

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

In the matter of an application under
and in terms of Section 331 of the
Code of Criminal Procedure Act No.
15 of 1979.

The Democratic Socialist Republic of
Sri Lanka.

COMPLAINANT

Vs

Weerahannadeege Sunil Ranjith
Fernando.

ACCUSED

Case No. CA 267/2017

HC (Panadura) Case No. HC 3069/2014

AND NOW BETWEEN

Weerahannadeege Sunil Ranjith
Ferrnando.

ACCUSED – APPELLANT

Vs

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

COMPLAINANT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

: Achala Wengappuli J.

COUNSEL

: Niroshan Mihindukulasruiya for the
Accused – Appellant

Madawa Tennekoon S.S.C. for the
Respondent

ARGUED ON

: 28th November, 2018

DECIDED ON

: 13th December, 2018

Deepali Wijesundera J.

The appellant was indicted in the High Court of Panadura under Section 54 A (b) and Section 54 A (d) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended) for being in possession and trafficking of 3.52 grams of heroin. After trial he was found guilty for both charges and was sentenced to life imprisonment. This appeal is against the said conviction and sentence.

The evidence of the prosecution was that, while they were going on a raid one of the officers had received a phone call to say certain

person in the Angulana area was trafficking heroine, thereafter the detection has been made in Angulana police area. The appellant along with the parcel of heroin was taken to the Moratuwa police station and the substance was weighted and found to be 10.50 grams. The productions were sent to the Government Analyst in a sealed envelope. The Government Analyst in his report has stated the sealed parcel contained a substance named as heroin weighed 15.64 grams of heroin out of which the pure heroin content was only 3.52 grams.

The grounds of appeal taken up by the learned counsel for the appellant were that the learned High Court Judge had not given his judicial mind and analysed the evidence as the prosecution failed to give a reason for the change in weight of the heroin taken into custody. The Government Analyst had testified at the trial that the parcel containing the heroin was received by him with the seals intact, and that when the substance was weighted it contained 15.64 grams. (page 159). The learned counsel argued that the learned High Court Judge erred in law when he failed to consider the disparity in the weight of the parcel.

The learned Senior State Counsel argued that the parcel was weighed in the police station and the weight was recorded and that the Government Analyst had weighed it on their electronic scale and found it

to be more but the issue which matters is the quantity of pure heroin found in the parcel which is 3.52 grams. He stated that either way it is more than 2 grams and the inaccuracy of the scales does not affect the credibility of the witnesses. We find that in page 7 of the learned High Court Judge's judgment he has analysed this issue at length and come to his conclusion. Therefore the appellant's counsel can not say that the learned High Court Judge erred in law when he failed to consider the inaccuracy of the police scale.

The learned counsel for the appellant stated that the learned High Court Judge did not accept or reject the dock statement of the appellant and failed to consider the same. On perusal of the judgment of the learned High Court Judge we find that in page number 9 of the judgment he has analysed the dock statement and rejected it. Therefore the second ground of appeal also fails. The learned Senior Solicitor Counsel has cited the judgments in **Simonge Ekanayake vs The AG CA 129/2005** and **Dharmadasa vs Director General Commission to Investigate Allegations of Bribery or Corruption 2003 1 SLR 64** and stated even if the dock statement is not considered it is not a reason for a conviction to be set aside.

The learned Senior Solicitor Counsel citing section 336 of the Code of Criminal Procedure Act (as amended) stated that this court is empowered to enhance a sentence imposed by a trial court.

The counsel for the appellant argued that the first and second witnesses for the prosecution gave evidence before the predecessor of the learned High Court Judge who delivered the judgment thereby he did not have the privilege to observe the demeanor and deportment of the witnesses. The two witnesses are official witnesses who had no personal interest in the case both of them have given evidence on the official duties performed by them, therefore the learned High Court Judge did not have the necessity to observe the witnesses.

The counsel for the appellant cited the judgment in **Padmathilake alias The Sargent Elpitiya vs The Commission to Investigate Allegations of Bribery or Corruption SC appeal 99/2007** and argued that the learned High Court Judge has not considered the guide lines set out in this case. In the instant case the prosecution evidence was very clear and the defence had failed to cast a doubt in the prosecution evidence and the above case is irrelevant and does not apply to the instant case.

For the afore stated reasons we decide to affirm the learned High Court Judge's judgment and conviction dated 10/08/2017 and dismiss the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Achala Wengappuli J.

I agree.

JUDGE OF THE COURT OF APPEAL