

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

C.A. 111/2007

HC Welikada Case No. 101/2006

Thuwan Jaiel Abideen
J. 04,
Logate Lake,
Colombo.

Appellant

Vs.

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

Respondent

C.A. 111/2007

HC Welikada Case No. 101/2006

BEFORE : Sisira J. de Abrew, J. &

P.W.D.C. Jayathilake, J.

COUNSEL :Tenny Fernando assigned Counsel for the accused-appellant.

DSG Rohantha Abeysooriya for the State.

ARGUED &

DECIDED ON: 25.07.2013

Sisira J. 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 31grams of heroin. Learned High Court judge after trial imposed to life imprisonment on the accused-appellant. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this court. Facts of this case may be briefly summarized as follows.

SI Nalaka attached to Police Narcotic Bureau, on an information, went to a house in Maligakanda and found the accused-appellant and four others, inside the said house, packeting the heroin. SI Nalaka searched the accused-appellant and found a parcel of heroin inside

his trouser pocket. The Government analyst has confirmed that the pure heroin in the said packet was 31g of heroin.

The accused-appellant, in his dock statement, denied the incident. According to the evidence of SI Nalaka after he found heroin inside the trouser pocket of the accused-appellant he handcuffed the accused-appellant along with the other four people who were there. But SI Bogamuwa who went with SI Nalaka into the said house says that the accused-appellant was not handcuffed. Learned counsel for the accused-appellant contends that this is a vital contradiction. We have to note that SI Bogamuwa has given evidence from his memory. But SI Nalaka has given evidence after going through his notes. We note that SI Bogamuwa has given evidence 8 years after the incident. When we consider all these matters we are of the opinion that the said contradiction is not a vital contradiction to vitiate the contradiction. We therefore reject the submissions of the learned counsel on this point.

Learned counsel next contended that PC Patrick who went with the police party was not called as a witness by the prosecution. According to the evidence of SI Nalaka and SI Bogamuwa PC Patrick was outside the house. Therefore even if PC Patrick was called as a prosecution witness, he would have only corroborated the arrest of the accused-appellant. Since two police officers had given evidence about finding of packet of heroin inside the trouser pocket of the accused-appellant it was not necessary for the prosecution to call PC Patrick.

We have considered the evidence led at the trial and see no reason to interfere with the judgment of the learned trial judge. We therefore

affirm the conviction and the sentence imposed by the learned trial judge and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL

NR/-