IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

In the matter of an appeal in terms of Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 331 of the Criminal Procedure Code and Section 19(B) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Democratic Socialist Republic of Sri Lanka

Complainant

Court of Appeal Case No:
CA HCC-165/2013

Vs.

HC of Negombo Case No:
HC 220/2007

Weerasinghe Arachchige Dona Chandrani
No: 227/05
Modara Street,
Colombo 05.

Accused

AND NOW BETWEEN

W.A.D. Chandrani
No: 227/05
Modara Street,
Colombo 05.

Accused-Appellant

Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondent

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

Counsel: Tenny Fernando for the Accused-Appellant
Shanil Kularathne, SDSG for the Respondent

Written Submissions: 20.11.2017 (by the Accused-Appellant)
28.02.2018 (by the Respondent)

Argued On : 21.03.2023

Decided On : 28.06.2023

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B. Sasi Mahendran, J.

This is an appeal by the Accused Appellant (hereinafter referred to as the Accused) on being aggrieved by her conviction and the sentence by the learned High Court Judge of Negombo dated 10th of July 2013.

The Accused was indicted before the High Court of Negombo on three counts with trafficking in 141.8 grams of Heroin on 8th June 2005 at Katunayake and at the same time and aforesaid place, and in the course of the same transition with having imported 141.8 grams of heroin and with having been in possession of said quantity of heroin, offences punishable under Section 54 A (b), 54 A (c) and 54 A (d) respectively of the Poisons, Opium, and Dangerous Drugs (as amended by) Ordinance No. 13 of 1984.

The prosecution led evidence of seven witnesses including the government analyst and closed the case for the prosecution. The Accused made a dock statement. The Learned

High Court Judge of Negombo after giving reasons found the Accused guilty on all three counts, convicted and sentenced to death.

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

The following grounds of appeal were urged by the counsel for the Accused.

Grounds of Appeal

- Learned High Court Judge misdirected himself by not considering the improbabilities of the narration of the Police Officers which cast a reasonable doubt on the prosecution version.

- Learned Trial Judge misdirected by failure to evaluate the dock statement in proper context and thereby caused a miscarriage of justice.

- Learned High Court Judge misdirected himself by failure to consider that the chief investigation officer had not entered notes on very material instances in the course of the raid and that creates a reasonable doubt on the version of the prosecution case.

- Learned High Court Judge misdirected himself by failure to consider that dock statement very clearly corroborates the version of the defence suggested to the prosecution witnesses and thereby cast a reasonable doubt on the prosecution version.
- Learned High Court Judge misdirected himself by not considering the material inter se contradiction which casts a doubt on the prosecution version and its credibility.

- Learned High Court Judge has misdirected himself by neither considering the fact that prosecution has failed to produced best evidence nor has made adverse inference under section 114 of the evidence ordinance in favour of the appellant and thereby accused a miscarriage of justice.

Facts in brief, as per evidence led by the Prosecution, are as follows.

The main prosecution witness SI Pushpakumara (PW1) attached to Katunayake Police Station Narcotics Bureau has been assigned to inspect passengers arriving from countries such as India and Pakistan for over five years by the time of the incident. On 8th June 2005 at around 1300hrs while on duty, he has received an information from a personal informant about person by the name Chandrani from Walgampitiya, coming to the airport to collect mishandled baggage consisted of men's waist belts which contained heroin in them. PW1 has identified the person to be a familiar face around the airport; a frequent flyer and a businesswoman. At 16.35hrs as the Accused was coming out of the customs office with 9 bags, he along with other officers approached her, introduced himself, confirmed her identity and questioned about the content of the 9 bags she was carrying. Upon suspicion, PW1 directed WPC 1197 Walpola (PW3) to take her in for further questioning. PW1 asked from her whether any bags contained men's waist belts, upon which Accused on her own has pointed to a blue and black bag, which notably did not have any tags on it. It should be noted that, this position has not been denied by the Accused in her evidence.

(On page 44 of the Brief)

ප්‍ර - මට තොරතුර ලැබුනෙ ඉන පටි වල මත්ද්‍රව්‍ය රැගෙන එන බවට. මා කිව්වා ඒ බෑගය තෝරා දෙන්න කියා. ඒ අනුව එය රැගෙන පරීක්ෂා කලා. සාමාන්‍යයෙන් ගුවන් මගීන් රට සිට එනවිට ටැග් එකක් තියෙනවා. මෙයට තිබුනේ නැහැ.

