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

In the matter of an Appeal under Section 154(p) of the Constitution read with Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Pallegama Ralalage Sunil Karunaratna Bandara
ACCUSED - APPELLANT

Case No. CA 137/2012

HC (Colombo) Case No. HC 4885/09 **VS**

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

BEFORE : Deepali Wijesundera J.
: Achala Wengappuli J.

COUNSEL : Chandana Sri Nishshanka for the Accused Appellant
Madhawa Tennakoon S.S.C.for the Respondent.

ARGUED ON : 18th September, 2018

DECIDED ON : 12th October, 2018

Deepali Wijesundera J.

The appellant was indicted in the High Court of Colombo for possession and trafficking of 6.58 grams of heroin under section 54(d) and 54(b) of the Poisons Opium and Dangerous Drug Ordinance (as amended) Act No. 13 of 1984. After trial he was found guilty for the said offences and was sentenced to death. The instant appeal is against the said conviction and sentence.

The story of the prosecution was that on the day in question there had been a check point manned by the army near the BMICH along Bauddhaloka Mawatha. The appellant along with another person had driven in a three wheeler along Baudhdhaloka Mawatha and was stopped by the army at the check point. They were asked to get down from the vehicle and army officers Karunaratne and Dilantha had searched the vehicle. Witness Dilantha has detected a parcel in the right side of the appellant's pocket and asked him whether it was a "බෙහෙත් ගුලිය" after taking it out of the pocket they have found five red grocery bags containing a white substance wrapped in a piece of paper. They have called the police mobile officers who were stationed close by to identity

the substance. S I Peiris has identified it is containing heroin. S I Peiris has taken the parcel to the police Narcotic Bureau and weighted the parcel which contained 23 g. of heroin. Thereafter the parcel and the appellant were handed over to the Cinnamon Gardens police station. The two army officers have given evidence at the trial. Their evidence was that they felt suspicious and searched the three wheeler and found the parcel with heroin in the appellant's pocket. They didn't know who the appellant was and they had no reason to fabricate evidence against him.

The learned counsel for the appellant argued that prosecution witness number two and three have failed the test of probability and they can not be treated as reliable witnesses. According to the appellant the two witnesses have differed on the issue of searching the appellant. Prosecution witness number three had said he saw prosecution witness number two searching both the passenger and the appellant. This is not a major issue both of them are army officers who are not familiar with this kind of detections. Therefore one can not say an injustice was caused to the appellant when their evidence was accepted. Their creditability had been considered by the Learned High Court Judge in his judgment (pages 342, 353 and 354).

The appellant's counsel argued that there was no actual, exclusive and conscious possession of the parcel with the appellant and cited the judgment in **Banda vs Haramanis 21 NLR 141 where it was held that;**

> ***"Criminal liability attaches only to possession on which is proved to be actual, exclusive and conscious possession on the part of the person".***

The behavior of the appellant had prompted the army officers to search the appellant and they have found the parcel in his trouser pocket and called the police officers (prosecution witness number one) who were nearby and identified the substance to be heroin. The army did not know the appellant and they were searching the vehicles at the road block and the appellant's behavior as if he had something to hide prompted them to search him and the vehicle. This evidence proves that the appellant had exclusive and conscious possession of the parcel which contained heroin. It was recovered from his trouser pocket and not from the vehicle which he claimed was not his.

The appellant's counsel argued that the learned High Court Judge failed to consider the defence evidence. This is not so the learned High Court Judge has stated that the defence evidence contradicted each

other. Both of the appellant and the passenger did not deny they had heroin in the three wheeler, they only disputed the place from where it was recovered. This has been carefully analysed by the learned High Court Judge.

Citing the judgment in **Moses vs State (1993) 3 SLR 401** the appellants argued that the trial court must give reasons for accepting the prosecution evidence and rejecting the defence evidence. It was stated in the above case that;

> ***"Failure to give reasons may even lead to the inference that the trial Judge had no good reasons for his decisions."***

We find that the learned High Court Judge has given reasons as stated above for his findings after analyzing the evidence. All grounds of appeal stated by the appellants have no merit. We are not inclined to set aside a well considered judgment. Judgment dated 30/01/2012 is affirmed and the appeal is dismissed.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Achala Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL