

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

In the matter of an appeal against an order of
the High Court under Section 331 of the Code
of Criminal Procedure Act No. 15 of 1979.

CA. No. 385/2018

Ameer Paslee

High Court of

Accused-Appellant

Colombo

Vs.

Case No.7965/2015

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

Respondent

BEFORE : N. Bandula Karunaratna, J.

: R. Gurusinghe, J.

COUNSEL : K. Kugaraja for the Accused-Appellant.

Anoopa de Silva SSC., for the Respondent.

ARGUED ON : 16.03.2021

DECIDED ON : 03.05.2021

R. Gurusinghe, J.

The accused-appellant with another was indicted in the High Court of Colombo for being in possession of and trafficking of 3.05 grams of heroin without any legal excuse on or about 3rd of July 2013 within the jurisdiction of the Court which is an offence under Section 54 (a), (b) and Section 54 (a), (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

The appellant was convicted for the first and second counts and sentenced to life imprisonment. Being aggrieved by the conviction and the sentence, the appellant has preferred this appeal.

The incident happened in the Maligawatta Magistrate's Court premises when the prisoners were brought to that Court and when they were getting into the bus to go back to the prison. The prisoners had to walk between the people who had come to the Court premises. PW2 had felt suspicion about the appellant and when checking him, he passed a small parcel to the second accused who was standing behind him. PW2 had taken the parcel containing heroin. PW2 had informed the Police Post of the Court. Then two suspects and the parcel were taken to the Police Narcotics Bureau and weighed the parcels and sealed the substance.

PW2 has given evidence to the effect of the both accused were checked before they had left prison and when they were checked at the Court premises, they did not have the parcel.

Officers of the Government Analyst had identified 3.05 grams of heroin from the substance. The parcel of heroin was taken into custody from the accused persons by PW2. He then had handed it over to PW1, the OIC of the Maligakanda Police Post. The sealed productions were handed over to the production keeper of Magistrate's Court Police Post. Thereafter the same was handed over to Government Analyst. The inward journey of this case had been proved by the prosecution witnesses. This was not challenged by the defence in this regard. Since the Trial Judge had heard all the evidence of this case, he had the opportunity to see the demeanor and deportment of all the witnesses. There was no reason for the PW1 or PW2 to implicate the appellant falsely. There was no such suggestion to the witnesses.

In the appeal, the only point argued on behalf of the appellant was that the learned Trial Judge had stated in his judgment that the stance taken

by the appellant was not suggested to the witnesses. It is incorrect. The learned Senior State Counsel conceded this fact. However, she pointed out that there was over whelming evidence to prove the prosecution case. The position taken up by the appellant was put to PW2 and he had denied it. The evidence of PW2 stands un-contradicted. Incorrect statement in the judgment had not prejudiced the right of the appellant. The prosecution had proved the charges against the appellant beyond reasonable doubt.

Proviso to the Section 334 (1) of the Criminal Procedure Code states as follows:

334(1). The Court of Appeal on any appeal against conviction on a verdict of a jury shall allow the appeal if it thinks that such verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of any law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

“Provided that the Court may notwithstanding its opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred”.

This provision applied to the non-jury cases as well.

In the case of Mannar Mannan Vs. Republic of Sri Lanka [1990] 1 Sri LR. 280, the Supreme Court held that the question to be asked by the Judges themselves is “whether on the evidence a reasonable jury, properly directed on the standard of proof, would without doubt have convicted the appellant?”

In *M.H.M Lafeer V. The Queen* 74 N.L.R 246 His Lordship Justice H.N.G.Fernando held thus:-

There was thus both misdirection and non-direction on matters concerning the standard of proof. Nevertheless, we are of opinion having regard to the cogent and uncontradicted evidence that a Jury properly directed could not have reasonably returned a more favourable verdict. We therefore affirm the conviction and sentence and dismiss the appeal."

It is not the contention of the appellant that the conviction was unreasonable, or that it cannot be supported having regard to the evidence. In this case, the evidence is cogent, convincing and sufficient to support the conviction. Therefore, the incorrect statement made by the Trial Judge had not occasioned a miscarriage of justice.

In the above circumstances, there is no reason for this Court to interfere with the judgment of the learned Trial Judge. I affirm the conviction and sentence. The appeal is dismissed.

Judge of the Court of Appeal

N. Bandula Karunaratna, J.

I agree.

Judge of the Court of Appeal