

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

In the matter of an Appeal in terms of
Section 331(1) of the CPC read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Democratic Socialist Republic of Sri
Lanka

COMPLAINANT

Vs

Angusamy Saththiyavel

ACCUSED

C.A. Application No. CA158/2010

H.C. Vavuniya Case No. HC/1906/2006

AND NOW

Angusamy Saththiyavel

ACCUSED – APPELLANT

Vs

The Hon. Attorney General
Attorney General's Department

Colombo 12.

RESPONDENT

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Amila Palliyage for the

Accused – Appellant

Thusith Mudalige DSG for the

Attorney General

ARGUED ON

: 05th December, 2016

DECIDED ON

: 09th December, 2016

Deepali Wijesundera J.

The accused appellant was charged under three counts namely 54 (A) (b), 54 (A) (c) and 54 (A) (d) of Act no. 13 of 1984 and convicted for all three charges and convicted for life imprisonment by the High Court of Vavuniya on 12/11/2010. This appeal is filed against the said conviction and the sentence.

The only ground of argument of the learned counsel for the appellant was that the learned High Court Judge has not evaluated and analysed the evidence placed before court. He stated the High Court Judge failed to consider the evidence given by the accused appellant and to apply the principle of consistency and probability. The counsel for the appellant submitted that the learned High Court Judge has only referred

to the cross examination of the appellant and thereafter and referred to some decided cases.

The learned Deputy Solicitor General for the respondent submitted that the learned High Court Judge has analysed the evidence and applied the test of probability when analysing witness Ebert Silva's evidence and referred to page 220 of the judgment.

It was held in **Jagathsena and others vs G.D.D. Perera Inspector, Criminal Investigation Department and Mrs. Sirimavo Bandaranayake 1992 1 SLR 371**. That,

“Although the findings of a Magistrates on questions of fact are entitled to great weight, yet it is the duty of the Appellate Court to test both intrinsically and extrinsically, the evidence led at the trial”. Therefore we proceed to analyse the evidence placed before the High Court.

On perusal of the evidence of the main witness Ebert Silva who made the detection we find that his evidence poses the test of probability, moreover we find that his evidence is consistent. There are no contradictions marked per-say.

On perusal of the judgment the High Court Judge has referred to a number of decided case and we find that he was mindful of the legal principles that has to be applied to evaluate the evidence of a witness. The appellant's counsel in his argument referred to P 225 of the brief and submitted that the learned High Court Judge has failed to analyse the evidence given by the accused appellant which amounts to a substantive miscarriage of justice.

Once again applying the rule in Jagathsen's case we proceed to analyse the evidence of the accused appellant. The accused has said out of the 14 people detained by the Navy with him only he was arrested and handed over to the police. He refers to some officers as "they" and goes on to say that the officers did not have any grudge against him and that he has not seen them before. He has denied the possession of the bag in which the heroin was found. He refers to a green coloured bag but the bag marked by witness Ebert Silva is a blue coloured bag. The defence counsel failed to suggest to the main witness that the bag found in the possession of the accused appellant was green in colour and not blue. Therefore we find that the story of the defence is not consistent. Accused appellant by giving evidence has failed to cast a doubt on the prosecution evidence.

For the afore stated reasons we find that there is no basis to set aside the judgment delivered by the High Court Judge of Vavuniya. We affirm the judgment and conviction dated 12/11/2010 and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL