
**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.

Hewa Halpawannage Aruna
Shantha Pathinayake

**Court of Appeal Case No.
CA/HCC/ 0259/2019
High Court of Colombo
Case No. HC/7712/2014**

Accused-Appellant

vs.

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

Complainant-Respondent

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

COUNSEL : **Shanaka Ranasinghe, PC with Niroshan
Mihindukulasuriya, Anushika Ranasinghe
and Tharakee Manchanayake for the
Appellant.
Maheshika Silva, DSG for the Respondent.**

ARGUED ON : **15/11/2022**

DECIDED ON : **17/01/2023**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General under Sections 54(A) (b) and 54(A) (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for the Trafficking and Possession respectively of 3.47 grams of Heroin on the 21st of August 2012 in the High Court of Colombo.

The Appellant was found guilty on both counts and at the conclusion of the trial and the Learned High Court Judge of Colombo has imposed a sentence of life imprisonment on him on the 21st of March 2019. At the trial the prosecution had called six witnesses and marked productions P1-14 in support of their case. The Appellant had given evidence from the witness box and called his father as defence witness.

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 for the matter to be argued in his absence due to the Covid 19 pandemic. During the argument he was connected via Zoom platform from prison.

On behalf of the Appellant four Grounds of Appeal are raised.

1. Credibility of the First Information.
2. The Learned High Court Judge failed to consider that the prosecution did not place any evidence with regard to alleged surveillance carried out by officers in civil clothes that the alleged information given by the said officers regarding the Appellant which created a reasonable doubt in the prosecution case.
3. Probability of alleged detection.
4. Has the Learned High Court Judge failed to consider and analyse that the prosecution failed to prove beyond reasonable doubt that the production alleged to have been recovered from the Appellant was the production that was analysed by the Government Analyst.

Facts of the case *albeit* briefly are as follows.

PW1 IP/ Athula Manohara was attached to Pugoda Special Task Force Camp when this raid was conducted. On the date of the raid, he had received reliable information from one of his personal informants which he had noted down in his pocket notebook. According to the information, the Appellant used to traffic Heroin to Ratmalana, Macdonald's Rajagiriya and Banadaranayakapura in his three-wheeler bearing No. WP/HY-7641. It was further informed that if they proceed to Maliban Junction, Ratmalana the Appellant could be apprehended. Acting on that information a raid was organized after his senior officers were duly informed. PW1 with 04 police officers attired in uniform while PW2 with 04 other police officers were in civil dress. After completing all the formalities, the team set out for the raid from Pugoda STF Camp. As the vehicle which was used to set out from Pugoda Camp was not in good condition, the team had proceeded to Gonahena STF Camp to change the vehicle. At the Gonahena STF Camp, PW1 had directed PW2, PW5, PW6 and PW8 to proceed to Macdonald's Rajagiriya by public transport and his team had proceeded to Maliban Junction, Ratmalana in the vehicle. At about 14:00 hours he had received a call from the informant

who had informed that the Appellant was not coming to Ratmalana on that day, but was going to Macdonald's Rajagiriya area for the same business. Having passed this information to PW2, PW1 and his team had proceeded to Rajagiriya MacDonalds and remained there for the raid. At about 15:40 hours, PW2 had informed that the said three-wheeler had come to the colour light junction indicating to turn towards Rajagiriya. Immediately, he had directed PW3 who was in uniform to halt the three-wheeler bearing No. WP/HY-7641. Accordingly, they were able to stop the vehicle in front of MacDonalds, Rajagiriya. Thereafter, the Appellant was subjected to a body check and a parcel with brown coloured powder was recovered from his trouser pocket. As the brown coloured substance reacted for heroin, he was arrested along with his three-wheeler. A passenger, later who was identified as the Appellant's father was also arrested and brought to the Police Narcotic Bureau for further investigations. The substance was weighed to about 22.520 grams. After sealing, the production was handed over to Police Narcotic Bureau under Production No. 134/2012. Thereafter, the production was sent to the Government Analyst Department for analysis. According to the Government Analyst Report 3.47 grams of pure Heroin (Diacetylmorphine) had been detected in the parcel.

The evidence given by PW1 has been properly corroborated by the other police witnesses called by the prosecution.

After the closure of the prosecution case, the defence was called as the Learned High Court Judge had observed that the prosecution had presented a prima facie case against the Appellant and the Appellant had opted to give evidence from the witness box and had proceeded to call a witness.

In the first ground of appeal the Appellant raised concern regarding the credibility of the First Information. He further argued that the Learned Trial Judge had failed to consider the contradictory nature of the evidence between PW1 and PW4 with regard to the 1st information that was alleged to have been received and the doubt created by the said evidence.

PW1, after receiving the information pertaining to this case had taken down the same in his pocket notebook immediately. In his evidence at page 62 of the brief he had confirmed this. The said evidence is re-produced below:

(Page 62 of the brief.)

- ප්‍ර : තොරතුරුකරු ලබා දුන්හ තොරතුරු මොකක්ද කියලා ගරු අධිකරණයට කියන්න ?
- උ : මට උදේ කතා කරලා දැනුම් දුන්නා කොළඹ මැරෙසින් බන්ධනාගාරයේ පිටිපස්සේ තියෙන මැරෙසින් පාරේ ඉඳලා දිනපතාම වගේ හෙරොයින් ජාවාරම් කරන පුද්ගලයෙක් ඉන්නවා අරුණ ශාන්ත කියලා. ඒ පුද්ගලයා රත්මලාන ප්‍රදේශයටත්, බොරැල්ල මැක්ඩොනල්ඩ් බණ්ඩාරනායකපුර පැත්තටත් කඩු බෙදා හැරීම, ජාවාරම් කිරීම සිදු කරනවා කියලා ඔහුගේ ත්‍රිවිල් රටයෙන් ගොස්. ඒ ත්‍රිවිල් රටයේ අංකය දුන්නා. WPHY 7641 කළු පැහැති ත්‍රිරෝද රටයක් කියලා. ඒකෙන් රත්මලාන ප්‍රදේශයට, මැලිබන් හන්දියට මැලිබන් එක ඉදිරිපිටට ගියොත් ත්‍රිවිල් එක අනිවාර්යයෙන් අල්ල ගන්න පුළුවන් කියලා දැනුම් දීමක් කළා.

After this information, he had prepared two teams for the raid. One was in uniform and the other was in civil attire. The uniformed group headed by PW1 had left for Ratmalana and the other group was sent to Rajagiriya near MacDonalds for the raid. PW1 had received a call from the informant about the movement of the Appellant around Rajagiriya area only on that day. Hence his team also rushed to Rajagiriya near MacDonalds and awaited the arrival of the Appellant.

PW4, who was in the uniformed team under the command of PW1 had very clearly corroborated the evidence given by PW1. The relevant portion of the evidence is re-produced below:

(Pages 135-136 of the brief.)

- *ප්‍ර : මොකක් හරි බලාපොරොත්තුවෙන් සිටියා ද ඒ අවස්ථාවේදී ?
- උ : මනෝහර මහත්මයාගේ පුද්ගලික ඔත්තකරු දැනුම් දීමක් කරලා තිබ්බා එම මාර්ගයේ රත්මලාන ප්‍රදේශයට පැමිණෙයි කියලා ඒ අනුව නමයි අපි වාහනයේ තුල සිට නිරීක්ෂණ රාජකාරි සිදු කළේ ස්වාමිණි.

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- ප්‍ර : දැන් එහෙම වාහනය තුළ සිට නිරීක්ෂණ රාජකාරී කරන විට මහත්මයාලාට තොරතුරක් ලැබුණාද ?
- උ : ඊට පස්සේ ආපසු මනෝහර මහත්මයාට දුරකතන ඇමතුමක් ආවා.
- ප්‍ර : ඒ කියට විතරද ?
- උ : දුරකතන ඇමතුමක් ආවේ පැය 13.45 ට පමණ.
- ප්‍ර : කාගෙන්ද ඒ දුරකතන ඇමතුම ආවේ ?
- උ : දුරකතන ඇමතුම ආවාට පස්සේ මනෝහර මහත්මයා දැනුම් දීමක් කළා මහත්මයාගේ පුද්ගලික ඔත්තුකරුගෙන් තමයි ඒ දුරකතන ඇමතුම ආවේ කියලා.
- ප්‍ර : ඉන් අනතුරුව ඒ පුද්ගලික තොරතුරුකරුගෙන් මනෝහර පොලිස් පරීක්ෂකවරයාට ලැබුණා තොරතුර ගැන ඔබලාව දැනුවත් කළා ද?
- උ : එහෙමයි ස්වාමිණි.
- ප්‍ර : එහිදී මොකක්ද ඔබලාට කිව්වේ ?
- උ : මනෝහර මහත්මයා දැනුම් දීමක් කළා අද දින අදාල ජාවාරම සිද්ධ වෙන්නේ රාජගිරිය මැක්ඩොනල්ඩ් අවන්හල ඉදිරිපිටදී කියලා ස්වාමිණි.
- ප්‍ර : ඒ තොරතුර ලැබීමත් සමඟ ඔබ සහ පොලිස් පරීක්ෂක මනෝහර මහත්මයා ඇතුළු පිරිස මොකක්ද ගත්ත පියවර ?
- උ : අපිට පණිවිඩේ ආවත් සමඟම අපි කැබ් රථයෙන් රාජගිරිය මැක්ඩොනල්ඩ් අවන්හල ආසන්නයට පැමිණියා ස්වාමිණි.
- ප්‍ර : ඒ කියට පමණද රාජගිරිය මැක්ඩොනල්ඩ් අවන්හල ආසන්නයට පැමිණියේ ?
- උ : අපි පැය 15.40 වන විට රාජගිරිය මැක්ඩොනල්ඩ් අවන්හල ආසන්නයට පැමිණියා ස්වාමිණි.
- ප්‍ර : ඉන් පසුව කුමක්ද සිද්ධ කළේ ?
- උ : මැක්ඩොනල්ඩ් අවන්හල ආසන්නයේ තිබෙනවා අතුරු පාරක් ඒ පාරේ සිට ප්‍රධාන මාර්ගයට මුහුණලා කැබ් රථය නැවැත්වුවා. නවත්වලා මනෝහර මහත්මයා දුරකතනයෙන් උපදෙස් ලබාදන්නා සිවිල් ඇඳුමින් සිටි කණ්ඩායමට. ඒ අනුව අපි වාහනය නවත්වලා ඒ ආසන්නයේ රැඳී සිටියා ස්වාමිණි.

Although, PW1 and PW4 were subjected for a lengthy cross-examination, their evidence very clearly reflected how the information was received and the raid conducted. The Learned High Court Judge after proper deliberation of their evidence, concluded that the evidence given by PW1 and PW4 is clear, consistent and unambiguous. Therefore, accepted them as truthful witnesses. As the credibility of the information had not been shaken in the trial, the Appellant is not successful in his first ground of appeal.

In the second ground of appeal, the Learned President's Counsel contended that the Learned High Court Judge failed to consider that the prosecution did not place any evidence with regard to the alleged surveillance carried out by officers in civil clothes.

From the very inception, PW1 had given consistent evidence as to how he planned the raid. No ambiguity or inconsistency was highlighted either in his evidence or from PW4. Planning and the execution of the raid was entirely dependent on the prerogative of the officers who participated in the raid.

Presence of civil clothes officers at the place of arrest was considered by the Learned High Court Judge in his judgment. At paragraph 12.0 and 13.0 the Learned High Court Judge has stated as follows:

(Pages 275-276 of the brief.)

12.0 මැරැණියාගේ එක ආසන්නයේ උප පොලිස් පරීක්ෂක මදුර සහ නවත් නිලධාරීන් කිහිප දෙනෙකු ඒ වන විට රැඳී සිට ඇත. මෙම දැනුම් දීම අනුව පැ.සා. 01 ද ඔහු සමඟ සිටි නිලධාරීන් සමඟ මැරැණියාගේ එක ආසන්නයට පැමිණ තිබේ.

13.0 මැරැණියාගේ එක ආසන්නයේ පොලිස් නිලධාරීන් ස්ථානගත වී සිටියේ බොරැල්ලේ කාසල් එක පැත්තෙන් එන විට හමුවෙන කල් ලයිට් එන ආසන්නයේ බව පැ.සා. 01 ප්‍රකාශ කරයි. පැය 15:40 ට 15:45 ට පමණ HY – 7641 දරණ ත්‍රිරෝද රථය කල් ලයිට් එක ළඟ නතර කර තිබෙන බවට උප පොලිස් පරීක්ෂක මදුර විසින් දැනුම් දීමක් කළ බව පැ.සා 01 ප්‍රකාශ කරයි. ඉන් පසුව මාර්ග බාධක යොදා ත්‍රිරෝද රථය නවතා ගත් ආකාරය පිළිබඳව පැ.සා 01 විස්තර කර තිබේ.

Hence it is incorrect to argue that evidence pertaining to the presence of civil clothes officers at the place of arrest has escaped the consideration of the Learned High Court. Therefore, this ground also lacks any merit.

In the third ground of appeal, the Learned President's Counsel contends that the probability of the version of the police officers create a reasonable doubt as happening of some events were highly improbable.

As stated above, planning and execution are entirely on the prerogative of the officer who heads the raid. All decisions have to be taken accordingly, to suit the situation. Hence it is not highly improbable for officers travelling in an unmarked vehicle on the same route not accompanying officers in civil clothes to travel in the same vehicle up to a certain point.

PW1, in his evidence very clearly stated how he meticulously planned the raid. One group travelling in a vehicle and the other using public transport are the strategies which had been adopted by the raiding team. Not travelling in one vehicle nor taking different routes to reach their targets cannot be considered unusual in a police raid. This ground of appeal is also sans any merit as the actual happening of the raid is not doubtful.

In the final ground of appeal, the Learned President's Counsel contended that the Learned High Court Judge failed to consider and analyse that the prosecution failed to prove beyond reasonable doubt that the production alleged to have been recovered from the Appellant was the production that was analysed by the Government Analyst.

In several judicial decisions delivered both by the Apex Court and the Court of Appeal of our jurisdiction, one salient point stressed frequently is that the inward journey of the productions in drugs related cases plays a decisive role in the final outcome of the matter. If the inward journey evidence creates a doubt, the failure of the prosecution case is inevitable. Hence, the chain of the inward journey of the production plays a major role in matters related to

drugs. The inward journey begins with the detection, sealing, custody and the conclusion by reaching the Government Analyst Department.

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 does not only need to prove the case beyond reasonable doubt but also ensure, with cogent evidence that the inward journey of the production has not been disturbed at the all-material point.

In the case of **Mohamed Nimnaz V. Attorney General** CA/95/94 the court held:

“A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences relation to drugs, we are of the view that the prosecutor should not be given a second chance to fill the gaps of badly handled prosecutions where the identity of the good analysis for examination has to be proved beyond reasonable doubt. A prosecutor should take pains to ensure that the chain of events pertaining to the productions that had been taken charge from the Appellant from the time it was taken into custody to the time it reaches the Government Analyst and comes back to the court should be established”.

According to PW1, the detection was done upon an information received beforehand. The Heroin was recovered from the left side pocket of the pair of shorts worn by the Appellant. After recovering the substance, the Appellant was taken to the Police Narcotic Bureau for further investigations. Until such time the production was in the custody of PW1. After arriving at the Police Narcotic Bureau, the substance was weighed using an electronic scale. The total weight including the grocery cover showed a weight of 22.520 grams. The weighing and sealing were done in front of the Appellant. PW1 had used his personal seal to seal the production and also obtained the fingerprint of the Appellant to seal the production. The sealed productions were handed

over to the reserve police officer Sgt/27632 Nalin of Police Narcotic Bureau after marking as PR 134/2012. The three-wheeler No. WP/HY-7641 which was driven by the Appellant at the time of his arrest was also handed over after marking as PR 135/12.

The Appellant was produced before the Learned Magistrate of Maligakanda. The production was taken to the Government Analyst Department by PW10 IP/Rajakaruna of Police Narcotic Bureau on 24/08/2012.

The prosecution led evidence that production PR 134/2012 was duly kept under the care of reserve police officers until it reached the Government Analyst Department. All reserve officers were called to give evidence to confirm that the production pertaining to this case had reached the Government Analyst Department without any break in the chain of custody.

PW11, the Assistant Government Analyst, Vajira Jayasekera confirmed that the production pertaining to this case had reached her department with all seals intact.

The Learned President's Counsel contended that although PW10 had received a sealed envelope which he had handed over to the Government Analyst Department on 24/08/2012, but in her evidence PW11, the Assistant Government Analyst testified that the Government Analyst Department had received two sealed parcels from Police Narcotics Bureau.

Although PW11 in her evidence at page 164 answered that two sealed envelopes had been received by the Government Analyst Department, the receipt which had been marked as P14 through this witness clearly mentioned that only one parcel had been received by the Government Analyst. This is further confirmed in the Government Analyst Report prepared and submitted by PW11. Hence, it is very clear that the Government Analyst Department had only received one sealed envelope for analysis. Handing over and receipt of the production by the Government

Analyst had been considered by the Learned High court Judge in the judgment.

The Learned President's Counsel further argued that there was a difference in the weight mentioned on the envelope and the recording of the weight by the Government Analyst Department.

According to PW11, on the top of the envelope which had been received by the Government Analyst Department the weight of the substance had been mentioned as 22.520 grams. But the weighing result of the Government Analyst showed 23.02 grams. The Learned Presidents' Counsel for the Appellant argues that this discrepancy is a substantial fact that which certainly affects the outcome of the case. As the difference of weight is only about 500 milligrams excess compared to the weight mentioned by the Police Narcotics Bureau, I don't think this difference could create a vacuum in the prosecution case. Further, the defence had not put a single question to PW11 when she gave evidence in the High Court regarding the weight difference. The Learned High Court had very clearly considered this weight issue and come to a correct finding. The relevant portion of the judgment is reproduced below:

(Pages 281-282 of the brief.)

25.0 පැමිණිල්ලේ 11 වන සාක්ෂිකරු වන රජයේ ජ්‍යෙෂ්ඨ සහකාර රස පරීක්ෂකවරියගේ සාක්ෂි අනුව රස පරීක්ෂක දෙපාර්තමේන්තුව වෙත ලැබුණු හෙරොයින් අඩංගු පාර්සලයේ බර ග්‍රෑම් 23.02 ක් බව සඳහන් කරයි. එහි තිබූ ශුද්ධ හෙරොයින් ප්‍රමාණය ග්‍රෑම් 3.47 ක් බවද සනාථ කරයි. රස පරීක්ෂකවරිය වෙත ලැබුණු භාණ්ඩ වශයෙන් පැ. 02, පැ. 03, පැ. 05, පැ. 06, පැ. 04 සහ පැ. 07 තුළ ඇති පැ. 08 හඳුනා ගෙන තිබේ. රස පරීක්ෂක දෙපාර්තමේන්තුව වෙත භාණ්ඩ ලැබීම සනාථ කරමින් අදාළ සංදේශය පැ. 14 ලෙස ලකුණු කර ඇති අතර රස පරීක්ෂක වාර්තාව පැ. 15 ලෙස ලකුණු කරමින් ඉදිරිපත් කර තිබේ. රස පරීක්ෂකවරියගෙන් කිසිදු හරස් ප්‍රශ්නයක් අසා නැති බැවින් එම සාක්ෂිය අභියෝගයට ලක් නොවූ සාක්ෂියකි. ඒ අනුව රස පරීක්ෂක වෙත යවන ලද භාණ්ඩවල ශුද්ධ හෙරොයින් ග්‍රෑම් 3.47 ක් අන්තර්ගතව තිබූ බව සාධාරණ සැකයෙන් තොරව සනාථ වී තිබේ. චූදිත සන්නකයේ තිබී අන් අඩංගුවට ගත් හෙරොයින් කිරා බැලීමේදී බර ග්‍රෑම් 22 මිලිග්‍රෑම් 520 ක් බව පැ. සා 01 පවසා තිබේ. රස පරීක්ෂක දෙපාර්තමේන්තුවේදී එහි බර කිරීමේදී බර ග්‍රෑම් 23.02 ක් වේ. එකී භාණ්ඩවල බරෙහි එම සුළු වෙනස මන්දව්‍ය කාර්යාංශයේ

තරුදියෙන් කිරීමේදී සහ රස පරීක්ෂක දෙපාර්තමේන්තුවේ ඉතා නිරවද්‍ය පාඩාංක ලබා ගත හැකි තරුදියකින් කිරන විට සිදු විය හැකි ෂුළු වෙනසක් බව පැහැදිලිය. ඒ අනුව චූදිත සන්නකයේ තිබී අත් අඩංගුවට ගත් හෙරොයින් සහිත පාර්සලයම කිසිදු බාහිර මැදිහත්වීමකින් තොරව රස පරීක්ෂක වෙත ලැබී ඇති බව එකී බර ප්‍රමාණය අනුව තීරණය කළ හැකිය.

Next the Learned President's Counsel pointed out the difference in the number of seals as stated by PW1 and PW11 when they gave evidence. According to PW1, he had placed seven seals on the parcels which had been sent to the Government Analyst for analysis. Although PW11, the Assistant Government Analyst initially said that she had noticed six seals on the parcel but when she identified the production in open court admitted that 07 seals were on the parcel. The relevant portion of her evidence is re-produced below:

Page 177 of the brief.

ප්‍ර : මෙම ලිපි කවරයේ දැනට මුද්‍රා කීයක් පේන්න තිබෙනවා ද මහත්මිය ?

උ : මුද්‍රා 07 ක් තිබෙනවා.

ප්‍ර : ඒ අනුව ඒ සම්බන්ධයෙන් ඔබ පැහැදිලිව සටහන් යොදා තිබෙනවා ද?

උ : එහෙමයි ස්වාමිණි.

පැ.03 හඳුනා ගනී.

In this regard the Learned High Court Judge, in his judgment, had correctly pointed out that the defence had failed to put relevant questions to the witnesses who gave evidence regarding the production of the case. Hence, it is quite clear that the learned High Court Judge had correctly considered evidence pertaining to the chain of production in its correct perspective. Hence, this ground also has no merit.

In this case evidence pertaining to the detection of Heroin from the Appellant is clear, cogent and without any contradiction or omission. The evidence presented by the prosecution is not challenged at any material point. Hence no fault had occurred at any stage of the trial.

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 21/03/2019.

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

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE COURT OF APPEAL