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

In the matter of an appeal under Section 331 of the Criminal Procedure Act, No. 15/1979 and the Constitution and Appellate Court Rules (2) (1) (a).

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA. No. 217/2017

High Court of Avissawella

Case No. 09/2014

Vs.

K.D. Needra Nilangani Perera

Accused

And Now Between

K.D. Needra Nilangani Perera

Accused-Appellant

Vs.

Hon Attorney General

Attorney General's Department,

Colombo 12.

Complainant-Respondent

BEFORE : N. Bandula Karunarathna, J.

: R. Gurusinghe, J.

COUNSEL : Tenny Fernando for the Accused-Appellant.

D. Warnakula SSC., for the AG.

ARGUED ON : 09.02.2021 and 10.02.2021

DECIDED ON : 18.03.2021

CA No. 217/2017 **H.C.AvissawellaNo. 09/2014**

R. Gurusinghe, J.

The accused-appellant (Appellant) in this appeal was convicted by the learned High Court Judge of Avissawella on 12.09.2017 for being in possession of and trafficking 132.06 grams of heroin and was sentenced to life imprisonment.

Being aggrieved by the said conviction and sentence, the appellant preferred this appeal.

The grounds of appeal are as follows:

1. The learned High Court Judge has failed to analyse the improbabilities of the prosecution version of the case and thereby the conviction is unsafe.
2. The learned High Court Judge has failed to analyse per se and inter se contradictions in the evidence of the prosecution, which creates a reasonable doubt and thereby the conviction is unsafe.
3. The Trial Judge has misdirected himself expecting an exculpatory explanation in addition to the fairly long dock statement and applying irrelevant legal principles to discredit the version of the defence and thereby the conviction is unsafe.

According to the prosecution version, PW2 PC. Mahinda who was attached to Police Narcotic Bureau (PNB) had received on 17.02.2012 at about 16.50 an information that a woman, a mistress of Loku who was imprisoned, living at Dikhethepma area dealing heroin and the informant was willing to show the house of that woman. This information was passed to PW1 by PW2.

Accordingly, PW1 Rangajeewa Inspector of Police had arranged a raid immediately. PW1 was accompanied by PW2 PC Mahinda, PC Asela, PC

Vakista, PC. Susantha and PW5 WPS Samanlatha. They left the PNB at about 17.25 and reached Dikhethepma junction at about 7.30 p.m. The vehicle was parked near the Dikhethepma junction. They have waited for the informant to come. At about 8.00 p.m. when the informant had come, PC. Mahinda left with the informant at 20.10. PC Mahinda returned alone at 21.00. When PC Mahinda and the informant went to the accused's house, it seemed to them that there was no one there.

Mahinda left the informant there and returned to the police vehicle and waited for a telephone call from the informant. Mahinda received a telephone call from the informant at 23.45. Then the police team left Dikhethepma junction towards the house of the appellant by their vehicle. After about 15 minutes, the vehicle was parked at a certain place and Rangajeewa PW1, Mahinda PW2 and Samanlatha PW5 reached the Appellant's house on foot. Rangajeewa and Samanlatha were waiting at the rear door of the house of the appellant and PC Mahinda at the front door. On the instruction of Rangajeewa, Mahinda identifying himself as the police called out the inmates asking them to open the door. Then the appellant had come out from the rear door of the house with a bag. She was stopped by PW1 and taken inside her house. PW 1 Rangajeewa had switched on the lights and opened the front door for Mahinda to enter the house. The bag which was carried by the appellant had six bags containing heroin. The appellant was arrested and taken to the PNB where the substance was sealed.

The version of the accused is that the Police came to her house in the night. She was sleeping with her children when the police had come. They asked her to open the door and she had opened the front door. There was no any female officer. One of the persons who entered the house pushed the appellant and made her to sit on a chair. Thereafter more persons entered the house from the front door and closed the door.

The person who pushed the appellant had shown his PNB identity card and asked her for drugs. The appellant had then said that she had no drugs. Then they assaulted her and searched the house and found no illegal substance. They dragged her to the jeep and took her to the PNB. At the PNB they had her handed over to PW5 P.S. Samanlatha. Rangajeewa and another person had brought a parcel. There was a substance which they had filled in bags and they had taken the thumb impression of the appellant to that bags.

According to the appellant, there was no way to escape from her back door as one side had a parapet wall. Other side had a barbed wire fence and the remaining side was the house itself.

Counsel for the Appellant argues that the Trial Judge had failed to take into account the visible improbabilities in the prosecution version.

The alleged information received by PC. Mahinda only says that the accused is dealing with heroin, living at Dikhethepma, and the informant could show the house she lives. There was no specific time or place as to how the police could detect her with heroin.

According to PW1, he had received the information at 17.00 and they left the PNB at 7.25 p.m. They have acted as soon as possible. They reached the Dikhethepma junction at 7.30 p.m. They had been waiting at Dikhethepma junction until 23.45 for 4.15 hours. At about midnight only they reached the accused's house. The officers left in such haste**.** However, they spent four and quarter hours at Dikhethepma junction. The Trial Judge has not considered the improbability that a police team waiting for more than four hours at a junction in a vehicle. There was no reason for them to leave the PND in such haste when considering the alleged information.

It is the position of the defence that from the beginning that PW5 Samanlatha had not been a member of the police team that came to her house.

Initial outward entry of PW1 does not contain the PW5 Samanlatha's name. After making the entry, PW1 has signed the entry. In that entry, even the reading of the odometer was recorded. To read the odometer, one should come to the vehicle. It is the position of the prosecution that the PNB is at 3rd floor of that building. Once they come to the garage, they do not go back to the PNB to make any entry regarding the vehicle. They would include such information only after coming back to the PNB.

What was the necessity for PW1 to make another entry after signing the earlier out entry? When this entry is confronted, answer of PW1 was, "if there was any mistake or deficiency, he would correct it and sign it again". The position of the defence was that PW5 never came to the accused's house. The Trial Judge had not allowed the defence to cross-examine on this point further stating that the Defence Counsel was repeating the same question. Generally, the same question is not allowed to repeat. However, this was a very important point for the defence. There was a good reason for the defence to question on this point. The answers given by PW1 on this point were somewhat evasive. Therefore, the questions with regard to this point should have been allowed. The defence was denied a fair trial by disallowing certain questions of the defence which were very relevant to the defence's case.

PW1 says Mahinda went to see the accused's house with the informant at 8.10 p.m. and returned to the vehicle at 9.00 p.m. Since 9.00 p.m. until 11.45 p.m., PW1 and PW2 were inside the vehicle. When PW1 was cross examined on whether he had asked PW2 the distance from the vehicle to the accused's house. PW1 said that he didn't.

When PW1 was cross examined on whether PC. Mahinda went with the Informant by a vehicle or on foot, the answer of the PW1 is as follows:

At page 183 of the brief:

> ඔත්තුකරුසමඟ මහින්ද නිළධාරියා ගියේ විත්තිකාරියගේ නිවස පිළිබඳ සොයා බැලීමට බව මම දන්නවා. ඔහු නැවත පැමිණි පසු අවශH කරුණු විමසා සිටියා. ඉන් එහාට පයින්ද ගියේ කකුලෙන්ද ගියේ කියලා මම ඇහුවේ නැහැ.

This is clearly an evasive answer. If the raid was conducted as unfolded by the prosecution witnesses, there is no necessity for PW1 to evade any answer. This answer is not only evasive; it lacks respect and courtesy to the Court. The learned Trial Judge should have been mindful that although the question was put by the Defence Counsel, all answers were given to the Court, not to the Counsel. However, the Trial Judge in the Judgment (page 573 of the brief) says that the prosecution witnesses were very respectful and PW1 has given evidence in Court in a manner which was very transparent and confident.

Judgment says thus:

> "මෙම සාක්ෂිකරු ඉතාමත් විනිවිද ලෙස මෙම අධිකරණය ඉදිරියේ සාක්ෂි දෙන බවට අධිකරණයට නිරීක්ෂණයවිය. එසේම අධිකරණය කෙරෙහි ඉතාමත් ගෞරවයෙන් යුතුව විශ්වාසනීය ලෙස මෙම සාක්ෂිකරු සතH ලෙස සාක්ෂි දෙන ලද බව අධිකරණයට ඔහු සාක්ෂි දුන් විලාශය අනුව නිරීක්ෂණය විය".

This observation is not sound or logical when considering the evidence of PW 1 PW 2 or PW5.

The distance from Dikhethepma junction to the house of the accused is not a material fact, according to PW1. His position is that he did not inquire from PW 2 the distance from the vehicle to the Appellant's place during that 3 hours. He says once they received the telephone call from the informant, he left the Dikhethepma junction by the vehicle. It took

about 15 minutes to go to the place where the vehicle was stopped. According to PW5 Samanlatha, after the vehicle was stopped at a certain place, it had taken about 14 or 15 minutes to reach the accused's house by foot.

According to PW2, distance from Dikhethepma junction to the accused's house is about 400 or 500 meters. However, PW1 says it took 15 minutes to go to that place by the vehicle. If it took 15 minutes as described by PW1, speed of the vehicle would be two kilometers per an hour. The inconsistency and unacceptable nature of this evidence was not considered by the learned Trial Judge.

When the police called out the inmates of the house at midnight, the accused woman was sleeping with her young children. Immediately, she took a bag of heroin and went to the rear door and opened it with a sound that could be heard by the police and while she was opening the door, she was carrying the bag in her right hand. This part of testimony is also highly improbable.

In Punkody vs AGCA 11/2005, the test of probability has been discussed at length. Salam J considering a similar situation said, *"The manner in which the raid had taken place and under the circumstances under which the accused has been arrested red-handed as claimed by the prosecution, while the accused lady walking into a trap knowing very well that she was to be trapped, demonstrate the absence of prima-facie case for an offence particularly under section 54(D) of the Poisons, Opium and Dangerous Drugs Act. It is common knowledge person extensively dealing with such prohibited items for financial gain knowing very well the consequences would never have acted in the manner the prosecution claimed that she did act."*

PW1 says that he had brought sealing equipment. When he was confronted with his notes and asked that there was no such entry in this regard, he said that it was a mistake. There were large number of mistakes in the evidence according to the prosecution's witness. All these mistakes were allowed in favour of the prosecution. They have not sealed the substance at the accused's place. PW 1,2 and 3 had given different accounts for not sealing the substance at the Appellant's house. This is compatible with the position of the defence that the heroin was introduced at the PNB.

Then PW1, PW2 and PW5 went to the accused's house on foot; they had left three male officers with weapons in the vehicle. It is difficult to believe PW1 and PW2 with the female officer going for another 15 minutes' walk in the dead of night to an unknown place, leaving behind three male officers with weapons in the vehicle.

Contradictory evidence:

Inward entry made by PW1 at 5.00 a.m. on 22.08.2012 states that he had employed two officers at the front door of the accused's house while he and PW5 went to the rear door. When he was giving evidence, he said that only PW 2 Mahinda was kept at the front door. When he was cross-examined drawing attention to these notes that there were two officers at the front door; he said it was a mistake.

At page 122 of the brief PW1 says as follows:

> "මමත්, කා.පො.කො. සමන්ලතාත් පිටුපස දොර ළඟ. අගුල කැරෙකෙනවා අපි පැහැදිලිව දැක්කා. ඊටපස්සේ අගුල කැරකිලා දොර විවෘත වුනා. දොර විවෘතවෙලා කලුවරයි. කාන්තාවක් අපි දෙන්නා ඉස්සරහින් එළියට එන්න උත්සාහකළා".

At page 193 and 194 on the same point, he says thus:

m%: ඔබ මූලික සාක්ෂි දෙමින් කිව්වා මතකද, ඔබ දොර ලග බලාගෙන ඉන්නකොට අගුල කැරකෙවෙනවා දැක්කා කියල?

උ: අගුල ඇරෙන ශබ්දය ඇහුන කියල සාන්ෂි දුන්නා.

m%: මීට කලින් දින අගුල ඇරෙනව දැක්ක කිව්ව නම් ඒක බොරුද?

උ: නැහැ,මම සටහන් දාල තියෙන්නේ ඇරෙන ශබ්දයක් කියල, ඇරෙන්නේ කැරකිලාතමයි.

m%: ඔබ පැහැදිලිවම මූලික සාක්ෂියේදී සාක්ෂි දීලා කිව්වනේ පිටුපස දොරඑ ළියෙන් බලා ඉද්දි අගුල කැරකෙවෙනවා දැක්කා කියල?

උ: එසේ කියන්න ඇති. කැරකෙන ශබ්දය ඇහුනා අගුල කැරකෙනවා.

At this point, the Trial Judge had stopped further questioning on the same point. Although this is not a significant contradiction, the learned Trial Judge should have allowed the defence to ask why he had said so in examination in chief.

When PW2 and the Informant went to the accused's house, there were no lights on and there was no sign that anyone was inside the house. When the police team went there at midnight, position was the same. According to PW2, the Informant had said that the doors were closed and lights were off, and he believed that the relevant woman may be sleeping inside the house. This cannot be treated as "information". The position of PW1 and PW2 was that the PW2 had left the Informant near the house of the accused to be vigilant and inform the PW2 if she comes home; there was no such "information". It is very difficult to believe this story. The police team had been waiting for more than four hours to receive the above "information" from the 'Informant'.

Unsatisfactory nature of the evidence of PW5:

"PW5 says that when they have been waiting at Dikhethepma junction; the Informant came to that place. When cross examined, she says, she did not see the 'Informant'.

At page 299 of the brief PW1 says:

m%: පැය 19.30 ට දික්හැතැප්ම m%දේශයට ලඟා වෙලා ඊටපසුව මොනවාද කළේ?

උ: රථය නවතා ගෙන හිටියා තොරතුරුකරු පැමිණෙන තෙක්.

m%: තොරතුරුකරු පැමිණියාද?

උ: ඔව්.

m%: ඔහු කීයටද පැමිණියේ?

උ: පැය 20.00 ට පමණ.

m%: තොරතුරුකරු පැමිණි පසුව මොකක්ද සිද්ධ වුනේ?

උ: පො. කො. 9036 මහින්ද නිළධාරියා සමඟ නිවස පරීක්ෂා කිරීමට පිටව ගියා.

m%: කවුද?

උ: තොරතුරුකරු.

m%: කවුරු කවුරුද ගියේ?

උ: පො. කො 9036 මහින්ද සහ තොරතුරුකරු.

Having answered in the above manner in evidence in chief, when cross examined the position was that she didn't see the informant. PW5 was cross examined about the surroundings of the accused's house. All those questions were answered by the PW5 either as 'I did not see' or 'I cannot recall'.

A body search of the appellant was carried out only after she was taken to the PNB. There was no reason to search her bodily at that time when PW1 thought it fit not to search her bodily in her house, when they arrested her. If PW5 Samanlatha was there at the arrest, such a bodily search should have carried out at that time. The evidence with regard to a body search is also contradictory. The return note made at 5.00 a.m. on 22nd August 2012, doesn't say that the accused was bodily searched by Samanlatha. It says that WPS 208 Galpotta had bodily searched the accused. This evidence is compatible with the defence's position that Samanlatha was not a member of the Police team.

PW5 could not say whether the accused's house had windows, whether there was a fence or wall or even a line of trees around the accused's compound. PW5 was not able to say how they entered the compound of the accused. She was not able to say whether there was a gate, whether there was a stile or anything like that.

Certain parts of her evidence are reproduced below:

At page 325 of the brief:

m%: වෙනත් කාන්තා නිළධාරීන් සිටියාද කියල ඔබට මතක නැහැ කියල කිව්වා?

උ: මට මතක නැහැ.

At page 331 of the brief:

m%: මොනවාද වැටලීමක් සඳහා ගෙන යන නඩු භාණ්ඩ මුද්‍රා තැබීමේ උපකරණ?

උ: සියලු දේ මතක නැහැ. ඒදෙක මතකයි.

At page 336 of the brief.

m%: සාක්ෂිකාරිය ජීප්රථයේ ගියා කිව්ව අවස්ථාවේ ලගට ආව කිව්ව ඔත්තුකරු දැක්කාද පැහැදිලිව ඔබගේ මතකයේ නැද්ද ඒ කාරණය?

උ: ඔත්තුකරු සම්බන්ධයෙන් සටහන්වෙලා නැහැ. සටහන් නැතුව මට කියන්න අපහසුයි.

m%: ඒ අවස්ථාවේදී ඔත්තුකරු දුටුවාද, නැද්ද කියලා කියන්න අපහසුයිද?

උ: මට මතක නැහැ. සටහන් නැහැ.

However, in the evidence in chief, she had given a detailed account of PW2 and the Informant.

At page 337 of the brief:

m%: සාක්ෂිකාරිය ඔබ ජීප් රථයේ ගමන් කලා කිව්ව අවස්ථාවේ කොයි ස්ථානයේද ගමන් කලේ?

උ: හරියටම කියන්න අපහසුයි. සටහන් යොදා නැහැ ඒපිළිබදව.

m%: ඔබ උත්තර දෙන ආකාරයට සටහන්වල සඳහන් දේ හැර වෙන කිසි දෙයක් මතක නැහැ කිව්වොත් හරිද?

උ: මම සටහන් වලට අමතරව මතකයේ තියෙන දේවල් මතකයි කියලා කිව්වා.

She could not say at least whether the vehicle was a jeep or a van. According to PW 1 they refueled the vehicle at Narahenpita. PW 5has no recollection of this fact.

At page 340 of the brief

m%: ඒ අවස්ථාවේ රථයෙන් නිළධාරීන් කවුරු හරි බැස්සද?

