

C.A.124/2012

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

In the matter of an appeal against the
Order of the High Court under section
331 of the Code of Criminal Procedure
Act No. 15 of 1979 as amended.

Saviera Santhana Raj alias Bonda

Accused-Appellant

C.A. Case No:-124/2012

H.C. High Court Case No:-2316/2005

V.

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

Respondent

**Before:- H.N.J. Perera, J &
K.K. Wickremasinghe, J**

Counsel:- Tenny Fernando for the Accused-Appellant

Chethiya Gunasekera D.S.G for the Respondent

Argued On:- 23.06.2015

Written Submissions:- 09.09.2015

Decided On:-26.11.2015

H.N.J.Perera, J.

The accused-appellant was indicted in the High Court of Colombo for being in possession of 26.5 grams of heroin punishable under section 54 (A) of the Poisons, Opium and Dangerous Drugs Ordinance. After trial the learned trial Judge convicted and sentenced the accused-appellant for life imprisonment on 02.02.2012. Aggrieved by the said conviction and sentence the accuse-appellant had preferred this appeal to this court.

The version of the prosecution was that on an information received from a private informant on 13.11.2002 by I.P.Welagedera arranged and conducted a raid. The information was that a person by the of Night Rider Rohitha, through his agent Bonda (accused-appellant) was packetting and selling heroin and if the officers come within half an hour they might be able to arrest Bonda (the accused). The informant had promised to show the Fuse Service Centre where he raid was to be carried out. I.P.Welageera had subsequent to the receipt of the said information at 14.50 and having selected a team of officers which comprised of W.P.C Dayani gamage, P.C 22447 Wimalaratne, P.C.29291 Wipula Kumara, P.C 1331 Thalangama, P.C 3680 Chinthaka, P.C 16416 Rathnayake, P.C 356 Jayawansa and P.C 34669 Niroshan as the driver, had proceeded towards Borella and stopped at the Junction near Veluwana Road. It was the evidence of I.P Welagedera that he constantly kept in touch with the informant through the phone and he was then asked to proceed towards Sahasrapura Saranapala Himi Road.

The informant had promised to show the Fuse Service Centre where the said raid was to be carried out. On arriving at the scene the informant had told him that, Bonda had left the Service Centre and was walking towards Sahasrapura. The clothes worn by Bonda had also been described by the informant to him. As per the description given by the

informant. They saw a person wearing a pair of short and a black and ash striped T. Shirt walking towards them. The witness had introduced himself to be from PNB and the male had panicked and the witness Wimalaratne had held him whilst I.P. Welagedera searched him. The said person was searched and on the right hand side pocket of his trouser and found a parcel (a guliya) and found heroin in his possession inside two Rose coloured cellophane bags.

As per the description given by the informant, PNB officer had stopped and searched the accused-appellant. A parcel had been found from the possession of the accused-appellant. As the parcel contained heroin, PNB officers had informed him of the charge and had arrested him. After his arrest the I.P.Welagedera had come back to the Fuse Service Centre and had searched the place. They had questioned the girl working as a cashier in the Service Centre and had taken her also into custody. Night Rider had not been at the Service Centre. No productions had been found from the Service Centre.

The said witness I.P Welagedera had stated that thereafter they went back to the police Narcotic Bureau at 16.40 with the accused-appellant and that the production was weighed in front of the accused-appellant and the net weight of the heroin was determined as 69.500 grams and the productions were duly sealed and kept under lock and key in his custody till the next date and was handed over to the officer in charge of productions, Jayamanna on the 14.11.2002 at 14.00 hrs.

The said items were positively identified by the prosecution witnesses at the trial. The inward and outward journey of the said productions to the Government Analyst had not been challenged by the defence. The Assistant and Government Analyst P.SA.Kumudini Rajapakse had given evidence in High Court and had positively identified the examined

productions as grams 26.5 of pure heroin. The Government Analyst Report was marked as X2 at the trial.

The chief investigating officer I.P. Welagedera's evidence had been corroborated by witness S.I. Wimalaratne. The witness Wimalaratne corroborates the position of the 1st witness. The learned D.S.G who appeared on behalf of the Respondent has submitted that the learned trial Judge had carefully evaluated the evidence of the prosecution witnesses and had applied the laws relevant and had scrutinized evidence elicited with the tests of probability and truthfulness.

According to the accused-appellant he is a worker at the Fuse Service Centre. He had been working from morning and had come to have his breakfast when the PNB officers arrived at the scene. He was having his breakfast at Night Rider Rohitha's Club when he was arrested by the PNB officers. He has further stated that the said officers questioned him and the WPC had searched the girl who was working at the said Centre as a cashier. The PNB officers had assaulted her and had taken the girl also in to their custody and he was asked to come and give a statement stating that heroin was recovered from the Service Centre. The position of the accused-appellant is that he agreed to make a statement and they proceeded to his house which was at Sahasrapura. It was his position that he did not possess the heroin but the PNB officers recovered heroin from the possession of the girl and the said quantity was introduced to him.

When this case was been argued before this court, the Counsel for the accused-appellant submitted to court that the witness Welagedera had stated that the productions were recovered from the right trouser pocket and the other witness had stated that they were recovered from the back right trouser pocket of the accused-appellant.

In the case of State of U.P V. M.K.Anthony 1984 2 SC J 236 it was held that where evidence is generally reliable, much importance should not be attached to the minor discrepancies and technical errors.

In Mohamed Niyas Naufer & Others V. Attorney General SC Appeal 01/2006 decided on 08.12.2006 Shiranee Thilakawardene, J. held that when faced with contradictions in a witness's testimonial, the court must bear in mind the nature and significance of the contradictions, viewed in the light of the whole of the evidence given by the witness. It was further held that, too great a significance cannot be attached to minor discrepancies or contradictions as by and large a witness cannot be expected to possess a photographic memory and to recall the exact details of an incident.

It was further held in that case that:-

“Therefore court should disregard discrepancies and contradictions, which do not go to the root of the matter and shake the credibility and coherence of the testimonial as a whole. The mere presence of such contradictions therefore, does not have the effect of militating against the overall testimonial creditworthiness of the witness, particularly if the said contradictions are explicable by the witness. What is important is whether the witness is telling the truth on the material matters concerned with the event.”

The fact that he was arrested on this particular day by the PNB officers is not disputed by the accused-appellant. But he had denied that he was arrested in the Manner stated by the prosecution witnesses. He also admits in his evidence that in fact heroin was recovered by the PNB officers on that particular day. It is very clear that the PNB officers had not introduced heroin to implicate anyone on this day. The fact that heroin was recovered was also admitted by the accused-appellant. His position is that the heroin that was recovered from the girl's possession

had been introduced to him. Defence had not suggested any reason for the introduction of heroin to the accused-appellant.

The Judge had carefully evaluated the evidence of the accused-appellant. The learned trial Judge had rejected the evidence given by the accused-appellant stating that it is very difficult to believe and accept the evidence given by the accused-appellant as true. The learned trial Judge in this case had considered the totality of the evidence before he reached the conclusion to reject the evidence given by the accused-appellant is insufficient to create a reasonable doubt in the prosecution case. The prosecution in this case had led clear evidence to prove that the accused-appellant was arrested with a parcel of heroin inside his trouser pocket.

In *King V. Musthapha* 44 N.L.R 505 the Court held thus:-

“The Court of Criminal Appeal will not interfere with the verdict of a Jury unless it has a real doubt as to the guilt of the accused or is of the opinion that on the whole it is safer that the conviction should not be allowed to stand.”

A Court of Appeal will not lightly disturb the findings of a trial Judge with regard to the acceptance or rejection of testimony of a witness unless it is manifestly wrong. In *Privy Council V. Fradd V. Brown & Company Ltd.* 20 N.L.R 282 it was held that:-

“It is rare that decision of a Judge so express, so explicit upon a point of fact purely overruled by a Court of Appeal, because the Courts of Appeals recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance.”

I find there is no material before this court to support the defence proposition that the accused-appellant did not have the exclusive possession of the heroin recovered.

For the reasons set out in my judgment I affirm the conviction and the sentence dated 02.03.2012 by the learned trial Judge and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe, J.

I agree.

JUDGE OF THE COURT OF APPEAL