

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

Court of Appeal Case No : CA HC/214/2010

W.A.S.Kumara
No. 241
Kajuhena Waththa,
Kadawatha.

Petitioner

Vs.

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

Respondents

CA 214/2010

H.C. COLOMBO NO. 3087/2006

**BEFORE: S. DEVIKA DE L. TENNEKOON, J. &
S. THURAIRAJA, P.C. J.**

COUNSEL: Amila Palliyage with Nihara Randeniya & Sandeepani
Wijesooriya for the Accused-Appellant.

Haripriya Jayasundera SDSG for the State.

**ARGUED &
DECIDED ON: 20.11.2017**

S. THURAIRAJA, P.C. J.

Counsel for the Accused-Appellant submits following grounds of appeal:-

1. The learned trial Judge had perused the investigation notes and depended on the said investigation notes too.
2. The serious contradiction in the contradiction per-se and inter-se with the prosecution witnesses was not considered by the learned Trial Judge.
3. The dock statement was not considered independently and evaluated by the Trial Judge.

We heard submissions of both Counsel and we find that the prosecution has led only one police witness and the Government Analyst and closed the case

for the prosecution. The Accused-Appellant had made a dock statement and closed his case.

As per the prosecution this is a case of detection of 5.3 grams of heroin in the possession of the accused-appellant at Sedawatte.

The prosecution witness S.I. Peduru Arachchi attached to the Police Station of Grandpass is the only witness who gave evidence. According to him on the 15th of May 2002 on receiving information and proceeded to Sedawatte, in his police area together with four officers in a private vehicle. They stopped the vehicle 50 meters away from the place where they cited the Accused-Appellant when they got down from the vehicle the accused-appellant and another person started running from the place, followed them and gave a chase and apprehended the Accused-Appellant and the other person who was there had fled away and mingled with the crowd. According to the witness he had seen the accused was running with a black colour (tulip bag in his hand). On arrest they found the bag had eleven pink colour cellophane bag. In that eleven bag they had found 200 packets wrapped in foil sheets. The witness categorically says that he had captured heroin from the accused but he has not described how he came to the conclusion that the substance was heroin. He, on the way, had arrested another person who possessed 500 milligram of heroin and brought to the police station. The prosecution witness initially says that he collected contents of all packets into a white sheets and sealed it at the police station of Grandpass. Thereafter, it was taken to (Letchami Jewellers) and weighed

it and the witness claims it was nine grams. The substance was sent to the Government Analyst and it weighed 13.42 grams with the envelope. When emptied the net powder weight was 9 grams. When that powder was subjected to a laboratory test it was found 5.3 grams of diacetylmorphine known as heroin.

At another place the prosecution witness says the substance was emptied at the jewellery shop weighed and sealed at that place.

The learned Deputy Solicitor General Haripriya Jayasundera maintaining the highest tradition of the Attorney General Department and submits that there is a serious discrepancy in the weight as well as the place of sealing the production.

Considering the facts the difference in weight and the place of sealing creates a reasonable doubt in the case of the prosecution, granting the benefit of the doubt, we find that the prosecution has not proved the case beyond reasonable doubt.

Since we have decided in favour of the accused-appellant on the above ground it is not necessary to arrive at decision on the other grounds of appeal.

Considering all circumstances, we find that the prosecution has not proved the case beyond reasonable doubt. Therefore, we allow the appeal and acquit the accused-appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L. TENNEKOON, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Mm/-.