

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

Court of Appeal Case No: CA 216/15

High Court of Colombo Case No: HC 6577/2013

In the matter of an appeal in terms of Article 138(1) of the Constitution of the Democratic Republic of Sri Lanka and in terms of Sec. 331 of the Code of Criminal Procedure Act No:15 Of 1979.

The Democratic Socialist Republic of Sri Lanka

Complaint

Vs

Nallaperuma Thanthirige Danuka
Roshan

Accused

AND NOW BETWEEN

Nallaperuma Thanthirige Danuka
Roshan

Accused-Appellants

Vs

Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant Respondents

Before : L.T.B. Dehideniya J. (P/C.A.)
S. Devika De Livera Tennakoon J

Counsel : R. Arsakularathne PC with Thilana Punchihewa for the Accused
Appellant
: Thusitha Mudalige DSG for the Respondent

Argued on : 12.06.2017

Decided on : 12.10..2017

L.T.B. Dehideniya J. (P/C.A.)

This is an appeal from the High Court of Colombo. The accused appellant was indicted before the High Court under Section 54(a) (c) of the Poisson, Opium and Dangerous Drugs Ordinance for being in unlawful possession of 2.34 grams of heroin and under section 54 (a) (d) for trafficking the said heroin. After trial the accused was found guilty and was sentenced for life imprisonment. Being aggrieved by the said judgement the accused appellant appealed against the said conviction and the sentence.

The prosecution has led only one police witness from the raiding party in proof of the charge that is SI Fernando, who headed the team. In giving evidence, the witness said that he led a team of police officers attached to the police Narcotic Bureau on a raid at St. Sebastian Road. They have apprehended a person carrying heroin. While returning to the police station, Police Constable Asela received information from a private informant about another person carrying Heroin.

Witness Fernando said that they parked the vehicle at the lawyers' carpark in St. Sebastian Road and walked up to Sucharitha. While they were waiting there for the accused appellant, the informant pointed out the accused appellant and thereafter, they have apprehended him. When they searched the appellant they found a parcel in his pocket containing heroin.

Witness Fernando further said that they brought the accused appellant to the police station at about 12:10. The heroin parcel was weighed at the police station. It contained 14.6 grams. Witness Fernando further said that he sealed the production with left thumb impression of the accused appellant and the signature, and handed over the production to the officer in-charge of production at 14:58. He has found Rs. 11,000/- in the possession of the accused appellant. But that money was not taken into custody.

The other witnesses were not eye-witnesses of the detection. Police Constable Asela was not available in the country to give evidence. Even though he was listed as a witness, prosecution was unable to call him.

The prosecution rest its case on this witness's evidence. Under section 134 of the Evidence Ordinance no specific number of witnesses is necessary to prove a fact. It has been held in the case of *The Attorney General v. Devundarage Nihal* (S.C. Appeal: 154/10) that;

“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 the evidence of a police officer who conducted an investigation or a 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 and arriving at a conclusion against an offender.”

E.R.S.R. Coomaraswamy in his book titled "The Law of Evidence" Volume 2; Book 1; Page 395 stated as follows:

"In great many cases the police agents are, as a rule, unreliable witnesses. It is always in their interest to secure a conviction in the hope of getting a reward. Such evidence ought to therefore be received with great caution and should be closely scrutinized, particularly where the evidence is the only corroborating evidence of the accomplice, as in bribery cases."

In the present case also the only witness is a police officer, trained in conducting narcotic raids. Therefore, his evidence has to be scrutinized closely.

The accused appellant was indicted on two accounts: one is of possession and the other is of trafficking. The witness Fernando said that the accused appellant had Rs. 11,000/- in his possession but has failed to produce it in courts. His explanation was that he did not take that money into custody because it was a small amount. When he was questioned as to what the yard-stick is, he was silent. The money that the accused kept in his possession may have direct impact with the charge of trafficking. Therefore, not taking the money into custody while the detection is being done is questionable. Especially without a proper explanation as to why it was not taken into custody.

The police team has returned to the police station at 12:10. Witness Fernando has taken nearly 3 hours to surrender the production to the officer in-charge of production in the police station. The sealing process may have taken some time, but it cannot be 3 hours. Taking such a long time to surrender the production also sheds light towards the unworthiness of the credibility of the witness

The accused appellant did not give evidence under oath but made a dock statement. The Accused appellant's version is that the policemen came to his house in search

of some other person and the accused appellant has protested. The police have arrested the accused appellant and introduced the heroin. This was suggested to the witness Fernando in cross-examination, but was not admitted by the witness.

The accused appellant need not to prove his defense. If he can create a doubt on the prosecution story, he becomes entitled for an acquittal. The shortcomings of the prosecution story have to be considered with the defense put forward by the accused appellant.

Witness Fernando is an officer attached to the police Narcotic Bureau with the experience of conducting more than one thousand raids. Therefore, he has the expertise in giving evidence in narcotic detections. He being the only witness, without any corroborating evidence, the surrounding circumstances such as not taking the money that the Accused Appellant had in his possession into custody even with a charge of trafficking and time taken to produce the parcel taken from him to the officer in-charge of production at the police station, question the credibility of the witness. Since there is no other corroborative evidence, it is unsafe to convict the Accused Appellant on his evidence alone.

I set aside the conviction and the sentence and acquit the Accused Appellant.

Appeal allowed.

President of Court of Appeal

S. Devika De Liera Tennakoon J.

I agree.

Judge of the Court of Appeal