

**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 333(1) of
the Criminal Procedure Code Act
No. 15 of 1979.**

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

Complainant

Arjunan Vinod Raju alias Ramesh

**Court of Appeal
Case No. CA 298/2013**

Accused

Vs,

And Now Between

Arjunan Vinod Raju alias Ramesh

Accused-Appellant

**High Court of Colombo
Case No. HC 4940/ 2009**

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 : J. Tenny C. Fernando Attorney-at-Law for the Appellant.
Shanaka Wijesinghe DSG for the Respondent.**

Written Submissions : Accused Appellant - 14th September 2018.

Complainant Respondent- 23rd January 2018.

Argument on : 07th November 2018.

Judgment on : 16th November 2018.

JUDGMENT

S. Thurairaja, PC. J

The Accused – Appellant, Arjunan Vinod Raju alias Ramesh (Hereinafter sometimes referred to as the Appellant), it is noted that the indictment and the petition of appeal has different names. It is also observed that the written submissions and the motions filed in the Court of Appeal have different names. For all purpose we use the name as appeared on the indictment as well as the evidence before the trial court.

The Appellant was indicted in the High Court of Colombo by the honourable Attorney General on four (4) counts. On the 13th of July 2006 at Bloemendhal Road, Colombo, the Appellant had possessed less than 1 gram of Heroin (dicetyl morphine) and trafficked the same which is punishable under Section 54 A (b) and 54 A (d) of the Poison, Opium and Dangerous Drugs Act. In the same indictment the Appellant also indicted for possession and trafficking of 6.36 grams of Morphine which is punishable under Section 54 A (b) and 54 A (d) of the Poison, Opium and Dangerous Drugs Act.

Trial was held before the High Court and prosecution led the evidence of Inspector of Police (IP) Mahinda Gamlath Welagedara, Kodikara Arachchilage Lal Kumara, Government Analyst Pathirage Sandya Kumari and Inspector of Police (IP) Virath Buddhika Gunasekara.

After the trial the Appellant was convicted and sentenced to 7 years rigorous imprisonment each on the 1st and 2nd count together with Rs. 50,000/- fine on each count and in default 1 year simple imprisonment. For the 3rd and 4th counts the Appellant was found guilty and sentenced to death.

Being aggrieved with the said conviction and sentence the Appellant had preferred this appeal to the Court of Appeal and submitted following grounds of appeal (the following are re-produced from the written submission of the Accused-Appellant).

- 1) Learned High Court Judge misdirected himself by not considering the improbabilities of the narration of the Police Officers which cast a reasonable doubt on the prosecution version.
- 2) Learned High Court Judge misdirected by failure to evaluate the dock statement in proper context and thereby caused a miscarriage of justice.
- 3) Learned High Court Judge misdirected himself by failure to consider that the chief investigation officer had not entered notes on very material instances in the course of the raid and that creates a reasonable doubt on the version of the prosecution case.
- 4) Learned High Court Judge misdirected himself by failure to consider that the dock statement very clearly corroborates the version of the defence suggested to the prosecution witnesses and thereby cast a reasonable doubt on the prosecution version.
- 5) Learned High Court Judge misdirected himself by not considering the material inter se contradiction which casts a doubt on the prosecution version and its credibility.

It will be appropriate to consider the facts of the case before we proceed to analyse grounds of appeal.

According to the prosecution witness, IP Mahinda Gamlath Welagedara attached to the Police Narcotic Bureau (PNB), his junior officer PC Lal had received an information from his personal informant regarding trafficking of heroin. They formed a team and organized a raid. They left around 12.30, laid in ambush and arrested the Appellant with narcotic substance.

The Counsel for the Appellant supported the 1st, 3rd and 5th grounds of appeal. The Counsel submitted that there is a discrepancy regarding the 1st information of which

the Learned Trial Judge had not considered. According to Police Constable (PC) Kodikara Arachchilage Lal Kumara, he received an information, that a person called Naseer is coming with drugs to be given to Ramesh and he in turn to distribute among his customers. But the Senior Officer when giving evidence said that Ramesh is coming there to distribute drug among the customers. The Counsel submits that the name of Naseer is not stated by the team leader. Therefore he submits that there is a serious discrepancy in their evidence.

We carefully perused the evidence led before the trial judge and find that there is a clear mention about the Accused-Appellant and the involvement in the transaction. The officers and the informant who were involved in the raid had clearly identified the Appellant. The person who supplied drugs to the Appellant is not a fact in issue in this case. Therefore we do not see any discrepancy in the evidence before the trial judge hence we find there is no merit in this case.

The 2nd and 4th grounds of appeals deal with the dock statement. The counsel for the Appellant submits that the dock statement was not properly considered. It will be appropriate to know how the proceedings were held before the trial judge. The Appellant was present throughout the trial. When the case for the prosecution was closed and defence called the Appellant made a dock statement and informed Court that he will be calling witnesses on his behalf. But suddenly he avoided appearing in Court. He never called any witnesses on his behalf. Therefore the Learned Trial Judge had to consider only the Dock Statement of the Appellant. This does not mean that the Appellant is expected to prove his innocence. I only mentioned what had happened before the trial judge.

The Appellant made a short dock statement. In his dock statement, the Appellant said that he did not have heroin in his possession. It was found elsewhere and they took me from home. Thereafter they filed this case. I was assaulted after taking to the Police Station. They assaulted and inquired "whose is this?", I told "I do not know".

Thereafter they filed the case on me. (almost direct translation of the dock statement).

We re-produce the said Dock Statement for completeness.

"ස්වාමීනි, මගේ සන්නකයේ හෙරොයින් තිබුණේ නැත. චේන කොහෙන්ද අල්ලාගෙන මම ගෙදර ඉන්නකොට මා චක්කරගෙන ගියා. ඊට පසු මට මේ නඩුව දැමීම. මට ගැනුවා. ගෙදරදිත් මට ගැනුවා. මට පොලීසියට ගිනිල්ලත් ගැනුවා. කාගෙන්ද කියලා අහලා ගැනුවා. මම කිව්වා දන්නේ නැතැ කියා. ඊට පස්සේ මට මේ නඩුව දැමීම."

The Learned Trial Judge has advised himself regarding how to handle a dock statement. Further being judicially trained minded judge has given due consideration for the dock statement. It appears he had clearly accepted the statement as evidence and considered the truthfulness, veracity, probability and relevance of the dock statement. After carefully considering he had rejected the said dock statement. 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 **The Queen v. Kularatne [1968] [71 NLR 529]** stated that,

"we are in respectful agreement, and are out of the view that such a statement must be looked upon as evidence subject to the infirmity that the accused had deliberately refrained from giving sworn testimony".

The charges against the Appellant are possession and trafficking of heroin (dicetyl morphine). Further the 3rd and 4th counts are for possession and trafficking of

morphine. When we consider the dock statement, there he had denied only possession of heroin. He had not denied or replied to 3rd and 4th counts in the indictment. Therefore there is no express denial presented by the Appellant other than pleading not guilty to the charges.

Considering the above circumstances it is the duty of the trial judge to consider the evidence presented by the prosecution.

Considering the grounds of appeal submitted by the Learned Counsel for the Appellant in his written submissions was reduced to the above two grounds of appeal at the time of the argument. We carefully considered all grounds of appeal and the submissions made by the counsel. For the purpose of completeness, we considered all grounds of appeal stated in the written submission. We find that there is no merit on all grounds of appeal submitted by the Appellant. Accordingly we dismiss the appeal.

Appeal dismissed. Conviction and sentences are affirmed.

Appeal Dismissed.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL