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

In the matter of an Appeal made under 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 Case No.
CA/HCC/ 0423/2018
High Court of Colombo
Case No. HC/743/2001

Ranasinghe Arachchige Karunawansha

Accused-Appellant

vs.

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

Complainant-Respondent

BEFORE	:	**Sampath B. Abayakoon, J.** **P. Kumararatnam, J.**
COUNSEL	:	**Chathura Amaratunga for the Appellant. Harippriya Jayasundara, ASG with Nishanth Nagaratnam, SC for the Respondent.**
ARGUED ON	:	**08/09/2022**
DECIDED ON	:	**29/09/2022**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred as the Appellant) was indicted by the Attorney General under Sections 54(A) (d) and 54(A) (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for the possession and trafficking of 8.2 grams of Heroin (Diacetylmorphine) on 11th July 1996 in the High Court of Colombo.

After the trial, the Appellant was found guilty on both counts and the learned High Court Judge of Colombo imposed death sentence on the Appellant on 27th of November, 2018.

Being aggrieved by the aforesaid conviction and the sentence the Appellant preferred this appeal to this Court.

The learned Counsel for the Appellant informed this Court that the Appellant had given consent for this matter to be argued in his absence due to the restrictions of the Covid 19 pandemic. During the argument he was connected via Zoom platform from prison.

The Appellant has raised the following appeal grounds in this case.

1. Whether the item of evidence is not sufficient to prove the prosecution's case against the appellant beyond reasonable doubt.
2. Whether rejection of evidence of the Appellant is wrong and principles governing the evaluation of a dock statement.
3. Considering all the circumstances whether imposing the death sentence is justifiable in this case.

In this case PW2 PS 17182 had received a particular information from a private informant that a bald-headed person wearing a green coloured sarong and a shirt was packeting heroin at No.75/50, Pettiwatte, Thotalanga inside which happens to be his resident. The informant had stated that the TV antenna has been hanging broken in front of the house, which was a sign for easy identification of the house.

Upon receiving this information, PW1 IP/Ajith of the Foreshore Police Station had organized the raid. Having selected eight other officers, they had left the police station around 19.15 hours after completing all formalities. Before reaching the location, at a convenient point the team hired three three-wheelers to go the location. When all reached the location as per the information, they had identified the house which matched the information that the TV antenna was hanging broken. As per the information, the identity of the Appellant was established and he was arrested immediately. Upon examination a parcel in the knot of the sarong was discovered. The parcel contained a large number of aluminium packets with brown coloured powder. As the substances which had been recovered from his possession reacted for Heroin (Diacetylmorphine), he was arrested and his statement was recorded immediately. Based on his statement two more parcels had been recovered. One of the parcels was recovered behind the Buddha statue which had been kept in the siting room of the Appellant. Another parcel was found concealed between two feet gap of rear wall of the next house and the boundary wall of the Appellant's house.

All three parcels contained 350 packets of heroin and the same were sealed at the point by PW01. Rs.2500/- also recovered from the Appellant. All the productions were kept in the custody of PW1 until he and the team had reached the police station. At the police station the production was entered in the production register under No. 146/96 and handed over the same and the Appellant to the reserve police officer at 21.30 hours. As there was no proper facility to weigh the production in the Foreshore Police Station, PW1

had taken the production and the Appellant to the Police Narcotics Bureau on the following day. At the Police Narcotic Bureau, the contents of the all 350 packets were weighed together and the sum of weight of the substance was observed to be 13.520 grams and the production was sealed again in front of the Appellant at the Police Narcotic Bureau. After sealing, the production was handed over to PW9 PS 10895 Gunasena under production No.148 and 149. Production No.148/96 contained the substances which reacted for Heroin and Production No.149/96 contained the 350 metal foils and the cash Rs.2500/-.

PW2, SI/Herath who was a member of the raiding team, was called to corroborate the evidence given by PW1.

After closing the case for the prosecution, as the evidence led by the prosecution warranted the presence of a case to be answered by the Appellant, the learned High Court Judge called for the defence. The Appellant made a dock statement and closed the case for the defence.

In all criminal cases the burden always rests upon the shoulder of the prosecution to prove the case beyond reasonable doubt. The Appellant is not required to prove his innocence but if he decides to plead a general or special exception of the Penal Code, then the Appellant has a duty of establishing that the case of the Appellant comes within such exceptions. This burden is imposed under Section 105 of the Evidence Ordinance.

In the first ground of appeal the learned Counsel for the Appellant contended whether the item of evidence is not sufficient to prove the prosecution's case against the appellant beyond reasonable doubt.

The witnesses called by the prosecution had given cogent and consistence evidence with regard to the raid and recovery of the productions. The learned High Court Judge had very correctly analysed the evidence in its correct perspective to reach his conclusion. When examining the evidence presented by both parties, it revealed that the defence had not challenged the evidence

pertaining to the raid and recovery of productions. The only material fact challenged by the defence was whether the heroin was sealed properly and handed over to the reserve in a form of an envelope and parcel or whether as two envelopes. PW1 has given evidence with regard to the detection, transporting, weighing and handing over the productions to the reserve police officers. The evidence is re-produced below:

(Page No. 119 of the brief.)

උ : සැකකරුගේ ඉනේ තිබි සොයාගත්ත පාර්සල් එකත්, නිවසේ බුද්ධ රූපයේ තිබි සොයා ගත්ත පාර්සල් එකත්, නිවසේ පිටුපස බිත්තියේ තිබි සොයාගත්ත පාර්සල් එකත්, එම පාර්සල් 03 හිම අඩංගු හෙරොයින් මම ගණන් කිරීමක් කලා ස්වාමිණි.

ප්‍ර : ඒ කියන්නේ මහත්මයාගේ සාක්ෂියේ සඳහන් ආකාරයට ඊයම් පැකට් ද ඒ ගණන් කලේ ?

උ : එහෙමයි ස්වාමිණි

ප්‍ර : මහත්මයා අතේ ඒ වනකොට හෙරොයින් පාර්සල් 03 ක් තියනවා ?

උ : එහෙමයි ස්වාමිණි

ප්‍ර : මහත්මයාගේ සාක්ෂියට අනුව ඒවා සෙලෝපේන් බෑග්වල තමයි දාලා තිබුනේ ?

උ : එහෙමයි ස්වාමිණි

ප්‍ර : ඒ සෙලෝපේන් බෑග් 03 හිම පැකට් කීයක් අඩංගු වුනාද ?

උ : 350 ක් ස්වාමිණි.

ප්‍ර : මහත්මයා එම පැකට් 350 ට මොකක්ද කලේ ?

උ : පැකට් 350 සෙලෝපේන් බෑග් එකකට බහා මා භාරයේ තබා ගත්තා ස්වාමිණි.

(Page No. 123 of the brief)

ප්‍ර : මහත්මයා කිව්වනේ බෑග් 03 ක් ගත්තා කියලා ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : ඉතිරි බෑග් වලට මොකද කලේ ?

උ : එක බෑග් එකට සියලුම පැකට් බහා එක් බෑගයක් අරගෙන ආවා.

(Pages No. 124 – 125 of the brief)

ප්‍ර : ඊට පස්සේ මහත්මයා කිව්වා එම හෙරොයින්වලට මොකක්ද කලේ කියලා ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : මුලින්ම මොකක්ද කලේ ?

උ : හෙරොයින් අඩංගු සෙලෝපෙන් බෑග් එක ලිපිකවරයක ඇතුලත් කරලා සැකකරුගේ වම් මාපට ඇඟිලි සළකුණින් සහ පොලිස් මුද්‍රාවෙන් මුද්‍රා තැබුවා ස්වාමිණි. සැකකරු සන්තකයේ තිබූ මුදල් ලිපිකවරයක ඇතුලත් කරලා සැකකරුගේ වම් මාපට ඇඟිලි සළකුණ සහ පොලිස් මුද්‍රාවෙන් මුද්‍රා තැබුවා.

ප්‍ර : එහෙම මුද්‍රා කරන අවස්ථාවේදි සැකකරු කොහේද සිටියේ ?

උ : මා ළඟ සිටියේ ස්වාමිණි මා අසල සිටියේ

ප්‍ර : ඒ අනුව මහත්මයා අදාල නඩු භාණ්ඩ ලිපිකවර දෙකකට දැම්මා ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : ඒ ලිපිකවර දෙකේ සැකකරුගේ වම් මාපට ඇඟිලි මුද්‍රාවත් පොලිස් මුද්‍රාවත් තැබුවා ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : ඉන් පසු ඒ නඩු භාණ්ඩ වලට මොකක්ද කලේ ?

උ : උප සේවයේ යෙදී සිටි නිළධාරියාට සැකකරු සමඟ නඩු භාණ්ඩ මා විසින් භාර දුන්නා.

ප්‍ර : එම අවස්ථාවේදි එම නඩු භාණ්ඩ පී. ආර් ගත කිරීමක් කලාද ?

උ : එහෙමයි ස්වාමිණි එම නඩු භාණ්ඩ පොලිස් නඩු බඩු කුවිතාන්සි ලේඛනයේ අංක 146 යටතේ ඇතුලත් කරලා උපසේවයේ රාජකාරියේ යෙදී සිටි නිළධාරියාට භාර දුන්නා.

(Pages No. 125, 126 – 127 of the brief)

ප්‍ර : ඉන් පසුව මහත්මයා කිව්වා පසුවද මීට අදාලව රාජකාරියක් කලා කිව්වා ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : ඒ කවදාද ?

උ : 96.07.12

ප්‍ර : මොකක්ද කල රාජකාරිය ?

උ : මෙම සැකකරු සන්තකයේ තිබූ හෙරොයින් පාර්සල් කිරා මැන බැලීම සඳහා මත්ද්‍රව්‍ය නාශක කාර්යාංශයට සැකකරු සමඟ ගමන් කලා.

ප්‍ර : ඒ කිරා මැන බැලීම මහත්මයාගේ පොලිස් ස්ථානයේ කලේ නැත්තේ ඇයි ?

උ : ස්වාමිණි ඊට තරාදි සහ අවශ්‍ය පහසුකම් නොමැති කම නිසා

ප්‍ර : මත්ද්‍රව්‍ය කාර්යාංශයට ගියා කිව්වනේ ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : කවුරු කවුරු ද ගියේ ?

උ : ස්වාමිණි සැකකරුත් මමත්, පොලිස් කොස්තාපල් 6063 යන නිළධාරියත් සමඟ මහ සැරයන් මුතුකුමාරණ නිළධාරියා පදවපු අංක 61-7750 දරන ජීප් රථයෙන් ගමන් කලා ස්වාමිණි.

ප්‍ර : පිටවීමේ සටහන් යෙදුවාද ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : පැය කීයටද මහත්මයලා වෙරබඩ පොලිසියෙන් මත්ද්‍රව්‍ය කාර්යාංශයට පිටත් වුනේ ?

උ : පැය 10.10 ට

ප්‍ර : මත්ද්‍රව්‍ය කාර්යාංශයට ගියේ කීයටද ?

උ : මත්ද්‍රව්‍ය කාර්යාංශයට ගමන් කරලා නැවත පැය 11.40 ට ස්ථානයට පැමිණියා

ප්‍ර : ඒ කාර්ය අතරතුර මහත්මයා මෙම නඩු භාණ්ඩ කිරා මැන බැලීමක් කලා ?

උ : එහෙමයි ස්වාමිණි.

ප්‍ර : මත්ද්‍රව්‍ය කාර්යාංශයට ගිහිල්ලා මුලින්ම ගත් පියවර මොකක්ද ?

උ : ස්වාමිණි උපසේවක නිළධාරියා භාරයේ තමයි අදාල තරාදිය තියෙන්නේ ඉන් පසු අපි පැමිණි කාරණය උපසේවක නිලධාරියාට දැනුම් දුන්නා. ඉන් පසු උපසේවක නිලධාරියා විසින් මා වෙත තරාදිය ඉදිරිපත් කලා. ඉදිරිපත් කිරීමෙන් පසු මා රැගෙන ගිය 146 නඩු බඩු කුවිතාන්සියට අදාල මුද්‍රා තබන ලද හෙරොයින් අඩංගු ලිපිකවර විවෘත කර එහි ඇතුලත් කර තිබෙන හෙරොයින් පැකට් 350 සියල්ලම දිගහැර එම හෙරොයින්

සැකකරුගේ වම් මාපට ඇඟිලි තීන්ත සලකුණ සහ ඔහුගේ අත්සන සහ දිනය ද මාගේ අත්සන සහ දිනයත් යෙදූ සුදු පාට කොළයකට දමලා කිරා මැන බැලුවා ස්වාමිණි

ප්‍ර : මහත්මයා මත්ද්‍රව්‍ය කාර්‍යාංශයට ගෙන ගියේ 146 යටතේ පී. ආර්. ගත කරන ලද ලිපිකවර දෙකෙන් එක් ලිපිකවරයක් පමණද ?

උ : නැහැ ස්වාමිණි 02 ම අරන් ගියා

The above re-produced portions of the evidence of PW1 clearly demonstrates that the prosecution has very well established the probability of occurrence of the chain of events from the detection and its reach up to the Government Analyst Department. It also shows the accuracy and the consistency of the investigating officer in this raid. A successful raid will certainly strengthen the prosecution, especially in a drug related case.

Bradford Smith, Law Commission, WWW.smithlitigation.com 2014 states that:

> *"Good police note taking is important for two reasons. First, it invariably bolsters the credibility of the police officer giving evidence. Second, it promotes the proper administration of criminal justice by facilitating the proof of facts. Conversely, sloppy police note-taking can be devastating to the credibility of the officer giving evidence and seriously, it not fatally, undermine the successful prosecution of the case".*

Probability and consistency of the evidence given by prosecution witnesses plays a crucial role in criminal prosecution. In this case, the evidence adduced by the witnesses of the prosecution about conducting the raid, recovery of production, sealing and its journey up to Government Analyst Department clearly shows high probability of the guilt of the Appellant.

In **Girija Prasad (dead) by LRs. V. State of M.P.,** AIR [2007] SCW 5589 (2007) 7 SCC 625, it was observed:

> *"It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence".*

As a result, it is wrong to assert that the prosecution has failed to present adequate evidence to establish this case beyond reasonable doubts. Therefore, the ground urged under number one has no merit.

In the second ground of appeal the Learned Counsel for the Appellant contends that the rejection of evidence of the Appellant is wrong and the learned High Court Judge had deviated from principles governing the evaluation of a dock statement.

In an appeal it is the profound duty of the Appellate Court to consider all the evidence presented by both parties in the trial. If the evidence presented by the prosecution is cogent and passes all the tests, the court has no difficulty whatsoever to act on the same and affirm the conviction of the Appellant.

But, if the prosecution fails to adduce cogent and consistent evidence, then the court has no option but to award the benefit of the doubt to the Appellant.

Further, in an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. Therefore, examining the evidence presented by the Appellant, as well as discovering and assessing materials favourable to the Appellant, must thus be thoroughly considered before the court may reach a final determination.

The Learned High Court Judge in his judgment had considered the dock statement and correctly discussed the stance the Appellant had taken up in his dock statement. Hence, as the stances taken up by the Appellant in his dock statement does not override the prosecution case, the Learned High Court Judge had relied upon the evidence of prosecution as reliable and come to his decision that the Appellant is guilty to the charges levelled against him. Hence, the Appellant is not successful in his second ground.

In the final ground of appeal, the Learned Counsel for the Appellant without prejudice to the 1st and 2nd ground of appeal, invited this court's indulgence to convert the death sentence to a life imprisonment considering the age of the Appellant. According to the Counsel, the Appellant was 46 years old when he was arrested on 11/07/1996. Hence, he is 62 years old now. The Learned Additional Solicitor General made no submission opposing to this ground which has been raised first time during the hearing of this appeal.

Given his age and the quantity of pure Heroin involved, I consider it is appropriate to consider the third ground of appeal in the affirmative.

For the reasons stated above, I conclude that the charges in the indictment against the Appellant have been proved beyond reasonable doubt by the

prosecution. I uphold the decision reached by the Learned High Court Judge of Colombo on 27/11/2018.

Further, for the reasons stated in the third ground of appeal, I direct that the death sentence be changed to life imprisonment, effective from the date of conviction.

Accordingly, the appeal is dismissed subject to the above variation in the sentence.

The Registrar of this Court is directed to send a copy of this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL