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

Devagiri Mudiyanselage Soma Manel
Amarasuriya
No. 17,
Mosque Road,
Ratnapura.

Accused-Appellant

Vs.

C.A. 110/2009

High Court of Ratnapura Case No.01/2001.

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

Respondent

Before : Ranjith Silva,J. &
D.S.C. Lecamwasam,J.

Counsel : Dr. Ranjit Fernando for the accused-appellants

C. Goonesekera, SSC for the A.G.

Argued &
Decided on : 27.10.2011

Ranjith Silva,J.

The accused-appellant was charged under Section 54a (b) of Act No. 18 of 1984 under the Poisons, Opium and Dangerous Drugs Ordinance. After trial she was convicted and sentenced to life imprisonment. In this appeal, counsel for the appellant rigorously argued on a point of law namely the illegal manner in which the Judge has dealt with the dock statement made by the appellant. In this regard, I draw my attention to pages 13 and 176 of the brief where the learned Judge makes a so called discourse of the law on dock statements. The learned Judge states that the dock statement which had been a concept recognized by the English Law and discarded by the English Law is obnoxious to the Provisions of the Evidence Ordinance.

He states further that a dock statement which is not subject to cross-examination is repugnant to the Provisions of the Evidence Ordinance and should not be considered as evidence. This Judgment appears to be per incuriam because the learned Judge was not aware of Section 100 of the Evidence Ordinance. Section 100 of the Evidence Ordinance states whenever in a judicial proceeding a question of evidence arises not provided for by this Ordinance or by any other law in force in Sri Lanka, such question shall be determined in accordance with the English Law of Evidence for the time being. Oblivious to this Section the Judge has

expounded on the current status of a dock statement. This Section provides for the adoption of the English Common Law which had hither to prevail in this country. It is only by an act of Parliament this position could be changed. It was by Section 72 of the 'Criminal Justice Act', the position of a dock statement was changed and not by Judicial Pronouncement.

The principles relating to dock statements have been the constant subject that gave rise to a lot of controversy, and was dealt with by the Supreme Court as well as the Court of Appeal in so many cases handed down for decades wherein eminent Judges who have gone before us have explained and evaluated the principles relating to dock statements. It is in their wisdom that their Lordships of the apex courts have delivered judgments in keeping with the law as it prevails today. It appears that the learned High Court Judge has done great violence to the law. Having done all that violence to law the learned High Court Judge goes onto evaluate the dock statement, in a way that is once again obnoxious to the existing law and totally against certain guide lines laid down by the Superior Courts. At page 15 the learned Judge once again states that since the dock statement was not subjected to cross-examination the dock statement is not capable of

creating a reasonable doubt. In this regard I would like to quote the Judgments in the following cases:

Jemis Silva Vs. Republic of Sri Lanka 1980 2 S.L.R. 167 and Yapa,J. in Kamal Addararachchi Case (2002) 1 S.L.R. 312 held, I quote, "to examine the evidence of the accused in the light of the evidence of the prosecution witnesses is to reverse the presumption of innocence."

In **Kularatne Vs. A.G. 71 N.L.R. 529 it was held that a Dock Statement** can be considered as good evidence subject to the following infirmities:

(1) That it is a unswarn statement

(2) That it has not been tested in cross-examination.

With regard to evaluation of a dock statement I would like to refer to the judgment in **Ariyadasa Vs. Queen 68 N.L.R. 66, Martin Singho Vs. Queen 69 C.L.W. 21 and Yahonis Singho Vs. The Queen 67 N.L.R. page 8**. If the defence evidence cannot be accepted as true and correct be rejected as untrue the defence must succeed.

The fact that there is evidence will warrant a re-trial but this is not a judgment that can be allowed to stand because one thing the same Judge would repeat this mistake in years to come and the other Judges might fall pray or follow suit. This Judgment will be quoted in so many other Court Houses in the island. Therefore, it is not at all safe to allow this Judgment to stand. For that reason we set aside this Judgment and we send back this case for a re-trial before a different High Court Judge in Ratnapura and the learned High Court Judge of Ratnapura is directed to give priority to this case and shall take up this case and hear this case de novo.

The Registrar is directed to send a copy of this Judgment to Mr. Heiyanthuduwa, the learned High Court Judge of Ratnapura.

JUDGE OF THE COURT OF APPEAL

D.S.C. Lecamwasam,J.

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JUDGE OF THE COURT OF APPEAL

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