

The next point that was heavily relied on by the Counsel for the appellant is the fact that the police party went in a three

wheeler and it was suggested that it is inconceivable as to how six people could have traveled in that three wheeler on this particular date and infact the defence version was that the police came in a jeep to the house of the accused-appellant and arrested her there. I must state that the 06 people included Inoka, was the defence version and is not the prosecution version. The prosecution version was that there were only 05 people who traveled in the three wheeler. According to the prosecution Inoka had not been there and there was no allegation against her by that time or thereafter. According to the prosecution there were only 05 people including Siththy Fareena and the accused-appellant. The prosecution story with regard to the three-wheeler is more probable because they wanted to prevent the public from knowing that they were on a raid and that they were waiting in ambush to arrest the persons who was trafficking heroine and who happened to be on the road at that time. They would not have gone in a police jeep because that would have betrayed their identity and

frustrated their purpose. Therefore the possibility of a three wheeler been used is much more probable.

On the other hand if they used the jeep , there was no reason for them to deny that fact and talk about a three wheeler. They could have easily said that they went in a jeep. There is no significance in trying to hide the identity of the vehicle they used .

With regard to deciding whether the learned High Court Judge was correct in his evaluation of evidence of the defence this Court cannot find any fault. The findings of facts on the credibility of the evidence of the accused-appellant and Siththy Fareena , we have observed that Siththy Fareena's evidence have to be totally rejected. Siththy Fareena states that on this particular day the Police came and found a parcel of heroine that was in her premises brought and kept there by Inoka. But Siththy Fareena has totally failed to state in

evidence that she involved or implicated or gave any information about Inoka to the Police. In fact at page 185, when she was questioned she said “ මං මුකුත් කිව්වේ නෑ ”

Could this happen and is it probable. Who is the person in whose possession heroine was found by the police, well knowing who brought that parcel there, will not divulge that fact to the police at such a great risk. This conduct is improbable and unbelievable . Therefore the learned High Court Judge cannot be faulted for rejecting the evidence of the accused-appellant and the evidence given by Siththy Fareena.

As I have stated earlier right from the beginning the accused-appellant had come up with a made up story unbelievable, let alone sufficient to throw any doubt in the prosecution case.

According to Justice Rodrigo in James Silva Vs Republic of Sri Lanka 1980 (2) S.L.R at page 167. Where His Lordship decided that evidence should not be compartmentalized whether the dock statement should be acted upon or not whether it is sufficient to throw any doubt in the prosecution

case should be decided in the light of the totality of the evidence and not by comparing the evidence with the prosecution evidence and not by compartmentalizing and evaluating the evidence separately. It has to be done in the light of the totality of the evidence and decide whether the dock statement is sufficient to create any doubt in the prosecution case. ( See also the Judgment of H/L Yapa, J in C.A. 90/97 reported in 2002 (1) S.L.R 312 and My Judgment in C.A. 72/2003 dated 13.09.2007 )

The evidence given by the accused-appellant and her witness is not sufficient to throw any doubt in the case for the prosecution and therefore could be rejected and the Judge cannot be faulted for rejecting that evidence.

In this case there is another aspect that has to be considered namely whether there was any reason for the police not to prosecute Inoka or Siththy Fareena. Siththy Fareena could not



have been in tow with the Police and had never been a friend of the police and had never been an informant or acted in collaboration with the police. That was the reason why she boldly came up and offered herself to give evidence against the police in favour of the accused-appellant.

As far as Inoka is concerned, she could be a fictitious character who was never in existence.

Usually, if the police wanted to take revenge from the accused-appellant the Police would introduce heroine or the illicit liquor as the case may be. But in this case there is no allegation whatsoever that the quantity of heroine was introduced by the police. In fact even the Defence attempted to show that the heroine was not introduced by the police but was brought by Inoka.

In the face of all these, we are of the opinion that the grounds of appeal and the contentions put forward by the counsel for the appellant are not tenable and cannot be sustained and therefore we refuse to agree with his submissions.

For the reasons adumbrated by me in the foregoing paragraphs of this Judgment, I find that there is no substance or merit in this appeal and accordingly I dismiss this appeal. I affirm the conviction and the sentence imposed on the accused-appellant on the 1<sup>st</sup> count.

**Judge of the Court of Appeal**

**H.N.J.Perera, J**

I agree.

**Judge of the Court of Appeal**

Kpm/-