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

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

The Attorney General of the Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal
Case No. CA/147/2010

Vs,

Hapumachchi Gamage Ramani

Accused

And Now Between

Hapumachchi Gamage Ramani

Accused-Appellant

High Court of Colombo
Case No. HC 1813/2004

Vs,

The Attorney General of the Democratic Socialist Republic of Sri Lanka

Complainant-Respondent

Before : **S. Devika de L. Tennekoon, J &**
S. Thurairaja PC, J

Counsel : Anil Silva PC, with Sahan Kulatunga AAL for the Appellant
D.S.R.Ratnayake DSG for the Complainant-Respondent

Written Submissions: Appellant – 18th September 2017
Respondents- 20th October 2017

Argued on : 6th and 7th February 2018

Judgment on : 8th March 2018

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Judgment

S. Thurairaja PC, J

The Accused Appellant (herein after sometimes referred to as Appellant), was indicted before the High Court of Colombo, for Possession and Trafficking of 45 grams of Heroin (Diacetyl Morphine), punishable under section 54 A (d) and 54 A (b) of the Poisons, Opium and Dangerous Drugs Ordinance respectively. After the trial the Appellant was found guilty, convicted and sentenced to Life Imprisonment. Being aggrieved with the said Conviction and The Sentence the Appellant preferred this appeal and framed following ground of appeal.

1. Two main prosecution witnesses are Police Officers and there are no serious discrepancies among them, hence there is a probability that they were fabricating, and it should not be accepted.
2. Prosecution failed to prove the case beyond reasonable doubt.
3. Learned Trial Judge had perused the Information Book.
4. Dock Statement was not considered.

Prosecution led the Evidence of 1. Inspector of Police (IP) Priyantha Liyanage,2. Police Constable (PC) 32698. Liyanage Prasanna Chandrasiri, 3. Government Analyst Kanapathipillani Sivaraja, 4. Sub Inspector (SI). Asanka Kumarasiri Jayamanna. When the defence called the Accused Appellant made a Dock Statement.

As per the witnesses the version of the Prosecution is that on the 28th December 2002 IP. Liyanage received an information from his private informant that a person involved in trading of Drugs. He then organised a party to conduct raid and proceeded to Madampitiya, Mahawatte Road and met the informant. From there they proceeded

further and laid in ambush, the informant pointed at the Appellant and moved away. The witness together with selected officers proceeded towards her and stopped her. When her bag was searched they found brown colour powder hidden in a black coloured bag. Witness on a preliminary examination satisfied himself that the substance was Heroin. Appellant was arrested after the charge was explained to her and taken to her residence. Her house was searched but nothing incriminatory was found. Subsequently she was taken to the Police Narcotics Bureau (PNB). The brown powder was weighed and found 95.700 grams, it was properly sealed and forwarded to the Government Analyst, on analysation it was found, it contained 45 grams of Diacetyl Morphine (Heroin).

The Appellant's 1st and 2nd grounds of appeal is that, two main prosecution witnesses are Police Officers and there are no serious discrepancies among them, hence there is probability that they were fabricating, and it should not be accepted and Prosecution failed to prove the case beyond reasonable doubt.

Appellant relying on Senaka Priyantha vs. AG, CA 91/2008 (decided on 30.09.2011) and submits that Police witnesses are trained hence their evidence cannot be greatly relied upon.

It is common knowledge that the people who deals with Drugs are dangerous and the public cannot be involved in detection, it is dangerous and their safety will be compromised. Most countries in the world has a specialised Police or powerful units. In Sri Lanka PNB is the main agency which deals with the drug investigation. If the court decides that the evidence of the officers attached to PNB cannot be accepted, then the PNB cannot do any detection. In most of the cases where they cannot involve civilians or outsiders because of the safety and complicity. It will be appropriate to evaluate each and every case on its own merits. Hence this case also will be assessed with the available evidence.

Witnesses for the Prosecution reveals the details of the raid and there is no material contradictions were marked. Considering the evidence of the witnesses individually

and collectively, I find that the witnesses were not falsely 'making up' a case against the Appellant.

After carefully considering all the materials before this court we are of the view there is no merit in 1st and 2nd grounds of appeal.

