

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

CA No: 69/2008

HC Welikada No: 12/2006

Mohomed Sardeen alias Sardi
No: 60/83,
Wadullawatte.

Appellant

Vs.

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

Respondents

C.A. No:69/2008.

H.C Welikada No: 12/2006

Before : **SISIRA DE ABREW, J. &
SUNIL RAJAPAKSHE, J.**

Counsel : Amila Palliyage for the Accused-Appellant.
Vijith Malalgoda DSG for the Attorney-General.

Decided on : 23.11.2012.

Sisira de Abrew, J.

Heard both counsel in support of their respective cases.

The Accused in this case was convicted for being in possession of 42.65 grams of heroin. Learned Trial Judge who heard the case imposed life imprisonment on the accused-appellant. According to the case for the prosecution, the Police Officers on receiving information searched the accused-appellant at a place called Wadullawatta in Orugodawatta area. When the Police Officer searched the accused - appellant, they found a cellophane bag concealed in the undergarment of the accused -appellant. They found 152.86 grams of

heroin in the bag. According to the Government Analyst pure quantity is 42.65 grams. Whilst the accused was being searched a person called Lokka came to make inquiries about the accused. When the Police Officers searched Lokka they found five packets of heroin in the possession of Lokka too. These five packets were concealed in the sarong of Lokka.

The accused – appellant who gave evidence under oath admitted that he is a heroin addict. According to the accused he came to one Sargara's boutique to buy two packets of heroin. When he was at the said boutique, he and the other people present at the boutique ran away on hearing that the Police Officers were coming. Police Officers arrested the accused-appellant whilst he was running away from the scene. When the Police Officers were taking him to another place, person called Lokka was arrested. Therefore it appears from the accused's evidence, Lokka was arrested whilst the accused was being taken in the police jeep. This position is quite contrary to the position taken up by the Police Officers. According to the Police Officers whilst the accused –appellant was being searched at Wadullawatta Junction Lokka came to this place saying Sardeen (accused's name) and at this time Lokka was having five packets of heroin. Learned DSG admits that whilst the accused was being searched Lokka came to this place

(Wadullawatta Junction). The question that must be considered is whether a person who was having five packets of heroin will come to make inquiries in respect of a known person whilst he was being searched. Police Officer who arrested the accused-appellant admitted on two occasions that Lokka came to the place where accused-appellant was being searched after he placed hand cuffs on the accused's hand. (Vide pages 59-60 and 103) Later he says that Lokka came when the accused-appellant was being searched. In the present case according to the prosecution case Lokka who was having heroin in his possession came to make inquiries about Sardeen (the accused-appellant) who was known to him when he (the accused-appellant) was being searched. I am unable to think that Lokka who was having heroin at that time would come to the place where the accused - appellant was being searched. The accused -appellant's evidence is that he was not having heroin and Lokka was arrested whilst he was being taken in a police jeep. When we consider the prosecution case itself, we feel that the prosecution story is not probable. We hold that the prosecution story does not satisfy the test of probability.

In these circumstances we hold that it is unsafe to allow the conviction to stand. The learned trial Judge has failed to consider the

above matters in detail. In these circumstances we set aside the conviction and acquit the accused –appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Sunil Rajapakshe,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg.