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

In the matter of an appeal made in terms of Section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No:
HCC 133/2018

Vs.

Madawita Vithana Arachchilage Dinesh Indika

Accused

HC Colombo Case No.
HC/8113/2015

And Now Between

Madawita Vithana Arachchilage Dinesh Indika

Accused-Appellant

Vs.

The Democratic Socialist Republic of Sri Lanka.

Complainant-Respondent

Before: **Menaka Wijesundera, J.**
B. Sasi Mahendran, J.

Counsel: Neranjan Jayasinghe with Harshana Ananda and Dulshan Katugampola for the Accused-Appellant
Sudarshana de Silva, DSG for the State

Written Submissions: 22.03.2023 (by the Accused-Appellant)
On 30.04.2019 (by the Respondent)

Argued On : 13.03.2023

Decided On : 16.05.2023

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B. Sasi Mahendran, J.

This is an appeal preferred by the Accused-Appellant (hereinafter referred to as "the Accused") aggrieved by the conviction and sentence imposed by the learned High Court Judge of Colombo.

The Accused was indicted before the High Court of Colombo for having in his possession 2.44 grams of Diacetylmorphine, commonly known as Heroin, and trafficking the said quantity of Heroin on 10th January 2014, which are offences punishable under the Poisons, Opium, and Dangerous Drugs Ordinance No. 13 of 1984, as amended.

The Prosecution led the evidence of three witnesses including that of the government analyst and drew its case to a conclusion. The Accused made a dock statement and led the evidence of one witness. The learned High Court Judge of Colombo found the Accused guilty on both counts. As such, the Accused was convicted and sentenced to life imprisonment.

Being aggrieved by said judgment this appeal was preferred by the Accused.

The following are the grounds of appeal urged by the learned Counsel for the Accused:

- The Learned Trial Judge had not correctly applied the test of probability and improbability in order to determine the creditworthiness of the Prosecution Witnesses;
- The Trial Judge had failed to consider the vital contradictions of the Prosecution Witnesses;
- The Learned Trial Judge had failed to consider the weaknesses of the Prosecutions' case;
- The Learned Trial Judge had wrongly rejected the dock statement and the evidence of the Defence witness.

The facts, albeit in brief, as per evidence led by the Prosecution are as set out hereinafter.

PW1, SI Weerasingha Mudiyanselage Imal Jayalath Thennakoon was on duty at the Special Task Force (STF) attached to the Gonahena base. According to his evidence, on 10th January 2014 at around 18.30-19.00hrs, PW4, namely PC 75756 Bandara, informed PW1 of information he received through his informant on a possible drug trafficking, supposed to take place between 21.00-23.00hrs on the same day. PW1 then organized a raid. PW1 and his team (comprising of SI Prakash (PW2), PC 75477 Weerasundara (PW3), PC 75756 Bandara (PW4), PC 77221 Rajakaruna (PW5), PC 83435 Chathuranga (PW6), PC Driver 2826 Thilakarathna) left the STF base in civil attire in a cab at around 19.30hrs and arrived near Sugathadasa Stadium at around 20.45hrs. The informant arrived around 21.15hrs and PW4 introduced him to PW1 and PW2. The informant gave information about the person in question, described him, claiming to be able to identify him, and further claimed that he can take the officers to where the suspect would appear.

Thereafter, PW1 and PW2 along with the informant travelled by foot about 300m to a place near Siriyansiri Hotel at Babar Junction. At around 22.00hrs, the informant pointed out a person who arrived at the Siriyansiri Hotel by a three-wheeler as the suspect and left.

As stated by PW1 (on page 81 of the Brief- proceedings dated 05.03.2018):

"උ - ස්වාමීනි තොරතුරු විසින් පෙන්වා සිටියා අර කඩේ ඉස්සරහ ත්‍රීවීල් එකේ රතු පාට ටී ෂර්ට් එකක් ඇඳන් ඉන්න මිනිහා තමයි මිනිහා. එයාව බලන්න කියලා."

PW1 and PW2 then crossed the road, approached the person in front of Siriyansiri Hotel, and conducted a search. When approached by the officers the suspect had started to panic. The search was conducted by PW1. He found two parcels of grocery bags in his right trouser pocket which upon inspection were suspected to contain Heroin.

The Accused was arrested at 22.00hrs and the two parcels containing heroin were retained by PW1. They proceeded to Sew Gunasekara Pawning Centre in Maradana to weigh the heroin at around 22.30hrs. The weight was recorded as 5g and 830mg. Thereafter, the PW1 and the officers with the Accused came to Kotahena Police Station. At the station, the production was sealed and handed over to PC 48846 from Kotahena Police reserve under PR number 75/2014 at 12.05hrs, along with the Accused and his belongings (his wallet, driver's license, mobile phone, bank card, and Rs. 3910/- in cash). Finally, the entry pertaining to the arrest was made at the Gonahena Base at 02.25hrs.

The other main witness is SI Mohottalalage Praksh Sooriyabandara (PW2), attached to STF, Gonahena Base. With a few contradictions which we will analyse further below, PW2's narration of events on the arrest of the Accused is similar to that of PW1.

The third and final witness is Pathirage Sandya Kumuduni Rajapaksa, a senior Government Analyst (PW19). It should be noted that there is a discrepancy between the weight of the heroin recorded at the pawning centre (5g 830mg) and the weight recorded by PW19 (6g 32mg). This witness explained that the weighing scale at the government department is accurate, and the particular weighing scale is periodically tested. It is further noted that a discrepancy could have occurred if an inexperienced person operated the scale.

As set out in her evidence (on page 160 of the Brief – proceedings dated 12.03.2018):

"උ - බරෙහි සුළු වෙනසක් තිබෙනවා. ඒ වෙනස් තියෙන නිසා මම ඒ සඳහා සටහනකුත් යොදලා තිබෙනවා. බර කිරන ලද තරාදියේ යම් කිසි දෝශ සහගත තත්වයක් තිබෙනවා සහ තරාදිය පාවිච්චි කිරීම පිළිබඳ දැනුම් නැති කෙනෙක් ඒක භාවිතා කලහොත් ඒ අවස්ථාවේදිදත් එවැනි වෙනසක් ඇති වෙන්න පුළුවන්."

Be that as it may, the slight discrepancy in weight could not be said to have caused any prejudice to the Accused, a limb that must be satisfied in terms of the Constitutional provision conferring this Court's appellate jurisdiction. The learned Trial Judge rightly concluded that this discrepancy could not assail the version of the Prosecution.

The Accused, in a lengthy dock statement, took up the position that the only reason he was there at Armor Street was to receive money on behalf of a friend. He had arrived at 19.30hrs and thereafter he was approached by three persons who arrived in a red three-wheeler, asking about a package. He claims that he called his friend informing this and thereafter he was told to leave. Subsequently, two of those three individuals pursued the Accused and put him in the three-wheeler, asking about drug trafficking. He was then taken near Sugathadasa Stadium, transferred to a cab and kept there. According to him he was asked to sign some blank papers. Then he made calls to a friend and a known priest using the cab driver's mobile phone. According to the Accused, he only met PW1 at the Kotahena Police Station and not before. It is further claimed by the Accused that earlier that day he purchased a pen drive and a sub-woofer, which was retained by the police and never returned. The other witness he called was the priest, Rev. Elapatha Samitha (D1). D1, in his evidence, stated that the Accused called him at around 20.30-21.00hrs that he was put into a van. He further claimed that he was verbally abused by the person who was with the Accused who identified himself as an STF officer. D1 then called a lawyer and on his advice went to Kotahena Police Station around 23.00-23.30hrs and made a compliant. Under cross examination D1 has admitted that in the Police statement he had mentioned that he received the call at 23.25hrs.

The main allegation by the Accused is that the arrest was not done by PW1, therefore his notes are wrong and manipulated. According to him, the raid was done by PW2 and PW4 not at the place they claimed to have arrested the Accused, but at Armor Street. In addition to that, the learned Counsel questioned why they went to Sew Gunasekara Pawning Centre in Maradana which is far from the place of arrest i.e. Kotahena (3km).

In evaluating the evidence of the Prosecution, the Learned Trial Judge was mindful of the fact that these are trained officers. Hence, the learned Judge considered even the small discrepancies in the Prosecution's evidence, yet considered the Prosecution's version as probable. In this regard, he observed strong overall consistency between the evidence of PW1 and PW2. The Learned Trial Judge noted that they were from the Gonahena STF camp and not police officers from the area itself, which justifies their limited knowledge of the roads and the geographic whereabouts. This limited knowledge does not however explain why PW1 did not go to the Narcotic Bureau which was located much closer to the place of arrest than the pawning centre, knowing the weighing can be done there. According to the evidence of PW1 and PW2, it is unclear

whose decision it was to go to the pawning centre. Though it is possible that the officers knew of the pawning centre as an obvious destination that can be utilized in similar circumstances. Also, according to PW1 they knew it was open 24/7, yet another detail upon which their decision is justified. Taken the evidence as a whole, the question of probability does arise, but we find this not substantial enough to challenge the credibility of the version of the Prosecution.

When we consider the overall evidence of PW1, he was consistent with regard to where the raid took place. When questions were asked regarding the place, the pawning shop, and how he reached the pawning shop he promptly answered without hesitation. This further confirms his involvement in the raid. We, therefore, reject the first ground.

In considering the second ground raised by the Defence, this Court is mindful of the contradictions *inter se* between PW1 and PW2. The Learned Counsel for the Accused shed light on a few events, mostly regarding the arrest and the events leading up to it.

As stated by PW1 (On page 54 of the Brief – proceedings dated 28.03.2018):

"උ - එම ස්ථානයෙන් ස්වාමීනි පාර පැනලා අපි සිරියන්සිරි හෝටලය ඉස්සරහට ගිහිල්ලා. ඒ අපිට පෙන්වා දුන් පුද්ගලයා දෙසට අපි ඉදිරියට ගියා."

Contradicting the above, PW2 states (On page 126 of the Brief – proceedings dated 05.03.2018):

"ප්‍ර - කොහොමහරි පාර මාරුවෙලා එහා පැත්තට ගියා සිරියන්සිරි හෝටලය ලඟට?

උ - පාර මාරු උනේ විත්තිකරුගේ ලඟට යන්න විතරයි.

ප්‍ර - සිරියන්සිරි හෝටලය ලඟට යන්න පාර මාරු උනාද?

උ - නැහැ."

As stated by PW1 (On page 81 of the Brief – proceedings dated 05/03/2018):

"උ - ස්වාමීනි තොරතුරු විසින් පෙන්වා සිටියා අර කඩේ ඉස්සරහ ත්‍රී වීල් එකේ රතු පාට ටී ෂර්ට් එකක් ඇඳන් ඉන්න මිනිහා තමයි මිනිහා. එයාව බලන්න කියලා."

Contradicting the above, PW2 states (On page 115 of the Brief – proceedings dated 05/03/2018):

උ - එම ස්ථානයට ත්‍රීවිල් රථයෙන් පැමිණ ත්‍රීවිල් රථයෙන් බැස්සට පස්සෙ තමයි ඔත්තුකරු පුද්ගලයව පෙන්වා සිටියේ.

This Court will consider how the learned Trial Judge appreciated these contradictions. The relevant excerpt of the judgment (on page 211 of the Brief) is as follows:

"මේ හැර පැ.සා. 01 හා 02 දුන් හරස් ප්‍රශ්ණ අතරතුරදී මතු කිරීමට උත්සහ කල කාරණාවක් වන්නේ විත්තිකරු පෙන්වා දුන් අවස්ථාවේදී ඔහු ත්‍රීරෝද රථයක සිටි අවස්ථාවේදී පෙන්වා දුන්නේද නොඑසේ නම් ඉන් බැස සිටි අවස්ථාවේදී පෙන්වා දුන්නේද යන කරුණ වේ. මෙම සාක්ෂිකරුවන් දෙදෙනාගේ සාක්ෂි සලකා බැලීමේදී ඔත්තුකරු එතනට පැමිණ විත්තිකරු පෙන්වා දෙන අවස්ථාවේදී පැහැදිලිව ත්‍රීරෝද රථයෙන් බැස එලියේ සිටින අවස්ථාවකදී පෙන්වා ඇති බව හෙලිදරව් වේ. ඒ ආසන්නයේ ත්‍රීරෝද රථයක් තිබී ඇත. ඒ අනුව ඔත්තුකරු මෙම පුද්ගලයා නිරීක්ෂනය කර පෙන්වා දෙනවාත් සමඟ විත්තිකරු ඔහු පැමිණි වාහනයෙන් බැස සිටි අවස්ථාව වී ඇත. ඒ අනුව මෙම සාක්ෂිකරුවන් දෙදෙනා අතර විත්තිකරු මුල් අවස්ථාවේදී පෙන්වා දෙන විට ඔහු සිටි ස්ථානය සම්බන්දයෙන් කිසිදු සැලකිය යුතු පරස්පරයක් මතුවී නැති බව තීරණය කරමි."

This court has to consider whether these contradictions have gone to the root of the case. That is to say, whether these contradictions are vital.

We are mindful of the observations made by Justice Thakkar with regard to contradictions in Bharwada Bhoginbhai Hirjibhai v. State Of Gujarat 1983 AIRHC 753:

> *"... (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. (2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another. (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person..."*

When assessing the above discrepancies, it is important to understand the context. According to Prosecution's evidence, PW1 is the officer who received the information from PW4, got authorization from his superiors, put together the team and organized the raid. In getting to Babar Street, PW1 is led by the informant and it is only on PW1's orders PW2 joined the party. All these factors are relevant in understanding that PW1 had more reasons to be attentive. When following someone along as opposed to leading the party, naturally the person is bound to pay less attention. This is likely to result in a blurry version of the events years later when the person gives evidence (Over four years later, in this matter).

Another factor to keep in mind is that both PW1 and PW2 are officers of STF which is a specialized unit in its own regard, but one that does not deal especially with the likes of drug cases. On the other hand, considering considerable time has lapsed since the raid, if the two witnesses' evidence is matching to the smallest detail, the Court would have more of a reason to be suspicious of the Prosecutions' version and its truthfulness.

In this light, it is worth referring to the dictum in State of Uttar Pradesh v. M. K. Anthony 1984 (2) SCJ 236. This was adopted by his Lordship Ranjit Silva J. in Nanediri Devage Wilman CA 122/2005, decided on 12.11.2007:

"Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit the rejection of evidence as a whole. If the court, before whom the witness gives evidence had the opportunity to form an opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the grounds of minor variations or infirmities in the matter of trivial details. Even honest and truthful witness may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the

trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

With the above dictum in mind, we hold that the particular contradiction does not go to the root of the matter. We cannot hold the contradictions are vital enough to assail the Prosecution's version.

The final ground raised by the learned Counsel for the Accused was that the learned High Court Judge failed to consider the dock statement of the Accused and the evidence of the Defence. Before we analyse the dock statement in the instant case, we have to consider the evidentiary value of a dock statement.

In Weddikkarage Thusharika Priyadarshani v. AG CA/HCC/0080/2020 decided on 05.09.2022, his Lordship Abayakoon J. considered the law on dock statements:

> *"In the case of Queen Vs. Kularatne (1968) 71 NLR 529, it was held that while jurors must be informed that such a statement must be looked upon as evidence subjected however, to the infirmities that the accused's statement is not made under oath and not subjected to cross-examination.*
>
> *Held further,*
>
> *1. If the dock statement is believed, it must be acted upon to.*
> *2. If it raised a reasonable doubt in their minds about the case of the prosecution, the defence must succeed. and;*
> *3. It must not be used against another accused.*
>
> *It was held in the case of Don Samantha Jude Anthony Jayamaha Vs. The Attorney General, C.A. 303/2006, decided on 11-07-2012 that,*
>
> > *"Whether the witness of the defence or the dock statement is sufficient to create a doubt cannot be decided in vacuum or in isolation, because it needs to be considered in the totality of evidence, that is in the light of the evidence for the prosecution as well as the defence."*

Bearing this in mind, this Court will consider how the Learned Trial Judge evaluated the dock statement and the evidence of the Defence. The Defence version is built on the notion that the Accused came to Babar Street to receive money on behalf of a friend. But as the Learned Trial Judge points out, there is no mention as to who this friend is, which would be a vital detail in their version. Learned Trial Judge has further addressed the failure of the Defence to address or even acknowledge vital issues from the arrest to the production. He further points to a few instances where details in the cross-examination are absent from the dock statement. Statements of such vague nature do not invoke confidence in the Accused. In his delivery, the Accused himself appears to seem uncertain of his story.

As stated in the judgment (on page 224 of the Brief):

"...මෙම නඩුවේ පැ.ස. 1 සහ පැ.ස. 2 ගේ සාක්ෂි අතරතුරදී විත්තියෙන් දිගෙන් දිගටම යෝජනා කරනු ලැබුවේ මනෝජ් නැමැත්තෙකු පදවන ත්‍රීරෝද රථයකින් ප්‍රකාශ් නැමැති පැ. ස. 2 බණ්ඩාර සමග පැමිණි බවයි. එසේ වුවද මෙම මනෝජ් නැමැත්තෙකු පදවන ත්‍රීරෝද රථයක් සම්බන්ධයෙන් ප්‍රකාශයේදී විත්තිකරු සඳහන් කර නැත. එක් අවස්ථාවකදී ත්‍රීරෝද රථයෙන් තිදෙනෙකු පැමිනි බවට යෝජනා කර ඇත. පසුව පැ. සා. 2 ත්‍රීරෝද රථයෙන්ද බණ්ඩාර නැමැත්තා ඊට පසුපස යතුරු පැදියකින් පැමිණි බව යෝජනා කර ඇත. ඒ අනුව විත්තියේ යෝජනාවන් ඒකාකරීව යෝජනා කර නැත. රමේශ් නැමැත්තෙකු සම්බන්දයෙන් විමසූ බවට ප්‍රශ්ණ කල බවට යෝජනා කර ඇති නමුත් විත්තිකරුගේ ප්‍රකාශයේදී එවැනි නමක් සඳහන් කර නැත. එපමනක් නොව දැනට විශ්ලේශනය කර ඇති ආකාරයට පොලී මුදලක් ලබා ගැනීමට හදුනන්නේ නැති ත්‍රීරෝද රථයක් එන තෙක් බලා සිටීමක් සම්බන්ධයෙන් මුල් අවස්ථාවේදී කිසිදු යෝජනාවක් හෝ සිදු කර නොමැත. ඒ අනුව පැහැදිලිව මුල් අවස්ථාවේදී ගෙන ඇති ස්ථාවරයන් යෝජනාවන් පසුව ප්‍රකාශයේ ගෙන ඇති ස්ථාවරයන්ද දැඩි ඒකාකාරී භාවයෙන් තොර වීමක් සිදු වී ඇත. එවැනි පසුබිමක විත්තියේ යෝජනාවලින් හෝ විත්තිකරුගේ ප්‍රකාශය තුලින් කිසිදු ආකාරයක සැකයක් පැමිනිල්ලේ නඩුව මත මතු කිරීමට විත්තියට හැකියාවක් නැත."

The Learned Trial Judge has correctly given emphasis to the time discrepancy in D1's evidence. Witnesses are not expected to have exact knowledge of the event, especially years after the incident, but this particular discrepancy becomes relevant as it creates severe doubt about the Defence's case. The Learned Trial Judge has observed this to be an attempt at dishonestly supporting the Defence position which was that the Accused was arrested at 19.30hrs as opposed to 21.55hrs, which is the version of the Prosecution. Even if we entertain the possibility of this being an honest mistake, it does not justify the Defence version's failure to appear coherent in the eyes of the Court. Such evidence not

only fails to make a dent in the Prosecution's case but also renders the Defence version untrustworthy.

In the case of James Silva v. The Republic of Sr Lanka [1980] 2 SLR 167, his Lordship Rodrigo J. stated thus:

> *"It is a grave error of law for a trial Judge to direct himself that he must examine the tenability and truthfulness of the evidence of the defence in the light of the evidence led by the prosecution. Our criminal law postulates a fundamental presumption of legal innocence of every accused till the contrary is proved. This is rooted in the concept of legal inviolability of every individual in our society; now enshrined in our Constitution. There is not even a surface presumption of truth in the charge with which an accused is indicted. Therefore, to examine the evidence of the accused in the light of the prosecution witnesses is to reverse the presumption of innocence.*
>
> *A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty - see the Privy Council Judgment in Jayasena v The Queen."*

In the instant appeal, we are of the view that the Learned High Court Judge has rightly considered the dock statement of the Accused and his defence, and has arrived at the conclusion that the dock statement has not created any reasonable doubt in the evidence of the prosecution.

During the argument stage, the learned Counsel for the Accused drew this Court's attention to the amendments made to punishments in the Poisons, Opium, and Dangerous Drugs (Amendment) Act No. 41 of 2022.

The punishment for possessing 2 grammes to less than 3 grammes of heroin constitutes *"a fine not less than One Hundred Thousand Rupees and not exceeding Two*

Hundred Thousand Rupees and imprisonment of either description for a period not less than seven years and not exceeding ten years or to both such fine and imprisonment."

After finding the Accused guilty, the learned high court judge sentenced him to life imprisonment on the judgement dated 12th September 2018. The learned Counsel for the Accused has contended that the Accused must have the benefit of the reduced punishment imposed through the Amending Act. He cited the judgment of his Lordship Gurusinghe J. in Walakada Gamage Priyantha v. Attorney General CA/HCC/261/2014, decided on 19-01-2023. In the said judgment, his Lordship observed:

"*At this stage, it is important to be clear on the point that anything stated in this judgment should not be construed as giving the Amendment Act a retrospective operation in so far as it creates new offences or provides for enhanced punishment and this court has not applied the Amended Act retrospectively, but in terms of just and fairness, the Appellant was given the advantage of the reduced punishment provided by the Amendment to the Act.*"

The prohibition of enacting ex post facto laws in terms of Article 13(6) of our Constitution, which is similar to Article 20(1) of the Indian Constitution, as summarised by Dr. Jayampathy Wickramaratne P.C. in his treatise 'Fundamental Rights in Sri Lanka' (3rd edition at p. 767) is limited to:

"*The conviction for an act or omission which did not amount to an offence at the time of such act or offence and the imposition of a penalty more severe than the penalty in force at the time offence was committed.*"

Consequently, a statute that imposes a lighter or lesser penalty (than the penalty at the time the offence was committed) cannot be considered an ex post facto law within the ambit of Article 13(6).

Although this Court is inclined to go down that path of fairness and construe the provision to the benefit of the Accused, Section 7 of the Amending Act puts a spoke in our wheel. This Section reads:

For the avoidance of doubt**, it is hereby declared that **the provisions of section 6 [which sets out the lighter punishment] ***shall not apply in respect of an offence which was committed prior to the date of coming into operation of this Act.*** [emphasis added]

As the legislative intention is manifested in clear and unequivocal terms, to disregard it in the interests of justice would be to enter murky constitutional waters. Therefore, regrettably, this Court has no authority to confer the benefit of the lesser sentence upon the Accused.

This Court is of the view that the grounds of appeal raised by the Accused are without merit. We see no reason to interfere with the judgement dated 12th September 2018. The conviction and the sentence are affirmed and the appeal is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE

JUDGE OF THE COURT OF APPEAL