

**IN THE COURT OF APPEAL OF THE DEMOCRETIC 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 of 1979, read with
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

Court of Appeal No:

CA/HCC/0280/15

Democratic Socialist Republic of Sri Lanka

COMPLAINANT

Vs.

High Court of Colombo

Case No: HC/6243/12

Gabriel Camilas Pillai *Alias* Noor Mohomad

Mohomad Paaris

ACCUSED

AND NOW BETWEEN

Gabriel Camilas Pillai *Alias* Noor Mohomad

Mohomad Paaris

ACCUSED-APPELLANT

Vs.

The Attorney General

Attorney General's Department

Colombo 12

RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.

Counsel : Shavindra Fernando, P.C. with Natasha Wijesinghe
for the Accused Appellant
: Rohantha Abeysooriya, P.C., ASG for the Respondent

Argued on : 01-06-2022

Written Submissions : 21-11-2017 (By the Accused-Appellant)
: 21-08-2018 (By the Respondent)

Decided on : 21-07-2022

Sampath B Abayakoon, J.

The accused appellant (hereinafter referred to as the appellant) filed this appeal on being aggrieved by the conviction and the sentence of him by the learned High Court Judge of Colombo.

The appellant was indicted before the High Court of Colombo for having in his possession, 313.5 grams of Diacetylmorphine, commonly known as Heroin, on 13th November 2010, an offence punishable in terms of the Poisons Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

He was also charged for trafficking the above-mentioned quantity of Heroin at the same time and at the same transaction.

After trial, he was found guilty as charged by the learned High Court Judge of Colombo of his judgement dated 26th March 2014 and was sentenced to death.

Facts in Brief

PW-01 Krishantha Ruwan Kumara was a Sub-Inspector of Police attached to the Police Narcotics Bureau (PNB). While on duty on 13th November 2010, he has been informed by PS 27378 Priyantha, who was also an officer attached to the PNB that he received an information of a Heroin trafficking incident in the Mount Lavinia area, which he has taken down in his pocket notebook. PW-01 has inspected the pocket notebook and has found that the note has been to the effect that a person will be arriving near De Vos Hotel Mount Lavinia to handover Heroin to another person. After placing his initials on the notebook and obtaining the relevant authority to conduct a raid from his higher officials, PW-01 has left the PNB at around 9.30 a.m. accompanied by 14 other police officers. Out of them, two had been in their uniform while others were in civilian clothing. They have used a jeep belonging to the PNB and a private van belonging to one of the Sub-Inspectors who participated in the raid. They have gone up to the Dehiwala Town Council building and have met the personal informant of PS Priyantha. PW-01 has been informed that a person called Camilas will be coming near the De Vos Hotel with a parcel of Heroin to hand it over to another person. He has asked the police team to wait near the petrol shed situated near the Mount Lavinia Court house until he provides details about the time the said person will be arriving. PW-01 and his team has waited near the petrol shed for nearly five hours expecting further information about the suspect. At 15.30 hours, the informant has returned and has informed that the person will come between 4-5 p.m., and that he will be able to point out the person to them.

After informing his team to act on his instructions, PW-01 accompanied by the earlier mentioned PS Priyantha and the informant, has walked across the road and passing the De Vos Hotel gone up to De Seram Road junction and has waited expecting the suspect to arrive. Around 16.15 hours, he has observed a three-wheeler numbered 204/3410 arriving in front of the hotel and a well-built person alighting from the three-wheeler. He has observed that person paying money to the three-wheeler driver and at that point, the informant has informed the

witness that it was Camilas, the person whom they were expecting. PW-01 has also observed the person carrying a blue-coloured plastic bag in his right hand. PW-01 and PS Priyantha has confronted the person and when informed of their identity, the said person has attempted to escape, however, after struggling with him for about 10 minutes, PW-01 has been able to handcuff him. After taking charge of the bag the arrested suspect was carrying, he has found two other parcels with brown-coloured gum tape inside the earlier mentioned blue-coloured bag. After piercing the two parcels, he has found that the two parcels having a brown-coloured powder. Upon inspection, he has identified the said brown-coloured powder as Heroin due to his experience as a police officer. After that, PW-01 has arrested the said person Camilas Pillai alias Noor Mohomad Paaris at 6.30 p.m. for the offence of having Heroin in his possession.

At the trial, he has identified the appellant as the person he arrested on that day. After getting down the other officers to the place of the arrest, the three-wheeler and the driver with whom the appellant arrived has been searched and questioned, and after being satisfied that the three-wheeler driver had no connection to the appellant but has only come on a regular hire, he has been released after recording a statement from him. PW-01 has taken the Heroin recovered to his custody along with the appellant. He has also recovered several items belonging to the appellant from his possession. Subsequently, after questioning the appellant, he and his team of officers have gone to a place near S.D. Jayasinghe playground and had waited till 6.40 a.m. on the following day, expecting another person to arrive. However, no one has come and PW-01 and the raiding party, has returned to the PNB at 6.40 in the morning.

At the PNB, he has marked the first parcel as KP 1 and the second parcel as KP 2. When weighed, KP 1 had a weight of 513 grams including the bag. KP 2 had 514 grams inclusive of the bag. PW-01 has taken necessary steps to parcel and seal the productions. After keeping the productions in his personal locker at the PNB, the productions have been handed over to the production officer of the PNB

at 8.10 a.m. on the 15th November 2010. At the trial, the witness has marked the relevant productions and has identified the productions accordingly.

Under cross-examination, it has been the position of the appellant that he was in fact arrested on the 11th and kept in police custody until 13th November, which the witness has denied. It has been suggested that the appellant was in fact arrested at a place called Jayalath Restaurant situated in Ja-ela while being with another person. It has also been suggested to the witness that the appellant and the other person was taken to a house situated within the Katunayake Airport Complex and detained there, which the witness had denied. The witness has been questioned in detail into the manner the police officers enter notes in their information books. It has been suggested to the witness that he and his team detected a large quantity of Heroin at a house in Puttalam and introduced a part of it to the appellant and that PW-01 is acting maliciously towards the appellant. PW-01 has denied any knowledge of the appellant being an informant which led to the discovery of items belonging to the LTTE, and has denied that he conspired with any politician in order to fix the appellant to the crime.

The earlier mentioned PS 27378 Priyantha (PW-02) was retired from the police service at the time he gave evidence. His evidence has been similar to that of the PW-01 and there are no contradictions or omissions in his evidence. Under cross-examination it has been his evidence that it was PW-01 who inspected the two bags found in the possession of the appellant and it never came into his possession during the raid. It was also his position that it was the other officers who came to the scene subsequently, searched the three-wheeler and questioned the driver, therefore, he is unable to give evidence in that regard. However, he has admitted that the three-wheeler was released then and there. It has been his evidence that it was he who received the first information and after noting it in his pocket notebook, revealed the information to PW-01 which led to this raid. He too has denied the suggestion put forward on behalf of the appellant that he was in fact arrested on the 11th and the Heroin was introduced to him. He has been questioned whether there was an incident of recovery of 11 Kg. and 870

grams of Hashish and arrest of two persons in the Puttalam area for which he has answered, stating since he has conducted large number of detections is unable to say anything without looking at his notes in this regard. Questions have been put to the witness which appears to suggest that part of the drugs found in the earlier mentioned detection has been introduced to the appellant which the witness has denied. It was also his evidence that he and the PW-01 had to struggle with the appellant before he was arrested.

In this action, the prosecution has led evidence to prove the chain of custody of the productions as well as the evidence of the Government Analyst to prove the quantity of Heroin sent for their analysis. The Government Analyst in evidence has confirmed that in the parcel marked KP1 and in the parcel marked KP 2, she identified 153.1 grams and 160.4 grams of pure Heroin respectively.

At the end of the prosecution case, learned High Court Judge, after considering the evidence placed before the Court has decided to call for a defence from the appellant. Accordingly, the appellant has chosen to make an unsworn statement from the dock. It has been his position that the evidence that he was arrested in Mount Lavinia and detained at the S.D.S. Jayasinghe grounds on that night was complete falsehood. It was his position that he was arrested on the 11th of November 2010 while being at the Jayalath Holiday Resort in Ja-ela. According to him, he was arrested along with one Nelson and was detained at a house near the airport, and the said Nelson was released on the following day and he was taken to Puttalam area in the night of the 13th. In Puttalam, three persons were arrested along with drugs was his position. It has been stated by him that he was never arrested with drugs but it was his belief that part of the drugs found in the possession of the persons who were arrested in Puttalam was introduced to him. He has also stated that he was instrumental in finding a large haul of arms and because of that, a politician had to face difficulties, and that also may be a reason for this incident.

It has been his position that, he hired the three-wheeler from Wellawatte and he had Rs. 3000/- in his possession and the driver of the three-wheeler was also arrested and he is unaware of what has happened to him. He has stated further, that although the driver has been listed as PW-14 in the indictment, he was not called to give evidence and if called, it is his belief that he will speak the truth.

At the conclusion of the evidence and after hearing the submissions of the parties, the judgement of this action has been pronounced on 26th March 2014, where the learned High Court Judge found the appellant guilty for both the counts referred against the appellant. He was sentenced to death accordingly.

The Grounds of Appeal: -

At the hearing of his appeal, the learned President's Counsel formulated the following grounds of appeal for the consideration of the Court.

1. Whether reasonable doubt arises with regard to the way the PW-01 and PW-02 gave evidence in relation to the first information received.
2. The subsequent steps taken after the receipt of the first information as stated by PW-01 and 02, does it cause a doubt in the prosecution case.
3. The versions given by PW-01 and 02 with regard to the arrest of the appellant are contradictory and would it cause a reasonable doubt in the case of the prosecution.
4. *Inter se* and *per se* contradictions between PW-01 and 02 were not considered in the correct perspective by the learned High Court Judge.
5. There was a discrepancy of 35.4 grams on the gross weight of the Heroin alleged to have been found in the possession of the appellant when weighed at the PNB and at the Government Analyst Department, which has not been explained.
6. The improbabilities of the time taken and the explanation given by the witnesses in relation to the raid that happened at 4.30 p.m. and returning to the PNB only at 6.30 a.m. on the following day.

7. The failure of the learned High Court Judge to properly evaluate the evidence, and misdirection with regard to the dock statement of the appellant.

8. The learned High Court Judge in determining the dock statement of the appellant has placed an unreasonable and unfair burden on the appellant on his failure to lead evidence that could have been led by the appellant.

9. The non-arrest and the release of the three-wheeler driver who was named as the 14th witness in the indictment, where he could have been the only independent witness in this case. In addition, the failure by the police to take down his address when recording a statement from him, but only his NIC number. Can the learned High Court Judge attribute this failure to the appellant on the basis that he did not take any further steps to call the said witness.

10. Based on the judgement, a question arises whether a fair trial was held against the appellant.

Consideration of the Grounds of Appeal

In his submissions before the Court, it was the view of the learned President's Counsel that, since the witnesses called by the prosecution in order to prove the raid are highly trained officers and the tendency is to have no infirmities, such evidence needs to be carefully scrutinized by the Court, for which I am in total agreement.

In this appeal, there had been no challenge to the chain of custody of the productions. It appears from the grounds of appeals urged, that the learned President's Counsel is mostly relying on the evidence of PW-01 and 02 in relation to the actual detection and the arrest of the appellant and the legal principles that should be considered in order to find an accused guilty to a charge of this nature.

With the above in mind, I will now proceed to consider the grounds of appeal urged in detail, while giving consideration to the submissions made in that regard by the learned President's Counsel as well as the learned Additional Solicitor General (ASG) on behalf of the respondent.

The 1st and the 2nd Grounds of Appeal: -

Since the above two grounds of appeal are interrelated, they will be considered together. The learned President's Counsel challenged the credibility of the 1st information on the basis that PW-01 has given contradictory evidence as to what he was informed by PW-02, and the actions they took after the receipt of the information. It was the submission of the learned ASG, that the evidence in that regard has not caused any doubt in the prosecution case.

PW-01, the officer who led the team of police officers to conduct the raid has stated in his evidence (at page 37 of the Appeal Brief), that he received the information from PS Priyantha about trafficking of Heroin in the Mount Lavinia area. After stating so, he has clarified further, stating that PS Priyantha has recorded that information in his pocket notebook on page 198. He has stated in detail that the information had been to the effect that a person is coming near the Mount De Vos Hotel in Mount Lavinia to handover Heroin to some other person. The evidence of PW-02 PS 27378 Priyantha confirms that it was the very first information received by him, and he informed that to PW-01 who was his superior officer.

I find no basis to conclude that the evidence of PW-01 and 02 are contradictory to each other with regard to the first information received. It is clear from the evidence of PW-01 that, what he has stated initially was a general statement of the information provided to him by PW-02. Later he has narrated the information received by him in detail, where it has been stated that after reading the information recorded in the pocket notebook of PW-02, he placed his signature on it. I find no basis whatsoever to conclude that a reasonable doubt has been created with regard to the 1st information received by PW-02. According to the

evidence led at the trial, after receiving the information, PW-01 has arranged a team of 15 police officers to conduct the raid and they have travelled in two vehicles in order to conduct the raid. I am unable to agree with the contention that this is not the probable behaviour if the intention was to arrest a single person. The decision-making process of an officer who decides to conduct a raid will depend on the assessment made by that particular officer as to his requirements in conducting the raid. It was the argument of the learned President's Counsel that, if PW-01 was accompanied by 14 other officers, why only the PW-01 and 02 was instrumental in arresting the appellant. It was the evidence, they had to arrest him after a struggle of about 10 minutes, which in his view was highly suspicious evidence with regard to the arrest of the appellant.

According to the evidence of PW-01, he has instructed the other police officers and the vehicles to wait some distance away from where the informant has informed that the person will come to deliver the drugs, and only him and PW-02 went and waited in the vicinity of the hotel expecting the suspect to arrive. There again, it relates to the decision-making process of the officer who conducted the raid. It may be possible that he did not want to arouse suspicion of their activity by calling an unnecessary number of officers to the actual place of the raid. Similarly, the officers waiting in their vehicles for over five hours for the conduct of the raid, and taking the appellant when he was arrested around 4.30 p.m. to a playground, and waiting there until the next morning are matters that can happen in the ordinary course of events when a group of trained police officers conduct such a raid. PW-01 has explained as to why they decided to wait until the following morning, explaining that they were waiting for a call from another person to the appellant, which did not materialize.

Be that as it may, the witnesses have not been confronted on these matters when they gave evidence. Had it been done, there may be more explanations than what is available in evidence if the appellant or his Counsel for that matter, wanted the witnesses to answer such concerns. I am of the view that, without confronting the witnesses in a proper manner when they gave evidence, it is not

open to argue that their evidence has created a doubt in the prosecution case. Hence, I find no merit in the above considered grounds of appeal.

The 3rd Ground of Appeal: -

The reason to argue that there are contradictory positions in the way the appellant was arrested is on the basis of what has been stated by the witnesses as to what happened just before the appellant was confronted by them. PW-01 in his evidence has stated that he saw the appellant paid the three-wheeler driver, and thereafter, he and PW-02 went near him. It was the evidence of PW-02 that the appellant was confronted while he was in the process of paying money to the three-wheel driver. I find no contradiction in that regard as argued. It is clear, that if one reads the evidence in its totality, both the witnesses had said the same thing in different ways.

A question has been posed as to why they did not call other officers who took part in the raid to assist them if they had to struggle with the appellant for over 10 minutes before he was handcuffed and arrested. I am unable to find a reason to conclude that it has created a reasonable doubt with regard to the arrest, as it may be possible for trained police officers to confront one person in the manner they have stated in their evidence. I find nothing unusual in summoning the rest of the raiding party only after the arrest was made.

The 4th Ground of Appeal: -

I am unable to agree with the contention that there are contradictions *inter se* and *per se* of the evidence of PW-01 and 02 that should have been considered as materially relevant in this case. The evidence in relation to the earlier mentioned grounds of appeal cannot be considered contradictions as stated above. I find no basis to conclude that the learned High Court Judge has failed to consider any material contradictions in the manner that should have been considered.

The 5th Ground of Appeal: -

The discrepancies between the gross weight as stated by the PW-01 and the Government Analyst are concerned, I find that the evidence of the Government Analyst has provided a clear insight in that regard. PW-01 has weighed the two parcels which he has been marked as KP1 and KP2 for the purposes of identification. It is clear from the evidence, that the weighing of the two parcels had been inclusive of the covers and not only the brown-coloured powder found inside. When weighed under that condition, parcel KP1 had shown a weight of 513 grams, and KP2 had a weight of 514 grams.

Evidence of the Government Analyst who was the PW-16 of this case has been clear that any weighing done under laboratory conditions is much more accurate than that of a weighing done under normal conditions. According to the evidence of the Government Analyst, the two parcels received, marked KP1 and KP2 were parcels covered in polythene and gum tape. Once weighed, after separating the content from the wrapping material, the gross quantity of the powder found in KP1 has been weighed at 496.7 grams and KP2 at 494.8 grams. The discrepancy in each of the weights given when the productions were handed over to the Government Analysts has been well explained. It has been stated that when weighed separately, each of the two parcels packing material had a weight of around 17 grams, which goes on to show that there was no discrepancy as to the weight of the Heroin found as claimed. I find no basis for the considered ground of appeal.

The 6th Ground of Appeal: -

As I have stated earlier, the purpose of this raid has been to nab any person or persons involved in the Heroin trade as established by the evidence of the witnesses. The officers who conducted the raid are officers from the PNB who are specialized in conducting raids of this nature. PW-01 has explained as to the reasons why he and his team of officers waited until 6.30 in the following morning at a nearby playground. He has explained that he was expecting another

person to call the appellant. It is clear that their intention had been to nab that person as well, if it was possible. Therefore, I am unable to agree that it was improbable for the officers of the PNB, to wait such a long period expecting another arrest or arrival of a suspect, given the facts and the circumstances of the case as revealed in evidence.

The 7th and the 8th Grounds of Appeal: -

After summarizing the evidence of the prosecution witnesses and after analyzing the said witnesses, it is clear from the judgement that the learned High Court Judge has drawn his attention to the defence taken by the appellant. At page 67 of the judgement, the learned High Court Judge has reproduced the dock statement made by the appellant in his entity and has considered whether his statement and the stand taken by him when the prosecution witnesses gave evidence, has created a reasonable doubt on the case of the prosecution or has given a reasonable explanation as to the evidence against him. I find that this is the correct approach that should be followed when considering the defence of an accused person in a criminal trial. I am unable to agree that the learned High Court Judge has imposed an additional burden on the appellant, by expecting the appellant to prove certain facts. It is clear, the views expressed by the learned High Court Judge was not on that basis, but in order to find whether the version of events as narrated by the appellant has created a doubt in the prosecution case and nothing more.

It needs to be noted that the stand of the appellant, when PW-01 gave his evidence and cross-examined was on the basis that a part of a large haul of Heroin detected by PW-01 and his team was introduced to him. However, when PW-02 was giving evidence, the position taken on behalf of the appellant had been that a large haul of Hashish had been recovered and was introduced among several persons. When making a dock statement, the appellant has stated without specifying, that it may be the part of the drugs detected in Puttalam that was introduced to him.

This shows that the stand of the appellant had not been consistent. The documents produced marked V1 and V2 when the appellant made his dock statement, have never been produced when the relevant witnesses gave evidence. Therefore, the said documents have no value as rightly considered by the learned High Court Judge. It is after considering all these factors in its totality, the learned High Court Judge has concluded that the defence put forward by the appellant has not created any doubt as to the cogent and trustworthy evidence placed before the Court by the prosecution nor has it provided a reasonable explanation.

Another matter that needs to be considered in relation to the consideration of the dock statement is the fact that the appellant has made two contradictory statements in his dock statement, as viewed correctly by the learned High Court Judge. In the first part of his statement, he has taken up the stand that he was arrested on the 11th, taken to Puttalam, and part of the drugs taken from another party was introduced to him. However, in the second part of his statement, he has stated that *“I came with the three-wheeler driver on a hire from Wellawatte and I had Rs. 3000/- with me. The three-wheeler driver was also arrested and I do not know what happened to him. He was the person who has been named as PW-14 in the indictment but he was not called to give evidence, if called he may speak the truth.”*

By the said statement, he has virtually accepted that he was arrested in the manner stated by the prosecution witnesses.

Although the learned President’s Counsel made an attempt in his submission to show that in fact, he was referring to his arrest at a restaurant in Puttalam, I find no basis to agree. I am of the view that, the conclusion in that regard reached by the learned High Court Judge was the only conclusion that can be reached in relation to the dock statement of the appellant.

The 9th Ground of Appeal: -

The learned President's Counsel questioned the procedure adopted by PW-01 in releasing the three-wheeler driver in whose three-wheeler the appellant is alleged to have arrived. It was his contention that although the said three-wheeler driver who should have been the only independent witness to the incident has been named as the 14th witness for the prosecution, his address has not been mentioned on the list of witnesses. It was his view that the learned High Court Judge was wrong to attribute the failure of the prosecution to disclose the correct address of the witness to the appellant by saying that he has failed to take any further steps to call him as a witness for himself if he so desired. It is clear from the evidence that PW-01 and PW-02 has determined that the three-wheeler driver has no connection to the person who came in the three-wheeler, because according to their evidence, they have seen the appellant paying the hire for the three-wheeler before his arrest. Besides that, it is in evidence that, his statement has been recorded before his release. I find that it is not unusual when a detection of this nature is made, not to arrest persons who clearly appear not involved in the crime. However, I find that there is a lapse on the part of the officer who recorded the statement of the three-wheeler driver as admitted correctly by the learned ASG. However, I am unable to agree that it has created a doubt in the prosecution case, as a prosecuting Counsel is not bound to call all the witnesses named in the indictment. There is no basis to believe that the prosecution deliberately withheld the evidence of the three-wheeler driver.

In the case of **King vs. Chalo Singho 72 NLR 269**, it was held:

“Prosecuting counsel is not bound to call all the witnesses’ named on the back of the indictment or tender them for cross-examination. In exceptional circumstances, the presiding judge may ask the prosecuting counsel to call such a witness or may call him as a witness of the court. There is no misdirection by the judge when he omits to refer to the presumption under section 114 (f) of the Evidence Ordinance in cases which the Crown does not

call or tender for cross-examination on the request of the prisoner's counsel, a witness whose name appears at the back of the indictment and whom the prisoner's counsel has himself an opportunity of calling."

However, in the case under consideration, the learned Counsel who represented the appellant has in fact obtained summons to call witness number 14. It has not been possible due to the fact that no address has been given with regard to him. Although it was not correct for the learned High Court Judge to comment that the appellant has not taken any further steps to call the said witness on his behalf, what needs to be looked at here is whether the non-calling of the said witnesses can lead to the presumption in terms of section 114 (f) of the Evidence Ordinance.

Section 114 (f) of the Evidence Ordinance reads as follows;

"That evidence could be and is not produced would, if produced, be unfavourable to the persons who withholds it." [Emphasis added]

In this matter, the evidence elicited has clearly shown that the three-wheeler driver has had no connection with the detection of Heroin. Therefore, he has been promptly released. Even if called for the prosecution, he will not be in a position to give evidence other than to the effect that his vehicle was hired by the appellant and the appellant was arrested by the police.

In his dock statement, even the appellant has stated that the three-wheeler driver went with him on a hire from Wellawatte area and he was also arrested but is unaware of what happened to him thereafter. In my view, this goes on to establish that non-calling of the PW-14 either by the prosecution or by the defence has not caused any prejudice to either party.

It was the position of the learned President's Counsel that, the prosecution has called only two officers to prove the detection in order to avoid contradictions and omissions being made if more witnesses were to be called. I am of the view that, since the deciding of how many witnesses the prosecution needs to call in

order to prove a case is up to the prosecution, the appellant cannot argue that non-calling of more witnesses should be considered in favour of him until he can show that it has led to a situation where a fair trial has not been afforded to him. I do not find any such situation in this action. Therefore, I find no merit in the considered ground of appeal either.

The 10th Ground of Appeal: -

It appears that the contention of the learned President's Counsel that a fair trial has not been afforded to the appellant is based on his stand with regard to the earlier considered grounds of appeal. I do not find any reason to accept that no fair trial has been afforded to the appellant. After the conclusion of the evidence led by the prosecution and the defence, the learned High Court Judge has well considered the prosecution evidence and the dock statement made by the appellant, and has analyzed the same with a clear understanding of the relevant law applicable. He has given clear reasons for his findings, for which I have no reason to disagree with. As he should have, he has considered the totality of the evidence and has determined that the prosecution has proved the case beyond reasonable doubt. Hence, I find no merit in the argument that a fair trial has not been afforded to the appellant.

For the aforementioned reasons, the appeal of the appellant is hereby dismissed, as I find no merit in the appeal, the conviction and the sentence affirmed.

Judge of the Court of Appeal

P Kumararatnam, J.

I agree.

Judge of the Court of Appeal