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 No:
CA/HCC/0196/2020
High Court of Colombo
Case No: HC/448/2019

Thuppahige Nuwan Sanjeewa

Accused-Appellant

vs.

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

Complainant-Respondent

BEFORE   :   **Sampath B. Abayakoon, J.**
                                        P. Kumararatnam, J.

COUNSEL   :   **Ruwan S. Jayawardena for the Appellant.**
                                        Janaka Bandara, DSG for the Respondent.

ARGUED ON : **26/10/2022**

DECIDED ON : **01/12/2022**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred as the Appellant) was indicted by the Attorney General in the High Court of Colombo under Sections 54A (d) and 54A (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984 for the Trafficking and Possession of respectively 29.711 grams of Heroin (Diacetylmorphine) on 16th August 2018.

After trial, the Appellant was found guilty on both counts and the Learned High Court Judge of Colombo has sentenced him to death on the 10th of September 2020.

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

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic. During the argument he has been connected via Zoom platform from prison.

The Learned Counsel for the Appellant had raised following appeal grounds.

1. That the learned trial Judge has failed to evaluate the deficiencies in the evidence of PW1, PW4 and thereby has overlooked the weaknesses in the prosecution case.
2. That the learned trial Judge had failed to consider the improbabilities of the version of the prosecution.
3. That the learned trial Judge has failed to consider the evidence with regard to the chain of custody in correct perspective.
4. The rejection of the defence was contrary to law.
5. The prosecution had led bad character evidence during the trial.

At the trial, PW1 SI/Chrishantha, PW4 PC 67490 Janaka, PW6 PC 45781 Priyantha, PW08 PS 17894 Athauda, PW14 PS 17260 Bandara, PW15 PC 44076 Bandula, PW16 PS 7060 Premachandra, and PW18 PC 71271 Karunaratna had given evidence on behalf of the prosecution and marked production P1-11. The Government Analyst Report was admitted under Section 420 of the Code of Criminal Procedure Act. The Appellant gave evidence from witness box and closed the case.

Background of the case

According to PW1, he was attached to the Anti-Corruption Unit which functioned under the Harbour Police Station. On 15/08/2018, while he was engaged in his usual daily official duties, he had patrolled to Kotahena, Modera, Dematagoda and Thotalanga with a team of police officers to detect illegal substances. At about 12.00 midnight, his team had come to Hingurukade Junction and stopped their van facing to Kelanitissa Power House. He had used a white coloured van for this purpose.

While they remained in the van, they had noticed a person clad in white coloured T-shirt and blue coloured trouser coming towards Hingurukade Junction from the direction of Bandaranayeke round aboard approaching

them. As his movements seemed to be suspicious, two officers had got down from the van and went across the road and apprehended the person before he could run after seen them. At that time the person had something in his hands and had tried to hide it. When he was interrogated, the person had very reluctantly handed over a small parcel which had been wrapped in a red coloured grocery cover to PW1.

When the said grocery cover was checked by PW1 some brown coloured substance was found which he identified as Heroin relying on his experience in dealing with narcotics. The Appellant was taken into custody immediately for further investigation. As the information given by the Appellant, the police team had waited there anticipating a person named Rupasinghe. As he did not show up the team had gone to Peliyagoda to check the house of said Rupasinghe. After checking the said house, the police team had gone to Grandpass Police Station to weigh the production recovered from the Appellant. The said production was in the custody of PW2, PC 30570 Bandara after the detection. At the Grandpass Police Station the production was weighed in front of the Appellant and the weight of the substance had been 220 grams. The said production was sealed with the thumb impression of the Appellant and handed over to reserve police officer PC 45781 Priyantha of the Grandpass Police Station.

PW4, PC 67490 Weeratunga had corroborated the evidence of PW1 properly.

The prosecution had called PW6, PC 45781 Priyantha, PW8, PS 17894 Athauda, PW14, PS 17260 Bandara, PW15, PC 44076 Wijebandara and PW16, PS 7060 Premachandra regarding handling of the production of this case before it was taken to the Government Analyst Department.

PW18, PC 71271 Karunaratna had taken the production to the Government Analyst Department and marked the receipt as P10 in the trial.

At the trial, both parties had agreed to admit the Government Analyst Report under Section 420 of the Code of Criminal Procedure Act. Hence, it was marked as P11 by the prosecution.

According to the Government Analyst Report, 26.711 grams of pure Heroin (diacetylmorphine) had been detected from the substance which was subjected for analysis.

When the prosecution had closed the case after leading the prosecution witnesses mentioned above, the defence was called, and the Appellant had given evidence from the witness box.

As the appeal grounds raised under 01 and 02 are interconnected, both would be considered together in the judgment.

The Counsel for the Appellant contended that the Learned High Court Judge had failed to evaluate the contradictory evidence of PW1 and PW4 with regard to weighing and sealing of production allegedly found in the possession of the Appellant.

Considering the evidence given by PW1 and PW4 with regard to sealing of production, both had confirmed that the suspected substance first had been put into a shopping cover which had been taken along with the police team when they left for the raid. The shopping cover which was used by the police weighed about 400 milligrams. The total weight of the substance showed 220.400 grams with the cover. Hence the net weight recovered from the Appellant is 220 grams which had been properly sealed and handed over to the reserve police officer of the Grandpass Police Station. The witnesses PW1 and PW4 had not contradicted regarding evidence pertains to sealing of the production in this case.

According to PW1, on that day the police team had been assigned to detect narcotic around Colombo city. Accordingly, they had gone around Colombo city and had come to Hingurukade Junction at about 12.00 midnight and

arrested the Appellant along with Heroin. This evidence had been properly corroborated by PW4.

Although PW1 had put notes that the team had taken sealing equipment along with them, but the sealing was done at the Grandpass Police Station using the sealing equipment available there. The Counsel for the Appellant contended that not taking sealing equipment by PW1 creates a doubt regarding the detection of Heroin from the Appellant. This contention cannot be accepted as PW1 had used sealing equipment which was available at the Grandpass Police Station.

After the arrest of the Appellant, the police team had gone to Peliyagoda to check a house. As they were not successful, PW1 had not put detailed notes and did not include the address of the house. Although the Learned Counsel for the Appellant argues that not taking down the address of the house is a serious lapse on part of the investigation, I conclude it is not a serious lapse as contended by the Counsel for the Appellant.

The grounds of appeal 01 and 02 have no merit as the Learned High Court Judge had very extensively discussed the evidence of PW1 and PW4 and accepted as trustworthy.

In the third ground of appeal, the Learned Counsel for the Appellant contends that the learned trial Judge has failed to consider the evidence with regard to the chain of custody in its correct perspective.

In this case the prosecution had called all the police officers who handled production of this case until it reached the Government Analyst Department. PW06 the reserve duty officer had first received the production from PW1 on 16/08/2018 and marked it as PR 2988/2018. Thereafter, PW08, PW14, PW15 and PW16 who functioned as reserve duty officers had taken charge of the production time to time. All such times, necessary entries had been put in the relevant book. Finally, PW18 had received the production pertains to this case and had taken it to the Government Analyst Department on

23/08/2018 and marked the receipt as P10 in the trial. The defence had cross examined all the witnesses who took charge of the production but could not raise any doubt on their evidence. Further, the defence had admitted the Government Analyst Report as an admission and marked it without calling the Government Analyst in the trial. The Government Analyst confirmed in his report that he received the production in a sealed envelope. Hence no adverse evidence had been led on the production which had been sent to Government Analyst Department. I conclude that the learned trial Judge has considered the evidence with regard to the chain of custody in its correct perspective. Hence this ground of appeal also sans any merit.

As the Learned Counsel for the Appellant had not contested the fourth ground of appeal, now I consider the final ground of appeal hereafter. In his final ground of appeal, the Appellant contends that the prosecution had led bad character evidence during the trial.

But on perusal of the entire court record and the judgment nowhere found any evidence of bad character in nature had creeped into the proceedings. The Learned Trial Judge nowhere put question from bench to impeach the character of the Appellant. The Learned Trial Judge after considering all the evidence presented by both parties had come to a decision to accept the prosecution version as credible and rejected the defence case. Hence, it is not true that bad character evidence had creeped into the court proceedings. Therefore, this ground of appeal also has no merit.

In every criminal case the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person. In a case of this nature, the prosecution needs to not only prove the case beyond reasonable doubt with cogent and believable evidence sans any contradictions or omissions but should also ensure that the arrest, detection, weighing and sending the substance for analysis is conducted with accordance to due process which will otherwise affect the root of the case.

In this case, the Learned High Court Judge had accurately analysed and considered the evidence presented by both parties and arrived at a proper finding.

Considering all the evidence presented during the trial, I conclude that the prosecution has proven the case beyond reasonable doubt. I further conclude that this is not an appropriate case in which to interfere with the decision of the Learned High Court Judge of Colombo dated 10/09/2020.

Hence, the appeal is dismissed.

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

<u>SAMPATH B. ABAYAKOON, J.</u>

I agree.

JUDGE OF THE COURT OF APPEAL