IN THE COURT OF APPEAL OF THE DEMCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Palliyapattuge Malika

Accused-Appellant

C.A.No.285/2009
H.C.Colombo No.1650/2004.

Hon. Attorney-General

Respondents.

BEFORE	:	M.M.A.Gaffoor,J. and K.K.Wickremasinghe<j.
COUNSEL	:	Gayan Perera with prabha Perera for the Accused-Appellant. Dappula de Livera ASG for the A.G.
ARGUED ON	:	15/3/2016 and 28/3/2016
DECIDED ON	:	05/12/2016

M.M.A.Gaffoor,J.

The Accused-Appellant was indicted in the high Court of Colombo under the allegation of possession of 14.02 grams of Heroin punishable under Section 54 ඇ (ඇ1) of the Poison Opium and Dangerous Ordinance. After trial the accused-appellant was convicted and sentenced for life imprisonment.

At the argument of this appeal learned Counsel for the appellant strenuously contended that the learned trial judge has erred in law by perusing the notes of the information book while delivering the judgment. Learned Counsel relied strongly on the following judicial decision :-

Sheela Sinharage Vs. The Attorney General 1885 (1) SLR 1

Banda and Others Vs .Attorney General 1998 (3) SLR 168

Keerthibanda Vs. Attorney General 2002 (4) SLR 245

I have given my mind to the rule of law enunciated in the above judicial decisions. I hold that the decision in the above case has no application whatsoever to the issue which arises in the instant case.

The rule of law enunciated in the above judicial decisions is that a trial Judge cannot use the matters recorded at the non-summary inquiry or matters recorded in a police statement as substantive evidence. In the instant case, the learned trial Judge has not used the notes of the information book as substantive evidence.

Reference is made to page 301 of the judgment.

මේ පිළිබඳව තබා ඇති සටහන් පරීක්ෂාකර බැලීමේදී ඇය විසින් නිළධාරීන් ඇද සිටි ඇදුම් පිළිබඳව සටහන තබා නොමැති පදනම පෙනි ගිය අතර සිද්ධිය 2002.04.04 දින සිදු වූවද ඇය සාක්ෂි දී ඇත්තේ 2008.02.27 දින බවද සළකා බැලීමේදී මෙලෙස පරස්පරතාවයත් දෙහිවඩුගේ සාක්ෂිය හා ඇයගේ සාක්ෂි අතර තිබීම කිසි ලෙසකින් නඩුවේ මූලයටම බලපාන පරස්පරතාවයක් ලෙස නොසලකමි (පිටුව 301) මෙම කාන්තාව සිටි ස්ථානයට යෑම පිලිබඳව පැමිනිල්ල මෙහෙය වූ නිළධාරියා 2008.02.27 දින 6 පිටුවේ මෙලෙස නිළධාරීන් ගමන් කිරීම පිළිබඳව රසිකාගෙන් ප්‍රශ්ණයටද කිරීමේදී තමාලා සිවිල් ඇදුමෙන් යනුවෙන් ඇසු ප්‍රශ්ණයටද සාක්ෂිකාරිය ඔව් යනුවෙන් පිළිතුරු ලබා දී අතර සමන් නිල ඇදුමින් යනුවෙන් අසා ඇති ප්‍රශ්නයටද සාක්ෂිකාරිය ඔව් යනුවෙන් පිළිතුරු ලබා දී ඇත.

Her evidence as follows,

In Page 112..... දෙහිවඩුගේ මම ජීවානන්ද සිවිල් ඇදුමින් සමන් නිළධාරියා නිල ඇදුමින්

In Page 113

ප්‍ර. තමාලා සිවිල් ඇදුමින්?

උ.ඔව්.

ප්‍ර.සමන් නිළ ඇදුමින්?

උ.ඔව්.

But in Page 50 Inspector Waduge (pw1)

ප්‍ර. ඒ නිළධාරින් මොන ඇදුමින් සැරසිලාද ගියේ?

උ. සිවිල් ඇදුමින් එක නිළධාරියෙක් අනෙක් දෙදෙනා නිළ ඇදුමින්.

ප්‍ර. කවුද සිවිල් ඇදුමින් සැරසි ගියේ

උ. සමන්.

ප්‍ර. තමා සිටියේ නිළ ඇදුමින්.

උ. ඔව්.

Upon perusal of the above passage, it is perfectly clear that the learned trail Judge has not used the material contained in the information book as substantive evidence.

Therefore, it is wrong for the appellant to suggest:-

1. That the learned trial Judge has used the

The wording of the judgment at Page 301 is perfectly clear to me. The learned trial judge held '

What is crystal clear from the above passage is that the learned trial Judge has held that after a considerable lapse of time it is customary to come across contradictions in the testimony of a witness. The conclusion is wholly legal and justifiable in law. Arriving at determinations with regard to credibility and testimonial trust worth sum of a witness is a question of fact ; See : ***Wickremasooriya V Dedoleena and other 1996 SLR Vol. (2) Page 95.***

In the case before me, the learned trial Judge, applying the test of credibility and test of testimonial trustworthiness, has very correctly relied on his knowledge of men and matters and has correctly held that when proceedings are led long

after the events spoken to by witness it is customary to come across contradictions.

I wish to emphasis that the learned trial judge has not used the contents of the information book to evaluate the credibility and evidential trustworthiness of the witness.

Thus, I reject the argument advanced by the counsel for the appellant as devoid if any merits.

I wish to add that in the case of Attorney- General Viswalingam 47 NLR 286 Justice Cannon stressed that the trial judge should direct his mind specifically to the issue which contradictions are material and without contradictions are not material before the proceeds to discredit a testimony of witness. In the case before me, the learned trial Judge has very correctly the procedure that was expounded by Justice "cannon" in a similar contest, justice. In a similar contest, Justice Collin Thoms in Jagathsena V. Bandaranayaka 1984 (2) SLR 39, in considering the issue of contradictions inter-

se of the testimony of two witnesses, emphasized that the trial Judge should probe the issue whether the discrepancy is due to dishonestly or defective memory or whether the witness power of memory are limited.

In the case before me, the learned trial Judge has correctly adopted the procedure laid down in the above case and held that it is customary to come across contradictions in the testimony of a witness after a considerably lapse of time.

As I said earlier, arriving at detrminations with regard to credibility and testimonial trustworthiness of a witness is a question of fact and not a question of law. See; *Wickromasuriya Dedoleena (Supra)*

I hold that the learned trial Judge has arrived at strong and tenable findings of fact and in the result, this Court has no jurisdiction or power to interfere with the findings of the fact of the learned trail Judge.

I wholly agree with the findings of fact reached by the learned trial Judge.

In the result, I proceed to dismiss the grounds of appeal of the appellant.

JUDGE OF THE COURT OF APPEAL

K.K.Wickremasinghe,J.

I agree.

JUDGE OF THE COURT OF APPEAL