

**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 Criminal Procedure Act No. 15 of 1979.

Innakpulige Sumith alias Polhengoda Sumith

**ACCUSED – APPELLANT**

**Case No. CA 243/2017**

**HC (Colombo) Case No. HC 6155/12** VS

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

**RESPONDENT**

**BEFORE**

: Deepali Wijesundera J.

: Achala Wengappuli J.

**COUNSEL**

: Neranjan Jayasinghe with Sachithra Harshana for the Accused-Appellant

Janaka Bandara S.S.C. for the

Respondent

**ARGUED ON**

: 25<sup>th</sup> February, 2019

**DECIDED ON**

: 15<sup>th</sup> March, 2019

**Deepali Wijesundera J.**

The appellant was indicted in the High Court of Colombo for trafficking and possession of 3.98 grams of heroin under the Poisons, Opium and Dangerous Drugs Ordinance punishable under section 54 AB and 54 AC. After trial he was convicted and sentenced to life imprisonment.

The prosecution story was that on 10/06/2010 the Police Narcotic Bureau officers have gone on two raids, the first one near the Ayurweda Hospital at Rajagiriya and from there to the second one at Obesekerepura. Prosecution witness number one S.I. Sampath Wijesinghe has gone in a three wheeler with P.C. Mahinda and P.C. Asela to Obesekerepura road with the informant. P.C. Mahinda had remained inside the three wheeler while the other two had gone across the road when the appellant came and parked the car. The informant had communicated with the appellant and when he approached the area where they were waiting has told prosecution witness number one that it was Sumith's car. Wijesinghe had crossed the road to where the car was parked and taken the car keys to his hand and searched the appellant. He has found a pink coloured grocery bag containing a white substance which he has identified as heroin. P.C. Asela has found a bunch of keys and the appellant's purse inside the car. P.C. Mahinda had stayed inside

the three wheeler across the road all this time. After taking the appellant to his custody Wijesinghe has got down the van he travelled in earlier which was parked some distance away and taken the appellant in the van to search his house. They did not find anything in his house. From there they have gone to search another house and then proceeded to the Police Narcotic Bureau. Wijesinghe has weighed the parcel and sealed it and handed it to P.S. Obeysekera who was in charge of productions. The car in which the appellant travelled was also taken into custody. Witness member one in cross examination has admitted that one of the keys found inside the appellant's car was a key to a house owned by S.S.P. Priyantha Liyanage. They have gone and searched this house and has not found anything suspicious in the house.

The officer who was there when the appellant was searched by Wijesinghe has not given evidence at the trial. Prosecution witness number five Mahinda was called to corroborate the evidence of prosecution witness number one Wijesinghe. Mahinda has driven the three wheeler in which they have travelled but he was not there when the detection was made. It was done by Wijesinghe with P.C. Asela. Witness Mahinda has said in evidence that he was in the three wheeler which was parked on the other side of the road he has said that he got to know about heroin been detected only at the Police Narcotic Bureau. (Vide page 174 of the Brief).

The learned counsel for the appellant argued that the appellant was convicted on the uncorroborated evidence of the prosecution witness Sampath Wijesinghe, and that the learned High Court Judge has failed to consider the principles laid down in law and failed to evaluate the evidence thereby. The learned High Court Judge has made a fatal error by doing so. He further stated that the witness who was called to corroborate the evidence of the main witness has said in evidence that he did not know about the detection until they went to the Police Narcotic Bureau. The argument of the appellant's counsel was that the evidence of prosecution witness number one was not corroborated and that the appellant was convicted on uncorroborated evidence. He stated that severe prejudice was caused to the appellant by getting convicted on uncorroborated evidence.

The appellant has made two dock statements both are identical and he has denied being in possession of heroin. He has said that he received a call from the informant Sajith to meet him near the Caltex building regarding his employment in Korea. He has said they only found his purse, phone, passport and some keys in the car and while questioning him about the keys it was revealed that he had the keys to an apartment belonging to S.S.P. Priyantha Liyanage. He was questioned on this and was taken to the said apartment and the place was searched and nothing was found. According to the appellant's dock

statement the officers who arrested him had some issues with S.S.P. Liyanage and he was arrested after they found the keys to the S.S.P.'S apartment in his possession. The appellant has stated that heroin was not found in his possession. The lengthy dock statement has been rejected by the learned High Court Judge. (vide pages 309 and 310). The argument of the appellant's counsel was that the dock statement was not properly considered by the learned High Court Judge.

The learned Senior State Counsel for the respondent argued that under section 134 of the Evidence Ordinance a single witness, if the witness is truthful and reliable is enough for a conviction. He stated that there is no reason to disbelieve an official witness. He said that in the absence of any suggestion that the production was introduced the witness has to be believed.

The learned High Court Judge has convicted the appellant on the evidence of prosecution witness number one Wijesinghe who's evidence was not corroborated by any other witness. Witness Mahinda was not there when the detection was made he has been seated inside the three wheeler across the road. Witness Asela who assisted prosecution witness number one in the detection was not called to give evidence. This court has to decide whether it is safe to convict an accused on a single

witness's evidence, in a narcotics case. In this type of a case the chain of events have to be established and proved beyond reasonable doubt. Did the prosecution do so? Why was witness Asela not called to give evidence? Wijesinghe has said in evidence that witness Mahinda could see the detection from where he was but the evidence of Mahinda was that he did not know about the detection until he went to the Police Narcotic Bureau.

**It has been decided in Sunil vs AG (1999) 3 SLR 191;**

*"It is trite law that the trial Judge who hears a bribery trial is entitled to convict on the sole testimony of a prosecution witness without any corroboration provided he is impressed with the cogency, convincing character of the evidence and the testimonial trustworthiness of the sole witness".*

The evidence of S.I. Wijesinghe (prosecution witness number one) does not fulfill the requirements set out in the said judgment.

This casts a serious doubt in Wijesinghe's evidence. In a criminal case the benefit of the doubt should be given to the accused. In the instant case prosecution witness number one was the only witness to give

evidence on the detection. His evidence has to be truthful and devoid of contradictions witness Mahinda has given evidence contrary to what he said therefore can he be believed, without corroborating evidence?

For the afore stated reasons we find that the learned High Court Judge who did not see the demeanor and deportment of the witness has failed to analysed the evidence correctly and thereby denied a fair trial to the appellant. The judgment and conviction dated 04/09/2017 is set aside and the appellant is acquitted.

Appeal allowed.

**JUDGE OF THE COURT OF APPEAL**

**Achala Wengappuli J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**