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

In the matter of an Application for Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal
Revision Application No:
CA(PHC)APN/0041/2023

The Officer-in-Charge
Police Station
Bulathkohupitiya.

COMPLAINANT

High Court of Kegalle
Bail Application No.5636/20

vs

Godayalage Karunadasa
177/2,10th Post,Udugoda.

MC Kegalle
Case No. B 13099/2018

ACCUSED

AND NOW

Godayalage Karunadasa
177/2,10th Post,Udugoda.

ACCUSED-APPELANNT

Vs

1. The Officer-in Charge,
   Police Station,
   Bulathkohupitiya.

COMPLAINAT-RESPENDENT

2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENT

AND NOW BETWEEN

Godayalage Karunadasa
177/2,10th Post,Udugoda.

ACCUSED-APPELANNT-PETITIONER

Vs

1. The Officer-in Charge,
Police Station,
Bulathkohupitiya.

COMPLAINAT-RESPENDENT-RESPONDENT

2. The Attorney General
Attorney General's Department,
Colombo-12.

RESPONDENTS-RESPONDENT

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

P. Kumararatnam, J.

COUNSEL : **Asanka Mendis with Sandeepani Wijesooriya for the Petitioner.**

SUPPORTED ON : **09/05/2023.**

DECIDED ON : **23/06/2023.**

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ORDER

P.Kumararatnam,J.

The Complainant filed a charge sheet against the Accused-Appellant-Petitioner (hereinafter referred to as 'the Petitioner') for the offence of having in possession of 1500 ml of "TOP" which is an illegal liquor at Undugoda on or about 24.12.2017 violating Section 46(A) of the Excise Ordinance No.27 of 1957 as amended and punishable under Section 47 of the Excise Ordinance read with the first schedule of the Increase of Fines Act, No.12 of 2005.

The trial commenced in the Magistrate Court of Kegalle. The prosecution had called two police officers from the Bulathkohupitiya Police Station and marked 04 documents and closed the case. When the defence was called, the Petitioner making a statement from the dock closed his case.

After calling written submissions from the parties, the Learned Magistrate had delivered the judgment on 10.02.2020. The Learned Magistrate found the Petitioner guilty as charged and sentence him to three months rigorous imprisonment with a fine of Rs.20,000/-. In

default of the fine, the Petitioner was sentenced to one-month simple imprisonment.

Being aggrieved by the aforesaid judgment of the Learned Magistrate of Kegalle, the Petitioner filed an appeal in the Provincial High Court of Kegalle.

Agreeing to settle upon filing written submissions, the Learned High Court Judge Kegalle delivered the judgment dated 25/06/2021.The Learned High Court Judge had affirmed the judgment and sentencing order of the Learned Magistrate Kegalle dated 10.02.2020 and dismissed the appeal subject to a cost of Rs.40,000/-

Being aggrieved by the aforesaid judgment of Learned High Court Judge of Kegalle, the Petitioner now invoked the Revisionary Jurisdiction of this Court in term of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Petitioner has pleaded following exceptional circumstances in support of her Revision Application.

1. That the Learned High Court Judge had erred in law by failing to consider that it is the duty of the prosecution to prove its case beyond reasonable doubt and to prove the chain of custody is intact.
2. That the Learned High Court Judge had erred in law by failing to consider that the Learned Magistrate had made a fatal error with regard to the evidentiary value of the dock statement.

Exceptional circumstances are not defined in the statute. Hence, what is exceptional circumstances must be considered on its own facts and circumstances on a case by case.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

> *"the decision must in each case depend on its own peculiar facts and circumstances".*

In every criminal case the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person and this burden never shifts. Hence an accused person has no burden to prove his case unless he pleads a general or a special exception in the Penal Code.

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

> *"A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences in 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…."*

In **the Attorney-General v. Rawther** 25 NLR 385, Ennis, J. states thus: [1987} 1 SLR 155

> *"The evidence must establish the guilt of the accused, not his innocence. His innocence is presumed in law, from the start of the case, and his guilt must be established beyond a reasonable doubt".*

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 the court held that:

> *"the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his*

favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice".

In the first ground urged before this Court the Petitioner contended that the Learned High Court Judge had erred in law by failing to consider that it is the duty of the prosecution to prove its case beyond reasonable doubt and to prove the chain of custody is intact.

Upon perusal of judgments of both the Learned Magistrate and the Learned High Court Judge, in both judgements the evidence led by both parties had been properly analysed to come to the conclusion.

The Learned High Court Judge in his Judgement at page 17 of P9 stated as follows:

පැමිණිල්ලේ පළමු සාක්ෂිකරුගේ සාක්ෂිය හා පැ.2 ලේඛනයේ සඳහන් කරුණු පරස්පර වීම මුල් අවස්ථා අධිකරණය නොසලකා හැරීම හා සම්බන්ධයෙන් ද, මැනීම් කටයුතු සිදු කිරීමේ දී යොදා ගන්නා ලද උපකරණ සම්බන්ධයෙන් ද, පරස්පරතා ඇති බවට සහ ඒවා අභියාචකගේ වාසියට සලකා බැලීමට අපොහොසත් වීම කෙරේ අධිකරණය අවධානය යොමු කර ඇත.