The 3rd ground of appeal is that the Trial Judge has perused the Police Information book. The Appellant submits that it had prejudice her case.

The relevant legal provision is at section 110 (4) of the Code of Criminal Procedure Act No. 15 of 1979 as amended. (CCPA)

> *(4) Any criminal court may send for the statements recorded in a case under inquiry or trial in such court and __may use such statements or information, not as evidence in the case, but to aid it in such inquiry or trial.__ Save as otherwise provided for in section 444 neither the accused nor his agents shall be entitled to call for such statements, nor shall he or they be entitled to see them merely because they are referred to by the court but if they are used by the police officer or inquirer or witness who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer or inquirer or witness the provisions of the Evidence Ordinance, section 161 or section 145, as the case may be, shall apply :*
>
> *Provided that where a preliminary inquiry under Chapter XV is being held in respect of any offence, such statements of witnesses as have up to then been recorded shall, on the application of the accused, be made available to him for his perusal in open court during the inquiry.*

(Emphasis added)

The learned Trial Judge had mentioned in the Judgment as follows;

> *Here, Liyanage has not disclosed in his evidence how he remained covered by the three-wheeler but on the examination of his investigation notes the fact*

that there was a three-wheeler parked in the place where he stayed before he went towards the woman, has come to light and hence there seems to be no contradictions between the evidence of the two witnesses.

Although, investigation notes are of no evidence, it has to be noted that there is a basis for the Court to consider this.

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විමර්ශන සටහන් සාක්ෂි නොවූවද, අධිකරණයට පරීක්ෂා කර බැලිම සඳහා අවස්ථාවක ඇති පදනම ද මෙහිදී සටහන් කර තැබිය යුතුය.')

When we carefully peruse the above portion, we find that the Learned Trial Judge had clearly mentioned what is the entry he perused and for what purpose. Considering the fact that the perusal is not for the purpose of finding any evidence for the Prosecution nor the defence. It was referred by the Judge for clarification. In fact if the Judge had found anything contrary to the evidence given in Court, it would have helped the case for the defence.

Considering section 110(4) of the CCPA the perusal is permitted and the Learned Trial Judge perusing is with in the permitted limits of the Law. Hence, we find no merit in the 3rd ground of appeal also.

The last ground of appeal is that the Trial Judge had not considered the Dock Statement of the Appellant.

We carefully perused the Judgment in this instant case, there we find that the Dock Statement was considered by the Trial Judge the question is whether it is adequate.

The Learned Trial Judge had discussed the contents of the said statement. He also compared with the evidence available in the case.

Acceptance of Dock Statement is discussed in many cases.

In Gunasiri and two other vs Republic of Sri Lanka 2009 (1) Sri L.R 39. It was held that

> *In evaluating a dock statement, the trial Judge must consider the following principles:*
>
> *(1) If the dock statement is believed it must be acted upon.*
>
> *(2) If the dock statement creates a reasonable doubt in the prosecution case the defence must succeed.*
>
> *(3) Dock statement of one accused should not be used against the other.*

In Gunasiri's (ibid) it was further held that,

> *It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination, it must follow that the evidence tendered on that issue ought to be accepted. The failure to suggest the defence of alibi to the prosecution witnesses who implicated the accused, indicates that it-was a false one.*

In the present case the learned Trial Judge had carefully analysed and observed that the Appellant was not consistent with her defence, further the stance taken in the Dock Statement was not put to the witnesses of the Prosecution, which makes the court to conclude that the Dock Statement is an afterthought.

After careful consideration of available materials, we are of the view that there is no merit in this ground also.

We considered the grounds of appeal and the submissions of the learned Counsel for the Appellant. We are also mindful of the submissions made by the Learned DSG. After evaluating all materials before us we are of the view that there is evidence to convict

the appellant as charged. We find the findings of the trial judge is warranted on the strength of the available evidence. It is our considered view that there is no merit on the grounds of appeal submitted by the appellant, therefore we find the conviction is well supported by the evidence. Accordingly, we affirm the conviction and the sentence and dismiss the appeal.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J

I agree,

JUDGE OF THE COURT OF APPEAL