

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

**In the matter of an Appeal in terms of Section
331 of the Criminal Procedure Act.**

**The Attorney General of the Democratic
Socialist Republic of Sri Lanka.**

Vs,

CA/273/2009

Sagara Sampath Senaratne,

H. C/ Colombo. 2689/2005

(Welikada Prisons)

ACCUSED

And now between

Sagara Sampath Senaratne

(Welikada Prisons)

APPELLANT

The Attorney General of the Democratic Socialist
Republic of Sri Lanka.

RESPONDENT

Before

: Vijith K. Malalgoda PC J (P/CA) &

H.C.J. Madawala J

Counsel

: Gayan Perera for the Accused/ Appellant

Harippriya Jayasundara DSG for A.G's Department

Argued On: 17.03.2015

Decided On: 08.06.2015

Order

Vijith K. Malalgoda PC J (P/CA)

The accused Appellant in this case was indicted before the High Court of Colombo for possession of 2.89 grams of Heroin, an offence punishable under sec.54A (d) of the Poisons Opium and Dangerous Drugs Ordinance as amended by Act No 13 of 1984. At the conclusion of the trial before the High Court the accused was found guilty of the offence against him and sentenced for life imprisonment. Being dissatisfied with the said conviction and the sentence, the accused had preferred this appeal.

In this case the Prosecution relied on the evidence of Sub Inspector Rajakaruna of Maradana Police, who was the Chief Investigation Officer. According to his evidence at the High Court trial, on 29th December 1999 around to 2.00 pm he had left the Police Station with PC 11700 Kumara and Security assistance 10 for a raid. When he left the Police Station, he took necessary equipment for sealing of productions with him.

They visited Lockgate Lane in Sangaraja Mawatha area but the said raid was unsuccessful. They decided to come back to the Police Station and on their way back they decided to take a short cut from Sangaraja Mawatha to Panchikawatte Road through a passage. The passage they took was known as “105 ඉවත” When they proceeded through this area he saw a man standing in front of a house. He questioned the said person, whether they could go to Panchikawatte Road through the passage. The person answered the above, saying he does not know anything since he is not from that area. Since the Police Officer felt suspicious of the conduct of the said person he decided to search the person.

The said person was then searched by the Police Party led by the witness and during this search he recovered ten packets wrapped in to a rolled handkerchief and was tied to the waist along with the sarong, the accused was wearing. When opened the said packets he observed each packet contained ten small packets containing a powder which he suspected as Heroin.

What was recovered from accused was sealed by the witness using the equipment he had in his possession and returned to the Police Station at 16.45 hours. He handed over the productions to the reserve after entering the production under PR 35/99. Again on the same day at 17.07 hours he left to the Police Narcotics Bureau along with the accused in Jeep No. 32/3537 driven by PC 19057.

At the Police Narcotics Bureau the productions were weighed and properly sealed in the presence of the accused. The weight of the brown powder was 7 grams and 600 mille grams. In additions to brown powder 111 pieces of metal foil also sealed separately. The two parcels were marked separately as 1 and 2 and handed over to reserve on their return. The productions were sent to the Government there after.

Counsel for the accused Appellant argued that the prosecution has relied only on the evidence of a single witness, which is against the accepted practice. His position was that, other than the investigating officer no other police witness was called at the trial. Counsel further submitted that the failure by the prosecution to call the officer who received the production at the Maradana Police Station is fatal in this case.

Failure by the prosecution to produce the handkerchief at the trial was also highlighted by the defence. However the learned Deputy Solicitor General brought to the notice of the Court three admissions made under sec. 420 of the Criminal Procedure Cord during the trial. The said admissions were recorded in the proceeding at pages 55, 95 and 117 of the appeal brief.

At Page 55 an admission under section 420 was marked with regard to 110 pieces of aluminum foil. At page 95 the recovery of the handkerchief from the Accused was marked as an admission. The inward production chain from the police Station to Government Analyst and out ward production chain from the Government Analyst to High Court was admitted under sec. 420 of the Criminal Procedure Code at page 117.

Whilst referring to the above admissions, Learned Deputy Solicitor General took up the positions that in view of the above admissions, calling additional witness to establish the production chain was not warranted. However with regard to the detection, Learned Deputy Solicitor General relied on the Supreme Court decision in the **Attorney General V. Devunderage Nihal. SC Appeal 154/10** to the effect, "Therefore it is quite clear that unlike in case where an accomplice or a decoy is concerned in any other case, there is no requirement in Law that the evidence of a Police officer who conducted an investigation or raid resulting in the arrest of an offender need to be corroborated in material particulars" and submitted that the Learned trial Judge was correct in acting on the un contradicted and convincing evidence of Sub Inspector Rajakaruna in finding the accused guilty on the Indictment.

We have the opportunity of going through the convincing evidence given by Sub inspector Rajakaruna at the High Court trial and is of the view that, as pointed out by Justice Suresh

Chandra in the above cited case, it will be an additional burden on the prosecution to call more than one witness in a drug related offence, however satisfactory the evidence of the main Police witness would be and therefore we are of the view that there is no merit in the submission made on behalf of the Accused- Appellant to the effect that it is against the accepted practice to convict a suspect in a drug related case based on one single police witness. For the reasons adduced above we see no reason to interfere with the conviction and sentence of the Learned Trial Judge. The appeal is accordingly dismissed

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala

I agree,

JUDGE OF THE COURT OF APPEAL