ඒ හා සම්බන්ධ කරුණු විශ්ලේෂණය කිරීම මුල් අවස්ථා අධිකරණය විසින් සිදු කර ඇත. ඒ හා සම්බන්ධ ව තීන්දුවේ සඳහන් කරුණු පරීශීලනය කිරීමේ දී, මෙම අධිකරණයට පෙනී යන්නේ ඊට මැදිහත් වීමේ අවශ්‍යතාවයක් උද්ගත නොවන බවයි. මන්ද, සාධාරණ සැකය යනු අභව්‍ය ලෙස ඇති කරගන්නා සැකයක් නොවන අතර, එය හේතු සහිත, ප්‍රායෝගික ව ඇතිවිය හැකි සැකයක් විය යුතුය. රජයේ රස පරීක්ෂක වාර්තාව හෝ භාණ්ඩ රස පරීක්ෂක වෙත යොමු කිරීමේ දාමය පිළිබඳ අභියාචක වෙනුවෙන් හබයක් නොමැති අතර, පැ.4 ලේඛනය අනුව රස පරීක්ෂක වෙත යොමු කරන ලද දේපල බලපත්‍රයක අවසරයක් ඇතිව නිපදවන ලද මද්‍යපානයක් නොවන බවට වාර්තා කර ඇත.

Hence it is incorrect to say that the prosecution failed to discharge their duty properly in this case. Hence, this ground has no merit at all.

In the second ground the Petitioner contend that the Learned High Court Judge had erred in law by failing to consider that the Learned Magistrate had made a fatal error with regard to the evidentiary value of the dock statement.

Even though the dock statement of an accused has less evidential value our courts never hesitated to accept the same when it creates a doubt on the prosecution case.

In **Don Samantha Jude Anthony Jayamaha v. The Attorney General** CA/303/2006 decided on 11/07/2012 the court held that:

> *"Whether the evidence of the defence or the dock statement is sufficient to create a doubt cannot be decided in a vacuum or in isolation because it needs to be considered in the totality of the evidence that is in the light of the evidence for the prosecution as well as the defence."*

In **Kathubdeen v. Republic of Sri Lanka** [1998] 3 SLR 107 the court held that:

> *"It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt."*

The Learned Magistrate in his judgment very correctly analysed the dock statement of the Petitioner and come to the conclusion that the dock statement of the Petitioner is not forceful enough to create a doubt over prosecution case. The Learned Magistrate in his judgment at page 53 of P6 stated as follows:

චූදිත විසින් විත්ති වාචක ඉදිරිපත් කරන අවස්ථාවේ දී විත්ති කූඩුවේ සිට ප්‍රකාශයක් කරමින් තමා නිවසේ සිටියදී පොලිසියෙන් පැමිණ වරෙන්තුවක් බවට දැනුම් දී තමාව පොලිස් ස්ථානයට රැගෙන ගිය බවත්, තමා අතේ කිසිවක් නොතිබුණු බවත්, පසුව බෝතලයක් රැගෙන විත් මුද්‍රා තැබීමට කියා නඩුවක් පැවරූ බවත් කියා ප්‍රකාශ කර ඇති අතර, විත්තිය එකී ප්‍රකාශය මඟින් ඉදිරිපත් කර ඇති ස්ථාවරය පැමිණිල්ලේ සාක්ෂිකරුවන් හරස් ප්‍රශ්න වලට භාජනය කිරීමේ දී විත්තිය විසින් යෝජනා කර නොමැති අතර, පැමිණිල්ලේ සාක්ෂිකරුවන් වෙත විත්තිය විසින් යෝජනා කර ඇත්තේ මෙවැනි ආකාරයේ වැටලීමක් නොකළ බවට පමණක් වේ. ඒ අනුව පැමිණිල්ලේ සාක්ෂිකරුවන් විසින් චූදිත ඔහුගේ නිවසේ සිටියදී අත්අඩංගුවට ගත් බවට වන ස්ථාවරය ඔවුන් වෙත යෝජනා කර නොතිබීම

මත එකී ස්ථාවරය විත්ති වාචකය ඉදිරිපත් කරන අවස්ථාවේ දී අලුතින් ඉදිරිපත් කරන ලද ස්ථාවරයක් බව පෙනී යයි. ඒ අනුව ඒ සම්බන්ධයෙන් පැමිණිල්ලේ සාක්ෂිකරුවන් හට පැහැදිළි කිරීමට අවස්ථාවක් ඉදිරිපත් වී නොමැති බවද අවධානයට ලක් කරමි. තවද, චූදිත විසින් තමාට එරෙහිව පැමිණිල්ල විසින් ප්‍රබල නඩුවක් ඉදිරිපත් කර තිබියදී හරස් ප්‍රශ්න වලට භාජනය වීමකින් තොරව විත්ති කූඩුවේ සිට ප්‍රකාශයක් ලබා දීම තුලින් එකී ප්‍රකාශයෙහි සාක්ෂිමය අංග ඉතා පහල මට්ටමක පවතින අතර, ඔහු විසින් විත්තිවාචකය අවස්ථාවේ දී ඉහත කී පරිදි අලුතින් ස්ථාවරයක් ඉදිරිපත් කර තිබිය දී එය හරස් ප්‍රශ්නවලට භාජනය වීමක් නොවීම තුලින් ද එකී ස්ථාවරය පිළිගැනීමේ බාධාවක් ඇතිවේ.

In the light of above authorities and considering the prosecution evidence and the dock statement of the Petitioner, I find no reason to disbelieve the version of the prosecution. Hence, this ground also has no merit.

Considering all the materials placed before this Court, I see no reason to disturb the findings of both the Learned High Court Judge Kegalle and Learned Magistrate of Kegalle. Hence, we affirm the conviction and the sentence imposed in this case. Accordingly, we refuse notice in this case.

The Registrar of this Court is directed to send a copy of this order to the High Court of Kegalle and the Magistrate Court of Kegalle.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL