

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

**C.A. No. 134/2007**

Mihindukulasuriya Peeter Joseph

**H.C. Negombo No. 43/99**

Cooreyra

Accused-Appellant

Vs.

The Attorney General

Respondent

**BEFORE : SISIRA DE ABREW.J &  
D.S.C. LECAMWASAM.J**

**COUNSEL : Anil Silva, P.C., with Udara de Soysa for the  
Accused-Appellant.  
Ms. Haripriya Jayasundara, S.S.C., for the A.G.**

**ARGUED &**

**DECIDED ON : 31.10.2011.**

**SISIRA DE ABREW.J**

Heard both Counsel in support of their respective cases.

The Accused-Appellant in this case was convicted for being in possession of 3.9g of heroin and for trafficking the same amount. He was sentenced to death.

Being aggrieved by the conviction and the sentence, the Accused-Appellant has appealed to this Court.

According to the prosecution case, the Accused-Appellant who came to Winrow Hotel was in possession of a parcel of heroin and the Excise Officers took it into their custody. The Excise Officer Sangeeth Wijesuriya stated in his evidence that the parcel of heroin was in the hands of the Accused-Appellant when Sandalal Pathirana, another Excise Officer, walked into Winrow Hotel.

Learned President's Counsel appearing for the Accused-Appellant brings to the notice of Court that there is a vital contradiction between the evidence of Sandalal Pathirana and Sangeeth Wijesuriya. Both are Excise Officers. According to Sandalal Pathirana, when he went to the Winrow Hotel it was Sangeeth Wijesuriya who gave the parcel of heroin to him. Therefore, it appears from Sandalal Pathirana's evidence that he had not seen the parcel of heroin in the hands of the Accused. Vide Page 45, 46 and 68 of the brief.

Sangeeth Wijesuriya says that Sandalal Pathirana came to the Hotel when the parcel was in the hands of the Accused. According to Sangeeth Wijesuriya, at this time, the parcel of heroin had not been given to him by the Accused-Appellant and Sandalal Pathirana took the parcel of heroin from the accused. Vide Page 120 of the brief. According to Sandalal Pathirana, he took the parcel of heroin from Sangeeth Wijesuriya. But Sangeeth Wijesuriya contradicts this position and says that Sandalal Pathirana took the parcel of heroin from the Accused. This vital contradiction has not been considered by the learned trial Judge.

Learned Senior State Counsel upholding the best traditions of the Attorney General's Department submits that she can't get over from this contradiction and that the learned High Court Judge has not considered this vital contradiction. This contradiction becomes important in view of the defence taken by the Accused-Appellant.

According to the Accused-Appellant, when he was having a cup of tea with a person called Nimal at Winrow Hotel, the Excise Officers came and assaulted Nimal and thereafter they took both Nimal and him to Hemas Building where the Excise Office is located. According to the Accused-Appellant, he was assaulted by the Excise Officers at the said building. The Accused-Appellant says that, even before he was taken to Hemas Building, he was assaulted. He says that the parcel of heroin

was introduced to him by the Excise Officers. The fact that he was assaulted was corroborated by the evidence of the Judicial Medical Officer (Dr. Ruwanpura). According to the Judicial Medical Officer, the Accused had sustained several contusions on his body. The Judicial Medical Officer says that, these injuries could have taken place within two weeks from the time of examination. The incident was on 4.4.1997. The Judicial Medical Officer examined the Accused on 12.4.1997.

The learned trial Judge had observed that the defence had failed to prove as to how the Accused-Appellant was produced before the said Judicial Medical Officer. On this basis, the learned trial Judge had rejected the doctor's evidence. But we note that the Accused-Appellant, on admission to the Remand Prison, was admitted to the Prison Hospital. When the Judicial Medical Officer examined the Accused-Appellant on 12.04.1997, the Borella Police had issued a Medico Legal Examination Form. According to the evidence, the number of the Medico Legal Examination Form is 138/97. The learned trial Judge had failed to consider these facts and decided to reject the evidence of the Judicial Medical Officer. The learned trial Judge had rejected the defence of the Accused-Appellant as she had rejected the Judicial Medical Officer's evidence. In our view, the rejection of the Judicial Medical Officer's evidence is wrong. The attack on the Accused-Appellant has been corroborated by medical evidence. When we consider all these matters,

• we hold the view that the rejection of the defence version by the learned trial Judge is also wrong. We are unable to agree with the said conclusion reached by the learned trial Judge. In view of the defence taken by the Accused-Appellant, the said contradiction which I have referred to earlier becomes very important and goes to the root of the prosecution case. In our view, the said contradiction is capable of creating a reasonable doubt in the prosecution case. We are, therefore, of the opinion that the benefit of the said reasonable doubt should have been given to the Accused-Appellant.

Considering all these matters, we hold the view that the prosecution has not proved both charges beyond reasonable doubt and therefore, set aside the conviction and the sentence of the Accused-Appellant and acquit him of both charges.

*Appeal allowed. The Accused-Appellant acquitted.*

**JUDGE OF THE COURT OF APPEAL**

**D.S.C. LECAMWASAM.J**

I agree.

**JUDGE OF THE COURT OF APPEAL**

**MK**