

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

CA 211/2006

HC Negombo Case No: 55/2002

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

Complainant

Vs.

Sabrudeen Kamrudeen
1249/C,
Ananda Mawatha
Hunupitiya
Wattala.

Accused

And between

Sabrudeen Kamrudeen
1249/C, Ananda Mawatha
Hunupitiya
Wattala.

Accused Appellant

Vs.

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

Complainant Respondent

Being aggrieved by the said conviction and the sentence Accused-Appellant has appealed to this court. Facts of this case may be summarized as follows:

The Accused-Appellant was arrested at a place called Ananda Mawatha in the Wattala Police area when he was carrying a bag which contained 8 parcels of heroin. The Accused-Appellant in his dock statement denied the charge. His possession was that heroin was not recovered from his possession. He further stated that he was arrested whilst he was sleeping at home. He called his wife and the son to corroborate this position.

The learned counsel appearing for the Accused-Appellant contended that the evidence of the prosecution witnesses could not be believed. But after we examined the evidence led on behalf of the prosecution we were unable to agree with the submission of the learned counsel for the Accused-Appellant. In our opinion the evidence of the prosecution witnesses could be believed. However

we thereafter examined the evidence of the defence in order to see whether the evidence led by the defence is capable of creating a reasonable doubt in the prosecution case. If the evidence led by the defence is capable of creating a reasonable doubt in the prosecution case, the Accused-Appellant should be acquitted. Although the Accused takes up the position that heroin was not found in his possession, his wife in an affidavit signed by her has admitted that parcel of heroin was found under her dressing table which was at home. This affidavit has been tendered to the High Court on behalf of the Accused-Appellant for the purpose of considering bail by the learned High Court Judge. Since she has admitted in an affidavit that heroin was found under her dressing table, her evidence given at the trial to the effect that heroin was not found from the possession of the Accused-Appellant becomes false. When we consider the above matters we are of the opinion that the defence evidence is false and is not capable of creating a reasonable doubt in the prosecution case. We therefore hold the view that the decision taken by the learned High Court Judge to reject the evidence is correct. When the defence evidence is rejected and the evidence of the prosecution is accepted, the conviction of the

Accused-Appellant will have to be affirmed. For the reasons stated above, we hold that there is no merit in this appeal and affirm the conviction and the sentence. We dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Sunil Rajapakshe, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-