

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

**In the matter of Appeal in terms of section 331(1)
of the code of Criminal Procedure Act No 15 of
1979.**

The Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs,

Mariyanayagam Norbertsingam

ACCUSED

**CA/16/2010
(High Court Vavuniya
Case No 1982/07)**

And,

Mariyanayagam Norbertsingam

1st ACCUSED-APPELLANT

Vs,

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

RESPONDENT

**Before : Vijith K. Malalgoda PC J (P/CA)
&
H. C. J. Madawala J**

Counsel : **A. K. Chandrakantha assigned counsel for Accused Appellant Dilan Rathnayake, SSC for A.G.**

Argued on : 11/05/2015

Judgment Date : 10/07/2015

H. C. J. Madawala J

The 1st accused- appellant filed this appeal to set aside the sentence of the learned High Court Judge dated 08-02-2010 as prayed for in the petition of appeal. The 2nd to 5th accused- appellant who also has tendered a separate petition of appeal, withdrew the same on 02-07-2012. Accordingly it is only the 1st accused - appellants appeal remains to be decided by this court. The 1st- 6th accused- appellants were indicted on 21-06-2007 before the High Court of Vavuniya on two counts. Namely,

1. For being in possession of 81.8 grams of Heroin.
2. For trafficking the same, offences punishable under section 54A (b) 54A (d) respectively of the Poisons Opium and Dangerous Drug Ordinance as amended by Amendment Act No 13 of 1984.

1st to 5th accused appellants were found guilty by the learned High Court Judge of Vavuniya by his Judgment dated 08-02-2010. The accused appellant and the 2nd to 5th accused were sentenced to life imprisonment on each count. The 6th accused- appellant was acquitted from all chargers.

Being aggrieved by the said conviction and the sentence of the learned High Court Judge the 1st accused filed this appeal before us. The appeal preferred by the 2nd to 5th accused has been

withdrawn by them. When this matter came up for argument on 23-03-2010 counsel for the accused appellant based his arguments on two grounds.

Firstly whether the prosecution has proved the chain relating to the inward journey of the productions that was tendered to court.

Secondly whether the prosecution has established the exclusive possession by the appellant.

Both parties agreed to file written submissions in support of their arguments.

The accused -appellants case was that he was found at a sand dune in the middle of the sea off the coast of Talaimannar and had been taken to a boat by the Indian fishermen in which the accused and the other co-accused (2A to 5A) were in. Soon after the appellant was taken in to the fishing boat the Navy patrol boat in which the PW8 and PW10 were travelling, searched the boat and found the parcels of Heroin. When searching the traveling bag which was claimed by the Sri Lankan as belonged to him the Navy found four parcels containing brown coloured powder suspected to be Heroin. The vessel and all the people were brought to the Navy Camp and handed over to Talaimannar Police together with the productions. The four parcels were marked A B C & C1 by the police.

There after the police produced them before court for joint possession. The appellant and the other co-accused have all denied any knowledge of the Heroin. The weight of the powder in parcels marked as A B C & C1 was 500grams, 400grams, 150grams and 150grams respectively totaling 1200grams.

The Government analyst in his report stated that total gross weight of these four parcels was 1012.2grams and not 1200grams and opined that the total of 81.80grams of Heroin was found in these four parcels.

The 1st accused who gave evidence has stated that he went to India and on the way back the boat in which he was travelling gave trouble and he was asked to get down on a sand dune in the sea. As he was standing on the sand dune a boat approached him and he asked the sailors there to take him on board. They agreed and while he was on board the Navy arrested all of them. He completely denied trafficking or possession of Heroin.

It was submitted by counsel for the accused- appellant that the productions including four parcels which contained heroin were initially detected and taken in to custody by PW 8 Leading Seaman in the sea and handed over to PW 5, SI Ranjith Kumara Pieris at Talaimannar Police Station. Accordingly PW 5 (SI Pieris) weighed the substance in parcels, conducted a field test on them, marked the four parcels as A B C and C1 and sealed them with his signature and the signatures and finger prints of all five suspects. Further the Government Analyst has stated that she found only one finger print and one signature of the appellant apart from the signature of the police officer and that there is no explanation for this discrepancy. It was also submitted that there is another discrepancy in respect of the weight of the substances contained in the parcels between the evidence of PW 5 (SI Pieris) and the Government Analyst. This was explained by PW 5 and according to him he had used an old scale used in the canteen.

It was submitted that PW 5 (SI Pieris) who took over suspects and productions from the Navy, having weighed and sealed, handed over them to PC Premaratne, who was on duty at the Reserve.

On the following day he took the parcels back from PC Premaratne in order to produce before Learned Magistrate. There after PW 5 having obtained the order from the Learned Magistrate handed over the productions to the Government Analyst.

It was submitted that PC Premaratne was not called as a witness nor does his name appear in the list of witness in the back of the indictment.

Counsel for the respondent submitted that the PW 5 testifies as to the sealing of productions and handing over of productions to the Government Analyst. PW 5 speaks of taking over of the custody of productions in this case from PW 8 on 30-03-2005 at about 2.45 p.m. and duly handing over the sealed productions intact to P.S. 1989 Premaratne who was in charge of reserve duties. The productions have been thereafter taken over from the reserve by PW 5 on 31.03.2005 at 9.00 hrs and had been handed over to the Government Analyst Department on 01-04-2005 at 7.30 hrs. PW 13 the Assistant Government Analyst in her evidence confirms the receipt of the productions in a duly sealed state and testifies as to finding 81.8 grams of pure Heroin in the four parcels of powder tendered for analysis.

We find that the Government Analyst have received the productions within a short period of two days from the date of detection which demonstrates the promptness with which the productions have been duly handled in this case. Accordingly we find this alone shows the bona fides of the officers involved in the handling of productions and leaves no room or time for interference with the sealing. We find that there is no evidence on record in the High Court trial which gives rise to even a suspicion that the productions were tampered with prior to been opened by the Government Analyst for analysis. As such in the circumstances we find that the prosecutions failure to call the

reserve Police Officer P.S. 1989 Premaratne cannot be faulted with as PW 5 as a person who handed over the custody of the productions to P.S. 1989 for a very short period of time had himself then taken over the productions from Premaratne on 31.03.2005 at 9.00 hrs. PW 5 gave oral evidence of Premaratne's handling of the productions during that time. Accordingly we find that therefore there is no 'break' in the chain of productions in its inward journey.

In Perera vs. Attorney General (1998) 1SLR 378 His Lordship Justice J.A.N. De Silva at page 380 remarked thus "It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore it is correct to state that the most important journey is the inwards journey because the final Analyst report will be depend on that. The outward journey does not attract the same importance."

In the light of the above decision, in **Witharana Doli Nona vs. The Republic of Sri Lanka C.A. 19/99** His Lordship Justice Sisira De Abrew remarked thus "It is a recognized principle that in drug related cases the prosecution must prove the chain relating to the inward journey. The purpose of this principle is to establish that the productions have been tampered with. Prosecution must prove that the productions taken from the accused appellant was examined by the Government Analyst. To prove this, the prosecution must prove **all the links** of the chain from the time it was taken from the possession of the accused appellant to the Government Analyst's Department."

According to evidence led, the inward journey of the productions coming into the Government Analysts Department has only taken a period of two days from the date of detection which demonstrates the promptness with which the productions have been duly handled in this case. We find that there is no gap in the prosecution case in not calling PS Premaratne as a witness, PW 5 as the person who handed over the custody of the productions to PS Premaratne by short period of time had himself then taken over the productions from Premaratne on 31.3.2005 at 9.00 Hrs. PW 5 who had given evidence of Premaratne's handling of the productions during that time.

The witness Ranjith Kumara Pieris who was serving at the Crime Prevention Division at the Talaimannar Police Station has stated as follows.

Q: How many packets were handed over by the Navy officers to your police station?

A: Four packets and a bag.

Q: In that, how many packets were found opened and checked and how many were found intact?

A: All packets were found to be intact.

Ranjith Kumara Pieris has stated as follows.

Q: As per this particular productions included by you under PR number, did you take any further action regarding those productions and the accused persons on that day of incident?

A: Until I get the order, I handed over the production receipt number 25, 26,27,28,29 and 30 along with the accused persons to the officer-in-charge of the police station, and to 1989 Premaratne in the reserve service.

Q: After handing over this productions to Premarstne in the reserve service, did you take them back again from the reserve service?

A: “Yes. On 2005/03/31 at 09.00 hours on that day, I took over from police constable 19890 Premaratne in the reserve service, the productions, listed in the production receipt numbers 25,26,27,28,29 and 30, the suspect persons detained in the police station M. Nobert Singam, B. Subramaniam, T. Kannan, N. Mariyavale, S. Murgavale and A. Silva and myself along with sub Police Sergeant 37075 Senaratne in a van bearing number 59-5040 driven by Sub Police Sergeant 20973, brought to the Honorable Magistrate’s Court Mannar in order to be produced there.”

The Government Analyst who has given evidence has stated as follows.

Q: Witness, first you stated that a person called Pieris handed over the production to you. When the Production was handed over to you, in what condition it was found? That means how was it packetted?

A: The stamp was found properly placed. A pre-paid stamp fee receipt was annexed.

Q: Whose stamp was found there?

A: I found the stamp of the Magistrate’s Court.

Q: Can you state that whether you found any particular shortcoming in the parcels that were handed over to you?

A: No, pre-paid stamp fee receipt was there. The parcel was intact.

Accordingly evidence above we find that there is no doubt created in the chain of productions and that the presumption under section 114(d) of the evidence ordinance namely, (d) that judicial and official acts have been regularly performed may be presumed by court and there is no material to cast any doubt in the presumption. It is proved that the parcel has been intact till it reached the government analyst.

Accordingly we find that there is no break in the chain of productions in its inward journey as submitted by the counsel of the appellant. Hence we accept that the prosecution contention that the appellants main ground of appeal has failed.

The other ground of appeal advanced by the Appellant's counsel is that there is a discrepancy in the marking of productions. This the Appellants counsel highlights with regard to PW 5 stating that all five accused's fingerprints and signatures were placed on the Heroin productions once sealed. PW 13 (the Assistant Government Analyst) states that only the fingerprint of the Appellant was found on the Heroin Productions sent for analysis. When the evidence under oath of the other Co-accused are considered it is clear that none of them say that their fingerprint was taken to seal the productions hence there is no contradiction in this evidence and no doubt as to the appellants signature been found by the Government Analyst on the productions. The trial Judge has considered the evidence of PW 5 very carefully in his Judgment and has concluded that there is no reason to reject this witness's evidence.

The learned trial judge who had the advantage of observing the demeanour of the witnesses has decided that the so called discrepancy in the markings on the productions was not significant even though the counsel for the accused- appellant tries to discredit the prosecution witness PW 5's testimony in this case. In the Supreme Court case of **ALWIS vs. PIYASENA FERNANDO 1993 1 SLLR 119 at 122** G.P.S. De Silva CJ stated as follows, it is well established that findings of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed in appeal. As such the evidence adduced by the trial judge cannot be faulted especially as the defence has not been able to mark a single contradiction or omission in this case. The testimonial trust worthiness

of the prosecution witnesses has remained firm and has been accepted by the trial court. Hence we are of the view that the appellant second ground of appeal should fail. We find that the trial judge's conclusion to accept the evidence of the main prosecution witnesses and coming to the conclusion cannot be rejected. Hence the submission made by the appellant are devoid of any merit. We find the prosecution version of the facts placed before court was tenable and that the defence version does not cause a doubt of that of the prosecution case. The learned trial judge in his judgment has considered and given reasons as to why he rejects the defence evidence. These reasons supported by evidence shows that there is no dent caused in the formidable prosecution case.

The defence took up the position that the raid was a fabrication by the Navy and the police but the appellants failure to even cast a doubt as to a substantial reason for the Navy or police to falsely implicate him shows that the appellants version is untenable hence we find that this incident indeed was a genuine detection made by the Navy. As regards to quantity of Heroin recovered from the appellant militates against the heroin being an introduction. The Street value of 81.8 grams of Heroin is staggering and for the Navy or police to acquire such a quantity of powder to falsely implicate the accused cannot militate against the accused's innocence, which position is often propounded by the defence in cases such as this.

On a consideration of the above evidence and reasons given above we find that the chain of events pertaining to the productions that had been taken charge from the appellant from the time it was taken in to custody to the time reached the Government Analyst and comes back to court is established. As such we are of the view that the prosecution have proved its case beyond reasonable doubt. Accordingly we have no reason to interfere with the findings and the sentence of the Learned High Court Judge and hence we dismiss this appeal.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL