

**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. 289/2013**

Vs,

Rakkan Mangalika

Accused

And Now Between

Rakkan Mangalika

Accused-Appellant

**High Court of Colombo
Case No. 5947/2012**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Complainant-Respondent

Before : S. Thurairaja PC, J &
A.L. Shiran Gooneratne, J

Counsel : Gayan Perera, AAL, for the Accused-Appellant
Rohantha Abeysuriya, SDSG for the Complainant-Respondent

Written Submissions : Appellant – 24th November 2017
Respondent – 8th February 2018

Argument : 4th and 11th June, 2018

Judgment on : 19th June, 2018

Judgment

S. Thurairaja, PC, J

The Accused Appellant Rakkan Mangalika, (Herein after sometimes called and referred as the Appellant) was indicted before the High Court of Colombo, under sections 54 A (D) and 54 A (b) of the Poison Opium and dangerous Ordinance (as amended) for possession and trafficking of 21.67 grams of Diacetyl Morphine (Heroin). After the trial she was found guilty on both counts and sentenced to death.

Being aggrieved with the said conviction and sentence the Appellant preferred an appeal to the Court of Appeal and submits the following grounds of appeal:

1. The Learned Trial Judge totally ignored all contradiction per-se and inter-se among the prosecution witnesses.
2. The Learned Trial Judge had shifted the burden of proof on the Appellant.
3. Dock Statement was not properly evaluated.

The Prosecution called 4 Police Officers from the Police Narcotics Bureau(PNB) and an assistant Government Analyst to prove the case for the Prosecution. When the defence called the Appellant made a statement from the dock.

It will be appropriate to know about the case before the High Court. On the 26th September 2008, at 0705 hrs, Inspector of Police (IP) Rangajeeva Neomal received an information that a rider of a red coloured motor cycle distributing Heroin, near Gamini Hall Junction, Maradana. He, then informed the Officer in Charge (OIC) and formed a team consisting of PC 8595 Weerasuriya, PC 50142 Asela, PC 10403 Sarath. After all

formalities were done they set out at 0745 hrs. from the PNB in a van bearing registration number HD 2739 driven by PS. 4674 Wasantha. All the officers were clad in civilian clothes. They reached Gamini Hall Junction at Maradana and met the informant and laid in ambush. At 1305 hrs. IP Rangajeeva, received an information from his informant on his mobile that a lady called Mahawatte Sitta from Thotalanga is trafficking Heroin and wanted them to come there. The team, then left to Grandpass. In front of Zainstan Cinema hall, IP Rangajeeva and PC Weerasuriya got down from the van and met the informant. IP Rangajeeva and the informant stayed on one side in a certain distance and PC Weerasuriya took position on the other side of the road, in front of Bank of Ceylon. After a while the Appellant was seen coming from the bus stand, the informant pointed her to the PNB officials and moved away. IP Rangajeeva signalled Weerasuriya to come. Both went up to the Appellant and identified himself as an Officer of PNB and wanted her bags to check. The appellant was carrying a green and white paper bag on her right hand. It was checked and found that there was a green coloured cellophane bag contained brown coloured powder, suspected to be Heroin. She was arrested around 1500 hrs and taken to her home, which was situated close by, and the house was searched. Her brother and some children were found there. PNB officials issued a receipt to the brother of the appellant of her arrest and took her to the Bureau. There the powder was subjected to field test and found positive to heroin. It was weighed with the grocery bag and found 106.500 grams. Thereafter formalities like sealing, formal search handing over to the reserve were followed. She was produced to the Magistrate and remanded. The productions were sent to the Government Analyst and found 21.67 grams of Diacetyl Morphine (Heroin).

IP. Rangajeeva, gave evidence at the trial and revealed the above facts.

PC Weerasuriya gave evidence and corroborated evidence of the above witness.

Ms. Rajapakse Assistant Government Analyst gave evidence and submitted that seals in the parcel was in tact and the substance was weighed and found 106.73 grams. After chemical analysis she had found 21.67 grams of Diacetyl Morphine (Heroin). It should be noted that her evidence was not challenged by the Appellant.

The next witness for the Prosecution was Sub Inspector (SI) Samarakoon, He testified to fact that he received productions from PW1 IP Rangajeeva on the 27th September 2008 at around 0837 hrs. According to the entries the parcel weighed 106.600 grams he handed over the same to the Government Analyst.

The last witness called by the Prsecution was PS. Wasantha Kumara Driver of the van which transported the officials on the said date. He said that they left the PNB at 0845 hrs, they went to Gamini Hall junction, Maradana and waited and they left to Grandpass on the instruction of IP Rangajeeva. He further said that they brought a lady suspect to the PNB.

It is noted that there are differences on time, date, place and other issues among these witnesses and it will be discussed when we consider the grounds of appeal.

The Appellant made a Dock Statement denying her involvement in the offence alleged against her. She said that on the day of the incident she was at her place with her child and her sister's children. She received calls from a known person called Sriyani, to show her house at Siripala Pinto's place for a tenant. She went there with her child and brother in Suresh's three-wheeler. On the way she had bought milk powder for her child and proceeded towards Siripala Pinto place. There she had seen Sriyani on the road and slow down to stop the three-wheeler, before it was stopped IP Rangajeeva and another officer got into the three-wheeler from both side and directed the driver to proceed without stop. IP Rangajeeva had told her that you know who I am, and asked her where is it and take it, take it. She then asked him what is it and said she doesn't have anything. Then he had scolded her in filth and asked the three-wheeler driver to stop at the tea kiosk near the petrol shed. He had assaulted the appellant and inquired about the heroin. The appellant had said she is two months pregnant and she doesn't have anything. They inquired about Kumara who sells Heroin, the appellant had said that she know him as a money lender and she had borrowed money from him. She was assaulted and subject to scolding. Then she was asked to call Kumara to come there to collect money, Kumara had told her that he is busy and come later, after several calls he had said that he is in Kandy and cannot come. Thereafter IP Rangajeeva had decided to take her to PNB. She said that she was not taken to her home, officials took her brother. She claims that she was arrested at about 11 am and taken to PNB after 4pm. She categorically denies the fact that she was arrested near Zainstan and she says that she was arrested at Siripala Pinto place. At the time of arrest, she was pregnant and she had a still birth, after 8 months at Castle street hospital while in custody, child was found dead at birth.

The first ground of appeal, is that The Learned Trial Judge totally ignored all contradiction per-se and inter-se among the prosecution witnesses.

Evidence of the Prosecution witnesses were carefully considered and found that some aspects were corroborated by each other and some are contradicted.

IP. Rangajeeva said that he made the entry at 0745 hrs and left the PNB building at 0810 hrs.

PC Weerasuriya says that they left at 0745 hrs.

PS. Wasantha Kumara the driver of the van says that they left at 0845 hrs. He subsequently changed as 0745 hrs.

On several occasions these witnesses had changes their time of departure, during the cross examination. This may not be very material fact but causes some suspicion in their entries and the evidence.

IP Rangajeeva said that he received an information about a person who is travelling in a red coloured motor cycle, subsequently he changed his stance and said he never mentioned about the colour of the bike. Once again, this alone will not be a serious contradiction.

IP Rangajeeva;

At one occasion he said that they went to Zainstan at 1950 hrs (Page 37 of the brief)

Arrest was made at 1500 hrs., (Page 41)

Returned to the bureau at 1400 hrs. (Page 47)

Under cross examination said returned at 1700 hrs., (Page 62)

Admitted altered the time 1720 to 1730 hrs. (page 69)

Admitted alteration of time of weighing of the production from 1620 to 1720 (Page 71)

The First witness for the Prosecution submitted to court that there was no alteration of time (Page 75) in the same breath he had reluctantly admitted that there were alteration of entries of time. (page 77)

Time of return was mentioned as 1700 hrs at one place and said in court that they returned at 1645 hrs. (Page 76 and 77).

PW 1 said that there is no entries regarding the time the sealing process started and concluded (Page 78 and 79). He further said that he commenced after 1830 hrs (Page 82) and concluded at 1800 hrs. (page 83) This evidence is given under oaths.

PW1 told court that they returned to PNB at 1700 hrs (page 85) but he had entered in the Police Information book that he returned at 2020 hrs. (page 85) he also admitted that is a wrong entry (page 86). PW5, PS Wasantha Kumara who was the driver of the van also entered the time of return as 2020 hrs. (Page 266 and 267)

Under oaths this witness told court that this incident had occurred on the 26/09/2007 (Page 59, 60, 61).

The above contradictions are relating to the time, further there are other contradictions were also noticed in the evidence of PW1 IP Rangajeeva.

He submitted all the officers who went on the said raid were clad in civvies (Page 33) but subsequently he said that PC Sarath was in uniform. He admitted it as a mistake (page 63 and 64)

The van, they travelled was bearing registration number HD2739. Whilst he was giving evidence he said HD2729 (page 90), HD2709 (page 91). It is in record that the Police Officer had given incorrect numbers.

According to PW1's entry when this started the vehicle was showing a running meter of 315928, and when they returned it was 315833. (He confirmed this on page 91, 92, 93, and 94.) He also admitted that those numbers were subsequently inserted in a different coloured ink (page 95). The defence counsel questioned the witness, after examining and showing the police information book, he admitted that there is an alteration/ interpolation of numbers with different ink. He admitted that this was a mistake (page 94 & 96). He also submitted that there is no log book. After questioning he revealed that there is a log book with the driver of the van.

PW1, said to court that he weighed the brown coloured powder with the grocery bag and it weighed 106.500 grams. When it was weighed by the government analyst without the bag it weighed 106.73 grams. When a person weighs a powder without the bag it should be less and not more. SI. M.B Samarakoon gave evidence and told the court that he took a parcel from PW1 Rangajeeva and it weighed 106.600 grams. The difference between these weights are minimal but there is a difference to be noted.

Even though the differences are minute, the numbers which are different to each other is noted.

When PW1 gave evidence, he said this incident had occurred on 26/09/2008, but he told the court that he handed over the suspect to the reserve on the 28th, and on another occasion the 27th. There are entries made by him in the information book shown to him and questioned. Initially, he denied but subsequently admitted those entries. He explained to court that those were mistakes.

PW2 8595 Weerasuriya who accompanied I.P Rangajeeva in the raid gave evidence and corroborated a major portion of the evidence. There are contradictions between these two witnesses regarding their placement of officials at the scene of the raid.

He told court that he went to Zainstan at 16:30 hours (page 160). Subsequently, he informed court that they went to the said place at 13:30. He categorically told court that his entries are correct and there are no mistakes. Under cross examination, he said that the accused was arrested at 15:00 hours (page 190 & 202). Considering his evidence there are certain contradictions being observed.

PW5, PS> Wasantha Kumara, gave evidence and submitted that he was the driver of the said vehicle on the day of the alleged raid. He admitted that there are mistakes in entering the vehicle meter reading. On the said date he had driven 28 KM only. Reading his evidence with the evidence of PW1, IP. Rangajeeva there are certain issues clarified and certain contradictions are becoming serious. It is noted that there are corrections, alterations and interpolations in their entries than allowed by the Police ordinance and regulations.

PW5 also made an entry that they returned to PNB at 2020 hrs. (Page 266) when questioned he said that's the time given to him by the PW1. It is common knowledge that the Driver makes log and running chart entries independently. And counter signed by the Officer in Charge.

Police officers are trained in making entries in the relevant Police information books. Officers attached to special divisions like Police Narcotics Bureau are well trained and experienced in making entries in the entry books. Therefore, making incorrect or wrong entries cannot be swept away as 'mistakes'. Considering the events in the present case there are several entries contradicting each other and the evidence of official witnesses.

In **Senaka Priyantha vs. Attorney General** CA 61/2006, Decided on 30-09-2011, Ranjith Silva J, held;

*'The need for corroboration in cases of this nature where it is almost impossible to get contradictions per se I the evidence of a trained Police officer was adverted to by this court in **Devundarage Nihal vs Hon Attorney General reported in CA 125/2008 decided on 04-05-2008**. This is a practice that has hardened into a rule and almost from times immemorial the courts have been very careful in assessing and evaluating the evidence of trained police officers especially when they give evidence in cases where the police are entitled to a reward.'*

Judgment consists of 65 pages; the learned trial Judge had analysed all available materials before the Court. We have observed that the learned Judge had not considered the contradictions and differences in detail.

We find that the learned Judge had commented on the inefficiency of the Court Staff, that is a matter for the administration to attend to, we cannot allow justice to suffer due to short comings of the system.

When we consider each and every mistake individually it may not be material but taking the entire evidence led at the trial, we are of the view that there is a pattern of mistakes and it creates a serious doubt in the case for the Prosecution.

Considering the evidence of Police officers attached to the PNB, it is revealed in courts that there are several alterations, corrections and interpolations. There can be mistakes

and the Police Ordinance, Inspector General's orders (known as IG orders) provides how to do it. If there is an incorrect entry made, it should be cross lined and the correct entry should follow. Erasing directly or by mechanically or chemically is permitted. In this present case it had revealed that some numbers were written on top of the same digits and some are scratched off. These types of corrections are not allowed and that creates a reasonable doubt in the case for the prosecution.

For the purpose of completeness, the learned Trial Judge had discussed the Dock Statement of the Appellant and observed that the appellant should have called certain witness to prove her defence.

Article 13 (5) of our Constitution provides as follows;

(5) Every person shall be presumed innocent until he is proved guilty:

The Accused is presumed to be innocent until he is proved guilty, this is a basic right enshrined in our constitution. In a criminal case, it is the duty of the Prosecution to prove the case beyond reasonable doubt. Accused is only expected to create a reasonable doubt in the case for the prosecution and that is also on the standard of balance of probabilities.

Considering the above observation, it will not be necessary for us to consider this ground of appeal.

Taking the entire evidence into consideration, we are of the view that the prosecution had not proved the case beyond reasonable doubt, hence we find that the conviction cannot be upheld. We find the Accused appellant not guilty and allow the appeal. Accordingly, we acquit the accused appellant.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL