

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Appeal under
Section 154 (P) of the
Constitution read with Section
331 of the Criminal Procedure
Act No. 15 of 1979.

Kumareshwara Kanageshwaram
alias Raji.

Court of Appeal Case No:
CA / HCC / 279 / 2014

High Court of Colombo Case No:
4780 / 2009

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Respondent

Before: Menaka Wijesundera J.

B. Sasi Mahendran J.

Counsel: Neranjan Jayasinghe with Harshana Ananda for the Accused –

Appellant.

Chethiya Gunasekara A.S.G., P.C, with Ridma Kuruwita S.C. for

the State.

Argued on: 14.06.2023

Decided on: 11.07.2023

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 23.5.2014 of the High Court of Colombo.

The accused appellant has been indicted for being in possession of 5.45 grams of heroin.

The version of the prosecution is that on the tip off received by SI Ruwan Kumara on 6.2.2006 a team of officers led by SI Nandana of the Police Narcotics Bureau had gone near the world market in Fort and had stayed watch near the railway station of Fort and had arrested the appellant who had walked out of the world market premises and upon a body search had discovered a substance from his trouser pocket which had later proved to be containing 5.45 grams of heroin.

Upon taking the suspect in to custody and questioning him it had been revealed that the alleged substance had been provided by a person called Ravi, and the police officers had gone in search of him. They had taken

the appellant to Nugegoda to look for the said Ravi but had not found him, and they had come back to the narcotics bureau at 2020 hours.

The officers who assisted the chief officer had corroborated him although the counsel for the appellant alleged that there were contradictions. But we failed to find any which goes to the root of the case.

The Counsel for the appellant did not contest the chain of productions and upon the closure of the case for the prosecution in the trial court the accused had given evidence from the box and had said that he had been arrested by the narcotics officers when he had been talking to some people and one person had runaway and the others had been taken in to custody by the narcotic officers. He had further said that the narcotics officers had been continuously questioned him about a person called Ravi and had assaulted him and the said Ravi is the person who had owned the shop next to his brothers shop and he had never had any alleged substance in his possession and the narcotics officers had introduced the said narcotics to him.

His brother also had given evidence and he had tried to corroborate the appellant but he had said that the appellant was brought to bis house and shown to him by the narcotics officers.

The defense in cross examining the witnesses had suggested to the witnesses of the prosecution that they were lying and the drugs were introduced to the appellant but they had never ever suggested to the witnesses that one person ran away and the rest were taken in to custody and the said person was Ravi and the narcotics officers assaulted him asking for his whereabouts.

The main contention of the counsel for the appellant also was that the alleged drugs were introduced to the appellant and that the said Ravi had run off and they had been looking for him and when they failed to do so they produced the appellant with the alleged substance.

Upon considering the version of the prosecution their position is that the appellant was arrested with the narcotics and on questioning they had found out that it had been supplied by a person by the name of Ravi, and they had gone in search of him but had not been successful.

The version of the defense is that the appellant never had in possession any incriminating article and the officers who arrested him had been looking for a person by the name of Ravi and he had been assaulted to divulge the whereabouts of him and later the narcotics were introduced to him.

Hence the presence of Ravi is common to both the prosecution and the defense. But the deface version of the police trying to look for Ravi through the appellant does not create a doubt in the case for the prosecution because it had not been put to the narcotics officers in cross examination that before the arrest of the appellant a person ran off and the appellant was assaulted in finding out the whereabouts of Ravi. Also, we observe that the defense witness had said in evidence that after the arrest of the appellant he was brought to his place and was shown to the witness which also had not been put to the narcotics officers in cross examination. Furthermore, it is highly improbable that as put forward by the Presidents Counsel for the respondents that whether the narcotics officers would take the tiger to the tiger den and expose all of them to the possible wrath of the defense. Furthermore, the defense had alleged

that the appellant was brutally assaulted by the narcotics officers at Galle Face green at about 4.30 in the afternoon which is also very improbable because at that time of the day generally the Galle Face Green is very populated and any right thinking police officer would not be assaulting a suspect in custody on broad day light violating the basic law in the country.

Hence, we have to conclude that the defense put forward by the appellant at the trial has not created a reasonable doubt in the case for the prosecution but we observe that at some points the trial judge had not properly analyzed the evidence before her but we finally conclude that the trial judge rightly concluded in saying that the prosecution had proved its case beyond a reasonable doubt.

As such we find no merit in the submission of the counsel for the appellant as such the conviction and the sentence of the trial judge is hereby affirmed and the instant appeal is dismissed.

Judge of the Court of Appeal.

I agree.

B. Sasi Mahendran J.

Judge of the Court of Appeal.