

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

In the matter of an Application made in  
terms of Section 331(1) of the Code of  
Criminal Procedure Act No. 15 of 1979 read  
with Article 138(1) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

**Court of Appeal**

**Complainant**

**Case No. CA 311/2009**

Vs,

Rajendran Sajusani Pradarshani

**Accused**

-And -

Rajendran Sajusani Pradarshani

**High Court of Colombo**

**Accused-Appellant**

**Case No. HC 1929/2004**

Vs,

The Attorney General

**Respondent**

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

**Counsel :** Dr. Ranjith Fernando for Accused-Appellant.  
Ayesha Jinasena PC, ASG for the Respondent.

**Written Submissions of the Accused Appellants Filed on:** 14/09/2017

**Written Submissions of the Respondents filed on:** 24/05/2018

**Argument on:** 26<sup>th</sup> June 2018

**Judgment on :** 03<sup>rd</sup> August 2018

**A.L. Shiran Gooneratne J.**

The Accused Appellant (hereinafter sometimes referred to as the Appellant), was indicted in the High Court of Colombo on 22/06/2004, for committing the following offences;

- (1) On or about 07/01/2003, at Forbes Lane, did possess 6.4 grams of Diacetyl Morphine (heroin), an offence punishable under Section 54 (A) (d) of Poison, Opium and Dangerous Drugs Act No. 13 of 1984 (as amended).
- (2) In the course of the same transaction trafficked in 6.4 grams of Diacetyl Morphine (heroin), an offence punishable under Section 54 (A) (b) of Poison, Opium and Dangerous Drugs Act No. 13 of 1984 (as amended).

At the conclusion of the trial, by Judgment dated 21/08/2009, the Appellant was convicted of both charges and sentenced to life imprisonment. The Appellant being aggrieved by the said conviction and sentence, preferred this appeal to this Court.

The facts briefly are as follows;

On 07/01/2003, Inspector of Police IP Rangajeewa, attached to the Police Narcotic Bureau (PNB), received an information around 11.00 AM, that a female was in possession of heroin. Acting on the said information at around 11.30 AM, IP Rangajeewa together with a team of 7 Officers had proceeded to the vicinity of Gamini Hall Maradana, and met the said informant. After a discussion with the informant, IP Rangajeewa and Sub Inspector (SI) Gunasekara, had proceeded about 200 metres along Forbes Lane and taken up position close to Mirismola Watta. About 30 minutes later, with the assistance of the informant, the Appellant was identified walking towards the Mirismola Watta from Maradana road, carrying a bag. Having arrested the Appellant a search was carried out and the raiding party had discovered heroin wrapped in a green cellophen bag, which was in the possession of the Appellant. Thereafter a search was carried on at the Appellant's house at No 163/22, Devanampiyatissa Mawatha, Forbes Lane, however, no unauthorized substance was recovered.

The heroin recovered from the possession of the Appellant had been sealed in an envelope and sent to the Government Analyst who reported that the substance

analyzed contained 6.4 grams of heroin. At the trial, the prosecution led the evidence of IP Rangajeewa and SI Gunasekara and the evidence of the Government Analyst. At the conclusion of the evidence of the said witnesses, the trial Judge, taking into consideration an admission of the authenticity of the inwards and outwards journey of the productions forwarded to the Government Analyst, by the parties in terms of Section 420 of the Code of Criminal Procedure Act (CCPA), accepted the facts contained therein as proved.

After the closure of the prosecution case the Appellant, initially gave evidence on oath, however later opted to make a dock statement. In the dock statement the Appellant states that, she was arrested at her house by the officers and denies any involvement with possession of heroin.

Both parties filed written submissions prior to the argument and the following grounds of appeal were raised on behalf of the Appellant.

1. Failure to attach any significance to the inwards and outwards journey of the productions under Section 420 of the CCPA, relating to the Government Analyst Report (GAR), confirming such productions as heroin seized from the Accused.
2. Erroneous approach of the Hon. High Court Judge in the evaluation of the defence, tantamounts to shifting of the burden of proof.
3. Infirmary arising on record whether the Accused gave evidence on oath or made a dock statement, as it affects the burden of proof.

The Appellant calls into question the purported lapses on the part of the prosecution for the failure to call material witnesses who could have confirmed the inwards journey and the safe custody of the productions sent to the Government Analyst Department (GAD), pointing out that,

- SI Jayamanna, who handed over the productions to the (GAD) and the Government Analyst (GA), Chandrani who received the productions, were not called as witnesses by the prosecution.
- Productions handed over to GA Chandrani was from the PNB and not from the Maligakanda Magistrates Courts.

When the trial re-commenced on 20/11/2008, the prosecuting counsel has amended the list of witnesses and included Kanapathipillai Sivarasa as Prosecution Witness 9, in place of the listed officer. In his evidence at page 167-168, the said witness states that GA Chandrani had accepted the productions and handed over the said productions to Assistant Government Analyst Navaratne. The witness has identified the signature of SI Jayamanna on the cover of the productions and also has observed that the seals contained were intact. At page 162 this witness clearly states that the productions handed over to the GAD were received from the PNB. It is observed that due to a typographical error it has been stated that the productions were handed over to the GAD from the Maligakanda Magistrate's Court. The fact that the productions were handed over to the GAD by the PNB

was confirmed by a file copy which was in the custody of the witness, marked and produced as Y.

At the conclusion of the evidence of the said witness the prosecution has moved to call Witness No. 11, IP Jayamanna. Thereafter, further application is made by the prosecution, subject to the agreement of the defence, that the Court consider the inwards journey of the productions to the Government Analyst Department in terms of Section 420 of the CCPA. By order dated 16/02/2009, the Court having considered the admission of the inwards journey by the defence, accepted the said evidence in terms of Section 420 of the CCPA. Thereafter, by order dated 27/02/2009, the Court upheld that the application made by the prosecution that the inwards journey of the productions from the PNB to the Government Analyst Department and the outwards journey to the relevant Court is an admitted fact in terms of Section 420 of the CCPA.

Section 420 (2), of the CCPA reads as follows;

*“It shall not be necessary in any summary prosecution or trial on indictment for either party to lead proof of any fact which is admitted by the opposite party or to prove any documents the authenticity and terms of which are not in dispute and copies of any documents may by agreement of the parties be accepted as equivalent to the originals.*

*Such admissions may be made before or during the trial.*

*Such admissions shall be sufficient proof of the fact or facts admitted without other evidence: Provided however that this section shall not apply unless the accused person was represented by an Attorney-at-Law at the time the admission was made:*

*Provided further that.....”*

In this case the Appellant was represented by counsel and the said admissions were recorded during the trial. Therefore, the exceptions contemplated in Section 420 of the CCPA, will not apply. The Appellant did not object to the admissions recorded in terms of the said Section. Accordingly, admissions agreed by the parties would be sufficient proof of the facts admitted, without calling for further evidence. The Court is mindful that there are numerous judicial decisions stressing the importance of the inwards journey of productions to the Government Analyst Department. The purpose of recording an admission is to dispense with the burden of proving any fact or to prove the authenticity of any document at the trial. As noted earlier the Hon. Trial Judge, in his order dated 27/02/2009, has stated that the said order is made with the agreement of the defence. GA Sivarasa was cross examined by the defence on the issue of safe custody, when handing over the productions to GA Chandrani by IP Jayamanna. GA Sivarasa has confirmed that the seals placed on the productions were intact at the time the productions were handed over to GA Chandrani. The defence has not suggested any counter stand to this witness on the receipt of the said productions by GA Chandrani. Therefore, it

is safe to conclude that the trial Judge has not been misdirected in recording the admission of the inwards journey in accepting the evidence relating to the Government Analyst Report, for the reasons stated in his Judgment.

In the case of *Perera Vs. Attorney General (1998) 1 SLR 378*, the Court looked into a similar question arising out of the inwards journey and the custody of productions when the defence had admitted the correctness of the procedure in terms of Section 420 of the CCPA, where the Court stated on page 381, that;

*“The learned trial Judge had approached the question raised by the counsel for the appellant in the light of the above admissions recorded by court. The learned trial Judge had stated that since the defendant had admitted the correctness of the procedure adopted by the prosecution in sending the production to the Analyst Department, the defendant is estopped from contesting the validity or the correctness of the analyst report even if the prosecution had not led in evidence the receipt of acceptance of the productions by the Analyst Department. Furthermore the defence had suggested not to call the analyst. In these circumstances defendant should not be permitted to take advantage of his own conduct and complain that the report of the Analyst is defective or inaccurate. We are in agreement with these observations of the learned trial Judge.”*

The learned trial Judge has considered the accuracy of the inwards journey of the productions to GA Chandrani, when deciding to admit the Government Analyst



Report. The acceptance of the productions by the GAD is confirmed by the file copy marked Y. Therefore, there is no reason to doubt the accuracy of the procedure adopted by the prosecution and to interfere with the findings of the trial Judge with regard to the admission of the inwards journey and the safe custody of the productions.

Question No. 2 is on the erroneous approach in the evaluation of the defence.

In her Dock Statement, the Appellant takes up the position that she was arrested at her house. Her stand was that the police officers came in search of her husband and failing to arrest him had taken her into custody. When her brother in law had intervened, the officers had assaulted him. The trial Judge when evaluating the admissibility of the Dock Statement has taken into consideration the presence of her husband and her brother in law, at the time of her arrest, to put into context the prosecution case, that the arrest of the Appellant was made elsewhere. Therefore, we see no error in the said evaluation of admissibility of the Dock Statement.

Question No. 3 is regarding the discrepancy/ infirmity in the nature of the evidence of the accused.

At the conclusion of the prosecution case the Appellant opted to give evidence on oath. However, during evidence in chief of the Appellant, the prosecution objected to adducing evidence of an alibi in support of the defence, without prior notice in terms of Section 126A (1) of the CCPA. At this stage the defence moved for time to consider and when the trial resumed on the next date, ie. 28/05/2009, (page

178), the Appellant opted to make a Dock Statement. (විත්තිකාරිය සාක්ෂි කුඩුවේ සිට ප්‍රකාශයක් කරන බව කියයි.)

The case record bears testimony to what transpired in open court on 28/05/2009 and to the method of defence the Appellant sought to proceed with, clearly rules out any discrepancy or infirmity of procedure.

In view of the above reasons, we see no basis to interfere with, the Judgment made by the learned High Court Judge. Accordingly, we dismiss the appeal and affirm the conviction and sentence.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**S.Thurairaja PC, J**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**