උ: 9036 මහින්ද නිළධාරියා බැස්සා. තොරතුරුකාරයා පැමිණි අවස්ථාවේදී.

m%: වෙන කිසිම නිළධාරියෙක් බැස්සෙ නැද්ද?

උ: මට මතක නැහැ.

At page 341 of the brief:

Answering whether Mahinda went by vehicle or on foot. She answered, “පයින් ගියාද වාහනයකින් ගියාද කියල කියන්න අපහසුයි”.

Then she was questioned about Mahinda’s return. She says:

m%: ඔහු පැමිණියේ පයින්ද, වාහනය කින්ද?

උ: රථය ලගට ඔහු පැමිණියා. වාහනයකින් ආවද, පයින් ආවද දන්නේ නැහැ.

At page 342 of the brief:

m%: වාහනයේ ගිහිල්ලා නිවසක් ලඟ නතර කලා කිව්වා නේ?

උ: නිවස ලගට ගිහින් නතර කලේ නැහැ, ගොඩක් මෙහායින් නතරකලේ.

m%: කොච්චර විතර දුරකින්ද?

උ: දුර m%මාණය කීමට මට අපහසුයි.

Next question regarding the house of the accused.

At page 344 of the brief:

m%: නිවස මොන වගේ ආකාරයකින් ද තිබුනේ?

උ: නිවස මොන ආකාරයද කියල කියන්න අපහසුයි. රා;S% කාලයේ ඉදිකරමින් පවතින නිවසක්.

m%: දෙමහල්නිවසක්ද, තනිනිවසක්ද, උලු සෙවිලි කරන ලද නිවසක් ද?

උ: ඒක කියන්න අපහසුයි මට මතක නැහැ. පොඩි පඩිපෙලක් තිබුණ වගේ මතකයි. සටහන් වෙලා නැහැ.

At page 345 and 346 of the brief:

m%: නිවසේ වට පිටාව පේන ආකාරයේ එළියක් ඒ අවස්ථාවේදී තිබුනේ නැහැ?

උ: නිවසේ ආලෝකය නිවා දමා තිබුණේ. අවට ආලෝකයෙන් අපට නිවස දර්ශනය වුනා අවශH m%මාණයට. නිවස දර්ශනයට ලක් වෙනව ස්වාමීනි.

m%: ඔබට මතක නැහැ මේ නිවස මොන ආකාරයේ නිවසක්ද කියල?

උ: මට කීමට අපහසුයි ස්වාමීනි.

At page 348 of the brief:

m%: ඔය නිවසේ ජනෙල් තිබුණද?

උ: මට මතක නැහැ.

m%: නිවස පිහිටා තිබෙන ඉඩම වටේට මොනවාද තිබුණේ?

උ: මට මතක නැහැ. නිවාස තිබුණා. ඒ ආලෝකයෙන් තමයි අපි මේ නිවස හඳුනාගත්තේ.

m%: මම අහන්නේ ඔබ මෙම වැටලීමට ගිය නිවසේ, ඉඩම වටේට මොනවාද තිබුණේ?

උ: මට මතක නැහැ.

At page 349 of the brief:

m%: තාප්පයක් තිබුණාද? ගස්වලින් හදපු වැටක් තිබුණාද, කම්බි වැටක් තිබුණාද?

උ: මට මතක නැහැ.

m%: ඔබ ඉඩමට ඇතුලුවුනේ කොහොමද?

උ: මට ඒකත් කියන්න අපහසුයි උතුමාණෙනි.

m%: තමුන් කිව්වානේ ඒ අවස්ථාවේදී නිවස පිටුපස්සට ගියා කියලා?

උ: එහෙමයි උතුමාණනෙනි.

All the above answers do not support the prosecution version but tallies with the position of the defence.

Next question is a very important question, and the answer given to that question creates a serious doubt as to the participation of PW5 in the raid.

m%: ඔබ කියන ආකාරයට ඔය නිවසේ පිටුපස දොර ලගටම යන්න හැකියාවක් තිබුණද?

උ: මට ඒක කියන්න අපහසුයි. නමුත් අපිදොර ඉදිරියෙන් තමයි රැදී සිටියේ.

m%: නිවසේ පිටුපසදොර පිහිටා තිබුණු වට පිටාවේ මොනවාද තිබුනේ?

උ: මට මතක නැහැ.

If she had gone to the back side of the Appellant's house, there is no reason for her to answer in the above manner.

At page 350 of the brief:

m%: නිවස පර්චස් කීයක නිවසක්ද?

උ: මම දන්නේ නැහැ.

m%: ඔබ නිවස පිහිටි ඉඩමට ඇතුල් වුණානේ?

උ: එහෙමයි උතුමාණෙනි.

m%: ඇතුලුවෙලා ගමන් කරන කොටදැක්කාද, සැකකාරියක් ඉන්නවා නම් ඇයට පැනලා යන්න පුලුවන් ආකාරයේ මායිමක් තියෙනවාද කියලා?

උ: මතක නැහැ උතුමාණෙනි.

At page 351 of the brief:

m%: මා ඔබට යෝජනා කරන්නේ, මේ විත්තිකාරියගේ නිවස වටේටම ඇයට කිසිසේත්ම පැනලා යන්න බැරි ආකාරයට තාප්පවලින් වටවී තිබෙන්නේ කියලා?

උ: තාප්ප තිබුණද කියල මට මත නැහැ.

At page 353 of the brief:

m%: ඔබට මතකද මේ නිවසේ පිටුපස දොරට පිටතින් යතුර දාල නැති ඇතුල් වෙන්න පුලුවන් දර ලිපෙන්උයන පොඩි කුස්සියක් තිබුනා කියලා ?

උ: මට මතක නැහැ.

At page 358 last question of the brief:

m%: ඔබ සිටියා කියන අවස්ථාවේදී නඩු භාණ්ඩ කිරලා, මුද්‍රා තැබීමේ කටයුත්තක් සිද්ධ කළාද?

උ: ඒ අවස්ථාවේදී සිදු කලා මට මතක නැහැ.

At this stage, the Defence suggested that she had not taken part in this raid and that is why she cannot recall anything other than what is there in the notes. Answering these questions, she says:

> “මම එය සම්පූර්ණයෙන්ම m%තික්ෂේප කරනව. මොකද මගේ හිතට සංවේදී බවක් දැණුනා. ඇයගේ වැඩිමහල් දරුවා මගේ දරුවගෙ පෙනීමට සමාන පෙනීමක් දැක්ක නිසා, මගේ හිතටත් වේදනාවක් දැණුනා. ඒ අවස්ථාවේදී වැටලීමට සහභාගි වුනේ නැහැ කියන එක මේ අවස්ථාවේදි මම m%තික්ෂේප කරනවා”

m%: මම ඔබට යෝජනා කරන්නේ, ඔය දරුවාගේ වයස සම්බන්ධවත් ඔබ අනිත් නිළධාරීන් යොදා ඇති සටහන් බලල අසතH සාක්ෂියක් දෙනවාකියලා?

උ: මම m%තික්ෂේප කරනව එය.

The learned High Court Judge had highly commended this answer, and he had decided that this witness was a very reliable and truthful witness because without seeing the son of the Appellant she could not be emotional. There is no evidence to show how any of them looked like. The learned High Court Judge has failed to see that this piece of evidence is only an attempt to harmonize her unsatisfactory evidence. The learned High Court Judge has failed to appreciate the unreliable nature of the evidence of PW 5.

The above evidence of the PW 5 creates a reasonable doubt as to whether PW 5 has participated in the raid. The benefit of the doubt should have been given to the appellant.

PW1 or any other officer had not asked a single question from the appellant to ascertain the source of the heroin. The officers not making any attempt to reveal the source of the narcotic is unbelievable. In <u>Chandima vs Attorney General CA 51/2009</u>Her Ladyship Justice Devika Tennakoon held thus;

"This court agrees with the submission of the learned Counsel for the accused-appellant that the evidence does not reveal any attempt made by the officers to ascertain the source of the Narcotics, neither does the evidence reveal whether the accused was even questioned as to the origin of the narcotics in question."

When considering the evidence of PW 1, PW2 and PW5 as a whole, my view is that the evidence is highly unsatisfactory and to convict an accused to a life sentence relying on such evidence is unsafe.

The infirmities in the case for the prosecution considered together with the dock statement made by the appellant creates a reasonable doubt as to the guilt of the appellant for the charges levelled against her as set out in the indictment for which she was found guilty and sentenced to life.

For the reasons set out above, I am of the view that the conviction of the accused-appellant is unsafe and cannot be allowed to stand. Therefore, I set aside the conviction, and the sentence imposed on the accused appellant and acquit her of the charges. Appeal is allowed.

Judge of the Court of Appeal

N. Bandula Karunarathna, J.

I agree.

Judge of the Court of Appeal