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

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

Gangoda Liyanage Padmasiri
APPELLANT

Case No. CA 233/2011

HC (Colombo) Case No. HC 2554/2005 **VS**

The Hon. Attorney General
Attorney General's Department
Colombo 12.
RESPONDENT

BEFORE : Deepali Wijesundera J.
: Shiran Gooneratne J.

COUNSEL : Tenny Fernando for the Appellant
Dilan Ratnayake D.S.G. for the Respondent.

ARGUED ON : 03rd July, 2018

DECIDED ON : 20th July, 2018

Deepali Wijesundera J.

The appellant was indicted in the High Court of Colombo for possession and trafficking of 523.5 grams of Heroin an offence punishable under Sec. 54 A (d) and 54 A (b) of the Poisons, Opium and Dangerous Drugs Ordinance. After trial the appellant was convicted on both charges and was sentenced to death.

The prosecution has led the evidence of four witnesses, namely two police officers who participated in the arrest and recovery of heroin and the evidence of the police officer who took over the productions till they were handed over to the Government Analyst. An officer from the Government Analyst's Department also has given evidence on the report produced by them and also on the acceptance of the productions. By these witness the prosecution has produced evidence on the arrest of the appellant, recovery of the heroin and handing them over to the Government Analyst and the learned High Court Judge has accepted the prosecution evidence.

On behalf of the accused one witness has given evidence and the first accused has given evidence on oath and was cross examined and

the second accused has made a dock statement. The second accused was acquitted on both charges.

The grounds of appeal argued by the learned counsel for the appellant was that the learned High Court Judge misdirected himself when he acquitted the second accused for want of evidence and thereby casting a doubt on the prosecution evidence on which the first accused was convicted. The second ground of appeal was that the learned High Court Judge misdirected himself when he failed to analyse the dock statement made by the appellant and the evidence given regarding the productions and not attached any weight to the defence evidence. The defence counsel further stated that the learned High Court Judge failed to appreciate the fact that the police had not carried out investigations into the bank deposits which had a serious connection to the incidence which caused a miscarriage of justice.

The counsel for the appellant stated that the learned High Court Judge failed to consider the principles laid down in judicial authorities by Superior Courts and misdirected himself by not analyzing the evidence in proper contest in a capital punishment case.

The appellant argued that the test of probability can not be passed in the instant case as the meter reader of the police jeep indicated they have run 100 kilometers whereas it was impossible to have run so much according to prosecution evidence. The learned Deputy Solicitor General said it was 10 kilometers and not 100 as stated by the appellant.

The appellant's counsel also argued that the informant was not present when the appellant was arrested. The respondents stated that the police officers acted on information received over the telephone.

The learned Deputy Solicitor General submitted that the learned High Court Judge had the advantage of observing the demeanor and deportment of all the defence witness and has gone into great lengths in assessing each witness and rejected the evidence as unreliable. He has also analysed the dock statement of the second accused and rejected it but acquitted the second accused stating that the prosecution evidence did not establish that heroin was recovered from his possession. The argument of the respondent was that this alone show how well the learned High Court Judge has evaluated the evidence in this case. He has stated that the learned High Court Judge has found no doubts raised in the productions marked and the chain of recoveries and productions.

He cited the judgments in **Alwis vs Piyasena Fernando 1993 2 SLLR 119** and **AG vs Mary Theresa 2011 2 SLR 292.**

In **Alwis vs Piyasena Fernando** , G.P.S. De Silva CJ has said *"it is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed in appeal."*

In **AG vs Mary Theresa** it has been held that *"there is simply no jurisdiction in an Appellate Court to upset trial finding of fact that has evidentiary support."*

In the instant case the learned High Court Judge has carefully analysed the evidence and as stated by the learned Deputy Solicitor General this is borne out in his judgment.

The respondent's argued that the tests of consistency and probability has been put into effect by the learned High Court Judge and has come to conclusion of accepting the evidence of prosecution witness giving detailed reasons for accepting them. He cited the judgment in **AG vs Devundarage Nihal 2011 1 SLLR 409** where it was held.

(1). *There is no requirement in law that a particular number of witnesses shall in any case be required for the proof of any fact. Unlike in a 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 raid resulting in the arrest of an offender need to be corroborated on material particulars.*

(2). *However, caution must be exercised by a trial Judge in evaluating such evidence and arriving at a conclusion against an offender. It cannot be stated as a rule of thumb that the evidence of a Police witness in a drug related offence must be corroborated in material particulars where Police officers are the key witnesses.*

We find that in the instant case the evidence of the prosecution witness number one who is the main investigating officer has been more than satisfactory and his evidence was corroborated by the prosecution witness number two. As stated in Mary Therresa's case there is no requirement in law that the evidence of a police officer who conducted a raid resulting in the arrest of an offender need to be corroborated in material particulars.

The appellant's argument that the police failed to carry out investigations with regard to the bank deposit ships made to a third party by the appellant is not an essential element in the charges against the

appellant and this does not affect the credibility of the prosecution witness.

For the afore stated reasons we decide that the learned High Court Judge's reasoning is sound and warrants no interfearance by this court. The judgment dated 25/07/2011 is affirmed.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Shiran Gooneratne J.

I agree.

JUDGE OF THE COURT OF APPEAL