

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

**In the matter of an Appeal in terms of
Section 331 of the Criminal Procedure Act
No. 15 of 1979.**

**The Democratic Socialist Republic of Sri
Lanka.**

COMPLAINANT

Vs,

Chalana Krishnan Wikramatilleka alias Thilaka

ACCUSED

C.A No 296/2009

(H/C Colombo Case No. 2297/2005)

And,

Chalana Krishnan Wikramatilleka alias Thilaka

ACCUSED-APPELLANT

Vs,

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

RESPONDENT

Before

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

H.C.J. Madawala J

Counsel : **Dr. Ranjith Fernando with Samanthie Rajapakshe**
for the Accused –Appellant,
Haripriya Jayasundera DSG for the Respondent.

Argued On: 07.05.2015

Decided On: 07.08.2015

Order

Vijith K. Malalgoda PC J

The Accused- Appellant was indicted before the High Court of Colombo for possession and Trafficking of 2.37 grams of Heroin, an offence punishable under **section 54 A (b) and (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 – Appellant was found guilty by the Learned High Court Judge and Sentences to life Imprisonment. Being dissatisfied with the above conviction and Sentence the Accused Appellant had preferred this appeal.

According to the evidence presented at the High Court, a police party led by IP. Thennakoon had left for Maradana on a tip off received by Police Constable Ranil through one of his informants

The police party consisted of several police officers including Police Constable Ranil and Police Constable Lal Kumara. The informant too had joined the team at the Police Narcotic Bureau itself.

The chief investigation officer, IP.Tennakoon was not available to give evidence at the High Court trial since he had left the service and the country. The prosecution therefore has mainly relied on the evidence of Police Constable Ranil.

According to the evidence of Police Constable Ranil, IP Tennakoon and himself along with the informant got off from the Police Vehicle at Technical Junction and proceeded towards "Moulana Watta" around 8.45 A.M; the informant has showed a person at a distance of 50 meters and left away. Witness had followed IP Tennakoon who proceeded towards that person and IP Tennakoon had searched him and recovered a parcel from his trouser pocket. Thereafter IP Tennakoon had arrested the suspect and Police Constable Ranil who assisted IP Tennakoon had witnessed the entire detection.

After getting down the police party at the scene, they returned to the Police Narcotic Bureau along with the Accused.

Accused-Appellant whilst challenging the conviction and Sentence both, took up the position, that this is a single witness case where the prosecution has relied entirely on Police Constable Ranil, whose evidence could be only treated as here say evidence, in the absence of the Chief Investigating Officer, IP Tennakoon.

Police Constable Ranil in his evidence has taken up the position that, after receiving the information from his informant, he took steps to inform his senior officer, of the information he received, and thereafter left the Police Narcotic Bureau with a party led by his senior officer IP Tennakoon. He was with IP Tennakoon until the accused was arrested by IP. Tennakoon, after the recovery of a parcel from the accused's trouser pocket. As the senior officer of the raiding party, IP Tennakoon had led the investigation. Even though Police Constable Ranil had received the information with regard to this raid, this court does not expect Police Constable Ranil to lead the investigation and make the arrest, when there is a senior officer leading the team. According to Police Constable Ranil he was with IP Tennakoon at the time the search and arrest took place and therefore this court cannot agree with the position taken up by the Learned Counsel for the Accused-Appellant to the effect that Police Constable Ranil's evidence could only be treated as here say. Police Constable Ranil speaks of the arrest which took place in his presence. He saw the accused being searched by IP Tennakoon and recovered the parcel from the accused's right trouser pocket.

Even though Police Constable Ranil has not made the arrest, this court is of the view that the above evidence of police Constable Ranil will have the same effect as if IP Tennakoon had given evidence in this case. Police Constable Ranil speaks from the time he received the information up to sealing of Productions at the Police Narcotic Bureau where he actively took part in the investigation as the raid had been carried out on information provided through his informant.

Learned Counsel for the Accused –Appellant has stressed the point that this is a “single witness” case. On this issue, we are mindful of **section 134 of the E/O** to the effect;

Section 134; No particular number of witnesses shall in any case be required for the proof of any fact

and also the decision by the Supreme Court in **SC Appeal 154/10**.

Even though the Learned Counsel did not make oral submissions on this issues, by stressing the point that this is a case of “single witness”, what he tried to canvass before us was that in drug related offence arising from a raid by the Police, the prosecution has to corroborate the evidence of any member of the raiding party in order to bring about a conviction.