In fact, according to PW1, none of the bags had tags attached to them and when asked about tags she had given him only five tags from her possession. Thereafter, with the help of Along with PS 27737 Hemantha (PW2), PW1 searched the said bag, and found some of the belts to be abnormal and bloated in size and to cause a "සර සර" sound when twisted, which then they have ripped into to find polythene bags containing a brown powder which by PW1's expertise was suspected to be Heroin. Out of 424 belts, 74 have contained the above powder in polythene bags, which in total rendered at 966 grams.

They have further taken into custody some documents and receipts belonging to the Accused, including the five tags she had. After the Accused claimed that the bag belonged to one Sarina and she would come to collect the bag, PW1 and his team waited a long while to proceed with the production of the items, but Sarina never arrived.

Thereafter, the production was sealed and handed over to PS 31618 Manjula (PW4) the next day, that is, 9th June 2005. PW4 handed out production to SI Fonseka (PW6) and PW6 handed over the production to the government analyst (PW12). According to PW12, the pure quantity of Heroin found was 144.8 grams. In the cross examination of PW1, the defence has taken the position that these bags indeed belonged to one Sarina, and PW1 was deliberately framing the Accused for Sarina's crimes.

PW2 in his evidence has corroborated with the above version and there are no contradictions noted between these two witnesses. When we peruse the evidence of both PW1 and PW2, the learned High Court Judge who evaluated the evidence has accepted the evidence as they were consistent and in the absence of contradictions or omissions marked.

When we consider the evidence of the Accused the learned High Court Judge has correctly regarded the evidence of the Accused on the basis that it is improbable that the Accused would go to the airport to pick up baggage not belonging to her. And also, the way she showed the bag to the officers right away indicates that she knew of the items inside the bag.

The question before us is whether the Accused had a knowledge of the presence of Heroin packed in the waist belts. A similar situation arose in, **K. Sumanawathi Perera v. Attorney General CA-Appeal,No: 152/96,** decided on 23/ 03/1998, in which Ismail, J held:

"At the hearing of this appeal learned Counsel for the accused-appellant submitted that the prosecution had succeeded only in showing that the accused-appellant had the mere custody of the bag and that the accused-appellant has raised a doubt in regard to her knowledge of the presence of heroin packed in the head of the ceiling fan. He has referred to the principles set out in Lord Wilberforce in Warner v. Metropoliton Police Commissioner (1968) 52 Criminal Appeal Report 373. It is as follows:-

" The question, to which an answer is required, and in the end a jury must answer it, is whether in the circumstances the accused should be held to have possession of the substance, rather than mere control. In order to decide between these two, the jury should, in my opinion, be invited to consider all the circumstances- to use again the words of pollock and wright, possession in the common law, P. 119- the 'modes or events' by which

the custody commences and the legal incident in which it is held. By these I mean, relating them to typical situations, that they must consider the manner and circumstances in which the substance, or something which contains it, had been received, what knowledge or means of knowledge or guilty knowledge as to the presence of the substance, or as to the nature of what has been received, the accused had at the time of receipt or thereafter up to the moment when he is found with it; his legal relation to the substance or package (including his right of access to it).

On such matters as these (not exhaustively stated) they must make the decision whether, in addition to physical control, he has, or ought to have imputed to him the intention to possess, or knowledge that he does possess, what is in fact a prohibited substance. If he has this intention or knowledge, it is not additionally necessary that he should know the nature of the substances."

We have considered the evidence led at the trial and we are of the view that the following items of evidence are relevant in considering the requisite knowledge.

- The Accused on her own has come to the airport to pick up the missed baggage.
- She has on her own gone to the mishandled baggage office, identified the bags as her own and collected the bags.
- When she was questioned by the officers, she has indicated to them that all bags belong to her.
- When the question was put to the Accused on which bag contained belts, she had without any hesitation shown the bag, which is not denied on her dock statement.

Then the question arises on how she knew which bag contained the belts. Applying the observation by Lord Wilberforce referred above, considering the above facts, we are of the view that Accused has failed to create reasonable doubt in regard to the question whether she did possess the requisite knowledge required for the purpose of proving charges in the indictment against her.

For the above-said reasons, 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 10th of July 2013. 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