

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

In the matter of an appeal under Section  
331 of the Criminal Procedure Act No. 15  
of 1979.

Hon. Attorney General  
Attorney General's Department

**PLAINTIFF**

**VS**

1. Selvanayagam Carmel Jenova
  2. Maruthai Selvanayagam
- ACCUSED**

**CA Case No. 107/2011**

**HC (Vavuniya) Case No 1892/2005**      **AND NOW BETWEEN**

1. Selvanayagam Carmel Jenova
- ACCUSED – APPELLANT**

**VS**

Hon. Attorney General  
Attorney General's Department  
**PLAINTIFF – RESPONDENT**

**BEFORE** : Deepali Wijesundera J.  
L.U. Jayasuriya J.

**COUNSEL** : Neranjan Jayasinghe for the  
Accused – Appellant.  
Wasantha Bandara S.S.G. for the  
Attorney General.

**ARGUED ON** : 25<sup>th</sup> September, 2017

**DECIDED ON** : 13<sup>th</sup> October, 2017

**Deepali Wijesundera J.**

The accused appellant was indicted in the High Court of Vavuniya for possession of 41.86 grams of heroin under section 54 (a) (d) of the Poisons, Opium and Dangerous Drugs Ordinance No. 13 of 1984 (as amended). After trial the appellant was convicted and sentenced to life imprisonment.

On an information received by the police prosecution witness no. 1 along with some other officers have gone to the house of the appellant, on approaching the said house prosecution witness no. 1 had seen the appellant on the front compound. The W.P.C. who had gone with prosecution witness no. 1 had searched the appellant and found a key to the house and opened the house and searched the house. Whilst the house was been searched the appellant had suddenly taken a dress which was hanging on the clothes line and put it into bucket. The dress was taken out of the bucket and searched by the prosecution witness no. 1 and found a parcel containing heroin.

The grounds of appeal urged by the learned counsel for the appellant are as follows. That the version of the prosecution is highly improbable and that the learned High Court Judge had failed to apply the test of probability and improbability in evaluating the evidence. The appellant's counsel submitted that it is highly improbable to believe that when six police officers were searching a small house for the appellant to take a dress alleged to have contained heroin in the pocket and put it in to a bucket. If the appellant took the said dress from the clothes line and put it into a bucket as claimed by the prosecution this would have drawn their attention to the dress which is not the conduct of a wrong doer I find this highly improbable. There are more than enough places in a house to conceal such articles.

The other ground urged by the learned counsel for the appellant is that the learned High Court Judge has not considered the contradictions inter se. According to prosecution witness no. 1 the appellant was searched in front of the said house in his presence and the WPC says the search was done inside the kitchen which was at the rear side of the house in order to secure the privacy of the appellant since the other officers were males.

Prosecution witness no. 1 says the appellant walked up to the door step and put the dress into the basket but witness Vipul Nandasiri say the appellant went outside and she was arrested outside the house. Prosecution witness no. 1 further testified that he did not take the dress into custody but the WPC stated that the dress was taken into custody and taken to the police station. The learned High Court Judge has not considered these glaring contradictions inter se and has not given the benefit of the doubt to the accused appellant.

In <sup>rathaa</sup> Sumithra Premawansa vs AG 1998 and in Karuppiah Punkody vs AG CA 11/2005 the test of probability has been discussed at length.

For the afore said reasons I decide to set aside the judgment dated 23/05/2011 and acquit the accused appellant.

Appeal allowed.

**JUDGE OF THE COURT OF APPEAL**

**Lalith Jayasuriya J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**