

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

Mahawannige Ajith Sri Lal  
H/2/12,  
Sanchiarachchiwatta,  
Colomb-12.

**C.A.Appeal No. 218/03**

**Accused-Appellant**

**HC. Colombo Case No. 761/02**

-Vs-

Attorney-General,  
Attorney-General's Department  
Colombo-12.

**Complainant-Respondent**

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

**Counsel:** : **Dr. Ranjit Fernando with Ms. S.Rajapakse  
for the Accused-Appellant.**

**Ms. Haripriya Jayasundera SSC for the  
Respondent.**

**Argued on:** : **01.02.2012**

Written Submissions

Tendered on: : 14.03.2012

**Judgment on: : 05.07.2012**

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**Ranjith Silva, J**

The accused-appellant ( hereinafter referred to as the appellant ) was indicted in the High Court of Colombo under section 54A (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984 for having in possession 1.1. grams of heroin on or about 11.01.2001. The learned High Court Judge by his judgment dated 19.12.2003 convicted the appellant on the said count and sentenced him to 7 years RI and imposed a fine of Rs. 100,000/- and in default for a term of 2 years R.I

This appeal is against the said conviction and the sentence.

On a tip-off given by an informant, SI Tennakoon and P.C. Upali of the Police Narcotics Bureau ( PNB) arrested the accused near Dam Street in Colombo. They found heroin wrapped in a cellophane bag inside a Benson & Hedges cigarette packet found in his shirt pocket.

The case for the defence was that there was a mixing up of the MC numbers of the productions at the Government Analyst Department and that has caused a substantial prejudice to the accused.

The evidence of the prosecution led at the trial was that;

On the day in question while SI Tennakoon and PC Upali were going for a general raid, PC. Upali received a message from an informant known to him that he wanted to disclose some information. Thereafter SI Tennekoon and PC Upali proceeded to the Technical Junction in Maradana to meet the informant and with him they had gone to Dam Street on the directions given by the informant.

Around 8.40. a.m the informant had pointed out the accused to IP Tennakoon and had left thereafter. Upon a search of the accused, the police found a Benson and Hedges cigarette packet in his shirt pocket with a cellophane bag which contained heroin. After explaining the charge, the accused was taken into custody by the police.

After the accused was brought to the PNB, the productions were weighed and duly sealed in his presence and entered in PR 134. Thereafter the accused and the productions were handed over to PS 6625 Nandiratne by SI Tennekoon.

After the case of the prosecution was closed, the learned High Court Judge called for the defence. The accused opted to make a dock statement and took up the position that on the 11.01.2011, while he was at home, Narcotics officers came home with one Saleem and made inquiries about one Baba and thereafter he too was taken into custody having admonished him for hiding the stuff. His position was that he was not arrested on the road.

The main ground of appeal that was taken up by the Counsel for the accused was that, the mixing up of the MC. Numbers has caused substantial prejudice to the accused, as the subsequent rectification was done at the behest of the Court.

As per the evidence of the two officers who arrested the appellant, the productions, namely the heroin was found in the possession of the appellant in a Benson and Hedges cigarette packet, wrapped in a cellophane cover. This was not disputed by the defence in cross examination. Moreover the

gross quantity that was recovered from the accused was 4.2 g. The relevant MC Case was B 22/01.

Upon receiving the report of the Government Analyst the PNB realized that there had to be a mixing up of the MC numbers as the net quantity in the report sent by the Government Analyst ( 1068g) was far beyond the gross quantity of the productions in this case. At the time they brought that disparity of the quantities to the notice of the Government Analyst Department, they had not even analyzed the productions in this case. The Government Analyst who gave evidence in this case explained the mistake made by a clerk at the time of preparing the receipts and categorically stated that the productions in this case that was found in a Benson and Hedges cigarette packet was not even opened by that time. Therefore it is abundantly clear that it was not the productions that was mixed up but only the MC numbers assigned to the receipts.

The defence at no stage challenged or disputed the signatures and the Left thumb impressions of the accused, placed on the productions that were marked in court at the trial. Thus it confirms the fact that the defence had

thereby admitted the fact that the productions in this case were not mixed up.

Although the accused has impliedly taken up the position that he was falsely implicated it is highly improbable for the PNB to fix an unknown suspect against whom there was no motive alleged. There was no evidence that any of the officers had any motive to fabricate a case against the accused. If on the other hand, the productions were recovered from a third party there was no reason for them to have falsely implicated this accused and any reason to do so was not alleged by the defence.

The Government Analyst stated that they received the productions of this case from MC. Maligakanda under case number B 22/01 and on the same day they received the productions from the same MC under B 23/2001. The productions in both cases were taken over by Bandumala Perera at the Government Analyst Department and had issued a receipt for the productions. After analyzing the productions in the MC case B 223/2001, they have submitted that report to the PNB and to the Magistrate's Court having inadvertently entering the MC number in this case ( B 22/2001). Upon receiving that report, both the PNB and the Magistrate's Court realized the mistake done by the Government Analyst Office as the net

quantity stated in that report was far beyond the gross quantity in this case. Therefore the learned Magistrate made an order to the Government Analyst Department to do the necessary corrections and report. In the circumstances the corrections were done as the correct Magistrate's Court number should have been B22/01 and not B 23/01. In her evidence this witness had identified P12- the receipt issued by Bandumala Perera and had identified her (Bandumala Perera's) signature. She has further stated that a wrong B Report number in the receipt had been entered by the clerk at the time of taking over of the productions and that was prior to the analysis of the productions in this case.

She has also stated that Bandumala has accepted productions in a sealed envelope from SI Sunil Perera at 12.30 p.m on 15.01.2001 with his specimen signature. She has further confirmed that the seals were intact as she was the person who opened the parcel. She has analyzed the productions on 03.07.2001. She has described the cigarette packet and has identified the other entries made on that. The gross weight of the heroin had been 4.2 g

Upon analysis there had been 1.1 g of pure heroin and she has identified P13 as the Government Analyst report that was prepared after analyzing the

heroin in the Benson and Hedges cigarette packet and has also confirmed that it was the report which was prepared in respect of this case.

For the aforesaid reasons I hold that the so called confusion with regard to the Magistrate Court numbers has not caused any prejudice or caused any miscarriage of justice to the appellant.

The rest of the infirmities and contradictions highlighted by the counsel for the appellant are the result of the so called confusion that arose due to the mixing up of the case numbers sufficiently explained by me in the foregoing paragraph of this Judgment and thus could be brushed aside as insignificant.

For the reasons adumbrated by me in the foregoing paragraphs of this judgment, I dismiss the appeal, affirming the conviction entered and the sentence imposed on the accused, by the learned Trial Judge.

**Judge of the Court of Appeal**

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

I agree.

**Judge of the Court of Appeal**

Kpm/-