On this issue the Supreme Court in **A.G.V. Devunderage Nihal SC Appeal 154/10** held “Therefore it is quite clear that unlike in the case where an accomplice or a decoy is concerned in any other case there is no requirement in law that 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. However, caution must be exercised by a trial Judge in evaluating such evidence and arriving at a conclusion against an offender. It cannot be stated as a rule of thumb that the evidence of a police witness in a drug related offence must be corroborated in material particulars where police officers are the key witness. If such a proposition were to be accepted it would impose an added burden on the prosecution to call more than one witness on the back of the indictment to prove its case in a drug related offence however satisfactory the evidence of the main police witness would be.”

Prosecution has then led the evidence of Police Constable Lal Kumara. According to the evidence of Lal Kumara he was a member of the team led by IP Tennakoon but not assisted IP Tennakoon for the arrest since he was asked to be in the vehicle with the other officer. However he corroborates the evidence of police Constable Ranil and confirmed that IP Tennakoon, Police Constable Ranil and the informant got down from the vehicle at Technical Junction. Around 9.00 A.M they were asked to come near “Maulana Watta” and when they reached at “Maulana Watta” he saw the officers with a third person but the informant who went with them was not there.

At 9.35 A.M they returned to the Police Narcotic Bureau and the field tests were performed by IP Tennakoon and thereafter the Productions were sealed by the witness in presence of IP Tennakoon and the Accused and entered the Productions in the Production Register under 187 and handed over to IP Chinthaka. This witness had identified his hand writing in the envelope and the White Paper which was used to seal the productions at the Police Narcotic Bureau.

Evidence of Lal Kumara corroborates the evidence of Ranil and also explains the steps taken by the investigation team. His hand writing found on the envelop and White Paper confirms his participation at the investigation.

Police Constable Ranil who was with IP Tennakoon when arrest took place confirms that the production taken from the Accused was with IP Tennakoon until they return to the Police Narcotic Bureau and there after it was sealed at the Police Narcotic Bureau. Witness Lal Kumara speaks of the weighing and sealing of the productions in the presence of IP Tennakoon and the Accused with his assistance and handing over to the production officer. IP Chinthaka who was called as a witness, has confirmed receiving the productions and taking it to the Government Analyst's Department.

With the above evidence the prosecution has established the inward journey of production chain up to the Government Analyst's Department and we see no reason to reject the above evidence.

On behalf of the Accused-Appellant it was submitted that the evidence of Police Constable Ranil Contradicts with the evidence of Police Constable Lal Kumara with regard to sealing of Productions.

Police Constable Ranil in his evidence admitted that he did not make any notes with regard to the weighing and sealing of productions since it was carried out by IP Tennakoon, but he admits his presence at Police Narcotic Bureau when sealing took place. He further submitted that his presence at sealing was recorded by IP Tennakoon.

When the defence was called, the Accused- Appellant had decided to give evidence from the witness box. Whilst giving evidence he has admitted that he was arrested with 3 packets of Heroin near a toilet in Maradana Area but denied that he was arrested near Maulana Watta with a Parcel containing Heroin.

Learned Trial Judge after analyzing and evaluating the prosecution and defence evidence has found the Accused-Appellant guilty of both counts against him. The defence has challenge the Judgment on the ground that the Learned Trial Judge has failed to mention the quantity of drugs found on person of the Accused, in his Judgment as the Accused admitted on oath that he did in fact possess a "user quantity" of drugs at the time of arrest.

I see no merit in the said argument since Learned Trial Judge after analyzing and evaluating both the prosecution and defence evidence had convicted the Accused on all counts and the quantity of the Heroin found from the Accused is referred to in both counts of the Indictment.

Based on the defence version in this case, counsel for the Accused- Appellant had moved us to consider the decisions in **Agampodi Samantha de Zoysa V. The Attorney General CA 83/97** decided by the Court of Appeal on 27.10.1998 (unreported) and reduce the sentence imposed on the Accused -Appellant. We see no reason to follow the decision in the above case since the circumstances under which the sentence was reduced in the above case has no relevance to the present case.

For the reasons adduced above we see no reason to interfere with the decision of the Learned Trial Judge.

Therefore I affirm the conviction and sentence imposed by the Learned High Court Judge.

Appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. MADAWALA,

I agree,

JUDGE OF THE CUORT OF APPEAL

Appeal dismissed.