

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Appeal in terms
of Section 331(1) of the Code of
Criminal Procedure Act No.15/1979
and the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

C.A.No.181/2014

H.C. Colombo No. 6097/2012

Meththamestrige Srimali Fernando

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE : DEEPALI WIJESUNDERA, J.
ACHALA WENGAPPULI, J.

COUNSEL : Saliya Peiris P.C. with Varuna de Seram and
Heshan de Silva for the Accused-Appellant.
Dilan Ratnayake D.S.G. for the respondent.

ARGUED ON : 29th May, 2019.

DECIDED ON : 09th August, 2019

ACHALA WENGAPPULI, J.

The appellant was indicted before the High Court of Colombo for possession of and trafficking in 2.47 grams of heroin on 09.05.2009 at *Badowita*. After trial she was convicted by the trial Court on both counts and was imposed sentences of imprisonment for life.

Being aggrieved by the said conviction and sentence, the appellant sought intervention of this Court to set them aside. Learned President's Counsel who appeared for the appellant had relied on the following grounds of appeal in challenging the validity of the conviction and sentence;

- a. the trial Court failed to consider the discrepancies of the prosecution evidence,
- b. the rejection of the evidence adduced by the appellant by the trial Court is contrary to law.

The prosecution case is that the appellant was arrested with the alleged quantity of dangerous drugs in her possession at her residence by officers *Dharmasuriya, Rajakaruna* and WPC 7244 *Amaranath* of the Police Narcotic Bureau upon being led to the said compound by an informant of IP *Rangajeewa*. The parcel containing heroin was detected concealed between the brassieres worn by the appellant and her body. The parcel had a gross weight of 18.9 grams at the time of its detection. The Government Analyst found the parcel that had been forwarded for its analysis contained brown powder which weighed 19.23 grams. After scientific analysis, it was revealed that the brown powder contained 2.47 grams of diacetylmorphine.

In support of the appellant's first ground of appeal, learned President's Counsel invited attention of Court to the several inconsistencies that he highlighted between the testimonies of the prosecution witnesses. It was his submission that due to these infirmities which rendered the evidence of prosecution unreliable and the trial Court had thereby fallen into error acting on such evidence.

Learned President's Counsel, during his submissions referred to an apparent contradiction on the exact place the appellant was in just before her arrest. IP *Dharmasuriya* in his evidence stated when they approached

the house of the appellant, she was seated on a plastic chair in the compound (විදුල) surrounded by banana plants. In contrast with this statement, learned President's Counsel referred to the segment of evidence where WPC *Amaranath*, who made the detection, had stated that a woman was seated at the back of a house facing it, which evidence is in conflict with the *Dharmasuriya's* that she was in front of her house.

A closer scrutiny of the evidence does not however reveal an inconsistency of the place where the appellant was. In fact, witness *Amaranath* gave consistent evidence with that of *Dharmasuriya* as to the place where the appellant was just prior to her arrest. The segment of her evidence, that had been highlighted by the appellant referred to what the informant, who accompanied them up to the point of the appellant's house, had conveyed to the witness before he parted with them. Her evidence is clear that after the informant's departure, they have approached the appellant's house from its front side. The witness had noted that the appellant, upon seeing their arrival, had made an attempt to get up excitedly from the chair she was seated on.

It was also highlighted by the appellant that the description of the approach roadway to the appellant's house differed significantly among the two witnesses. Witness *Dharmasuriya* described it as a mere "foot path" whereas witness *Amaranath* described it as a roadway in which a three wheeler could be easily driven on. Subsequently *Dharmasuriya* offers further description of the road in his evidence and stated that it is not made according to a Government plan but merely through usage out of necessity. He further adds that the said roadway had served three other

houses, indicating that it is not a mere footpath used sparingly by few individuals.

Another inconsistency that had been highlighted by the appellant is that the presence of a polythene parcel marked P5. The appellant's submission is *Dharmasuriya's* evidence as to the description of the sealing indicate that the parcel containing heroin was placed in a transparent polythene bag and was properly sealed thereafter. The heroin, at the time of detection, was found inside a pink coloured polythene bag (P4A) and was thereafter placed in an envelope (P3) at the trial stage. The other clear polythene bag was marked as P4. Then the prosecution marked yet another polythene cover containing a brown sticky substance as P5. No explanation was offered by the prosecution through the expert witness as to how and when it was introduced. It is this polythene cover the appellant claims that does not fit into the description given in respect of sealing of productions.

The Government Analyst, in her evidence described the opening of the sealed parcel she took charge for analysis. She had opened up a sealed envelope which contained another sealed polythene bag. Inside that polythene bag a pink coloured polythene packed containing brown powder was found. The pink coloured bag was weighed by the analyst in addition to the powder it contained. This description of the contents matches with what had been described by the witness *Dharmasuriya*. There was no reference to a polythene wrapper/bag, marked as P5 when the Government Analyst unsealed the parcel in preparation for her analysis.

Thus, it is apparent that the trial Court had clear evidence before it as to what was sealed by the police after the detection and what had been received and analysed by the Government Analyst in that sealed parcel. The finding of P5 along with the other polythene bags could not therefore be considered as a defect in the inward productions chain and therefore is insufficient to create a reasonable doubt as to the identity of the parcel sent for analysis.

Learned President's Counsel made submissions on the apparent disparity of the gross weight of the parcel that had been allegedly detected in the possession of the appellant. The parcel had a gross weight of 18.9 grams at the time of its detection as per the evidence of the police witnesses. When the parcel was weighed at the laboratory of the Government Analyst Department it was found that the said parcel weighed 19.23 grams, a higher weight than that was recorded by the investigators. The proceedings reveal that the expert witness had weighed the brown powder first and ended up with a weight of 19.23 grams. She then weighed the pink polythene bag which contained the brown powder with a weight of 0.687 grams making the total weight of the parcel that had been detected at 19.917 grams.

The police officers stated in evidence that when the parcel was weighed at the Police Narcotics Bureau with a reading of 18.9 grams. The difference between the two readings is a mere 1.017 grams which could easily be attributable to the inherent limitations in the two weighing scales used by the witnesses.

In support of her second ground of appeal, it was submitted that her denial was wrongly rejected by the trial Court on the basis that a "large" quantity of heroin was detected and it was improbable for the PNB officers to introduce heroin only to the appellant leaving the others who were said to be there with her at the time of the detection.

The appellant in her rather a short statement from the dock claimed that she was arrested whilst on road and she had nothing illegal with her at that time. The trial Court had noted that the disputed fact of the place of arrest had been put to prosecution witnesses. Those suggestions were naturally denied by them. In relation the trial Court's reference of a "large" quantity of prohibited substances is obviously made in reference to the gross weight and not to the pure quantity of heroin, which was not known to the officers at the time of detection. Hence, the rejection of the appellant's denial by the trial Court could not be faulted.

The appellant also relied on the cumulative effect of the several infirmities she had pointed out before this Court in support of her appeal to impress upon that she was therefore deprived of a substance of a fair trial. In this sense this Court is inclined to agree with the submissions of learned Deputy Solicitor General that the impact of the inconsistencies that were highlighted before this Court seemed too insignificant to make a dent in the trial Court's determination to accept the prosecution evidence as credible, especially when the trial Judge, who delivered the judgment, has had the distinct advantage of observing the demeanour and deportment of witnesses who testified before him.

This Court, after a careful consideration of the grounds of appeal of the appellant, is of the firm view that those grounds are without merit.

The conviction of the appellant on two counts and the sentences imposed are accordingly affirmed.

Appeal of the appellant stands dismissed.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL