

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

In the matter of a petition of appeal in
terms of section 331 (1) of the Code of
Criminal Procedure Act No 15 of 1979
Democratic Socialist Republic of Sri
Lanka.

High Court (Colombo)

Case No:2451/2005

C.A. Case No:106/2013

Democratic Socialist Republic of Sri
Lanka.

Complainant

Vs.

PahanthiyagePredeepChandanaPeiris

Accused

AND

PahanthiyagePredeepChandanaPeiris

Accused Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant Respondent

BEFORE

: **H.N.J. PERERA, J**

P.W.D.C. JAYATHILAKE, J

COUNSEL

: L. BaranaGayanPerera for the

Accused Appellant.

ShanakaWijesinghe DSG for the

Respondent.

ARGUEDON

: 04.09.2014

DECIDEDON

: 12.03.2015

P.W.D.C. Jayathilake, J

Pahanthiyage Pradeep ChandanaPeiris, the Accused Appellant was indicted in the High Court of Colombo on two counts under the provisions of the poisons, opium and dangerous drugs ordinance No. 13 of 1984. He was charged for possession and trafficking of 17.4g of Heroin. After trial, the learned High Court judge has convicted the Accused Appellant for the charges leveled against him and sentenced him to life imprisonment. Being aggrieved over the aforesaid conviction and sentence, the Accused Appellant has preferred this appeal to this court.

Inspector Dharmadasa organized a raid on information received by SubInspector Maduranga on 23.09.2003. The information received was about trafficking and transportation of heroin at a place near Kalubowila hospital. He organized a team of a police officer's including S.I. Maduranga for the purpose of the said raid. Inspector Manoj Perera and another police officer went in a private car and were waiting near Koko Gril restaurant near Kalubowila hospital while Inspector Dharmadasa and others were in the hospital premises.

While they were waiting after 9.00 in the night SubInspector Maduranga received a telephone call describing the suspect as one wearing a blue pair of Denim trousers, and a t-shirt with a black polythene bag in his hand. On this occasion having seen person similar to the description climbing up the staircase of the restaurant SubInspector Maduranga nabbed him. On a call received from SubInspector Maduranga, Inspector Dharmadasa and the team arrived at the restaurant. Then Inspector Manoj produced the polythene bag to Inspector Dharmadasa. When Inspector Dharmadasa was searching the bag, he found 4 parcels in it. In each parcel were packets of heroin prepared for sale. Accordingly, the suspect was arrested brought came to the Narcotic Bureau. There were 800 packets, 455 packets, 532 packets and 800 packets in each parcel separately. When each of them were weighed they found that each confined 18g 300mg, 11g 200mg, 12g 500mg and 18g respectively. Altogether these packets had 60g of heroin in them. The government Analyst had found out that there was 17.7g of pure heroin.

The Accused Appellant has made a dock statement in which he has stated as follows.

He was 33 years. He was addicted to drugs. His mother save him from it and bought him a three wheeler. He was hiring this three wheeler on Anderson Road. On the day of the incident, a woman called Dammi Akka known to him

called him saying she wanted to go to Nugegoda hired his three wheeler. But she got off at Koko Gril restaurant and went to the restaurant to bring meals. He got down from the three wheeler to buy a cigarette. At that time, the police officers caught him. Then, a police officer brought Dammi Akka down from upstairs. The police officer had a parcel in his hand. He was put into the jeep. Then, 3 friends of his came near the jeep and asked the police why he was put into the jeep. After that, he was taken to the Narcotic Bureau. Though he told the police that he was innocent, he acted obediently to the Police Officers because he would have to get assaulted by the police. He said he was innocent.

The learned Counsel for the Accused Appellant pointed out some matters to make the court accept that it is the Accused Appellant's version which is more acceptable. The matters pointed out were some discrepancies of the evidence given by police officers in regard to the incidents that took place at the time of the arrest. He argued that the friends of the Accused Appellant had tried to intervene because the Accused Appellant was innocent. But the argument of the learned State Counsel was that the dock statement of the Accused Appellant corroborates the evidence of prosecution witnesses.

The Accused Appellant, in his dock statement has admitted that he came by a three wheeler and stopped near Koko Gril restaurant and he has further admitted that he got down from the three wheeler and walked into the said

restaurant. As the arrest had been done at the said restaurant the trivial matters such as the exact place where the Accused Appellant was arrested in the restaurant building do not affect the prosecution case. Though the Accused Appellant has referred to the names of some friends in his dock statement none of them has been present before the court as witnesses. For this, Accused Appellant has given a variety of reason. It appears that the learned trial judge has considered the evidence of the prosecution witnesses as well as the dock statement of the Accused Appellant carefully. The trial judge has concluded that even though there are some short comings in the evidence, the witnesses cannot be treated unbelievable. His conclusion in respect to the Accused Appellant's dock statement was that there by a doubt about prosecution case did not arise.

It was held in AG Vs Mary Theresa – 2011 2SLR292 that

“Credibility is a question of fact and now law. Appellate Judges have repeatedly stressed the importance of trial Judges’ observations of the demeanour of witnesses in deciding questions of fact. Demeanour represents the trial Judges’ opportunity to observe the witness and his deportment.”

Shirani Thilakawardane J. in agreement with Sripavan J. (as he then was) and Imam J. in the said judgment of the Supreme Court has further held

“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance”.

It has been further held that

“An Appellate Court has no jurisdiction to upset trial findings of facts that have evidentiary support. A Court of Appeal improperly substitutes its view of the facts of a case when it seeks for whatever reason to replace findings made by the Trial Judge”.

When considering the facts involved in the instant case with the admissions made by the Accused Appellant, there exist no question of law to be decided by this court other than accuracy of findings by the learned trial judge. As discussed above we see no reason to interfere with the findings of the learned trial judge in convicting the Accused Appellant for the charges leveled against

him. Therefore, we confirm the conviction and the sentence by the trial court and dismiss the appeal.

Appeal dismisses.

JUDGE OF THE COURT OF APPEAL

H.N.J. PERERA J

I agree

JUDGE OF THE COURT OF APPEAL