

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

C.A.No.281/2006

H.C.Colombo 1674/04

Sinnatamby Wijayakumar

No. 70/35, Sarasavi Lane,

Castle Street, Borella

Accused-Appellant

Vs

Hon Attorney-General

Respondent-

BEFORE            Sisira de Abrew J.,  
                      Sunil Rajapakse J

COUNSEL        Amila Palliyage for the Accused-Appellant  
                      Sarath Jayamanne, D.S.G, for the Attorney-General

ARGUED ON:    28.01.2013

DECIDED ON    27.06.2013

Sunil Rajapakse J.,

The Appellant was indicted on the charge of possession of 6.44 grams of heroin and thereby committed an offence punishable under the provisions of Opium and Dangerous Drugs Ordinance, as amended by Act No. 13 of 1984.

After the trial learned High Court Judge found the Appellant guilty to the charge and sentenced to a term of life imprisonment. This appeal is against this conviction and sentence of life imprisonment imposed on the Appellant.

#### NARRATION OF PROSECUTION CASE

On 19.07.2005 at around 11.40 a.m, after receiving secret information about a drug dealer, a police team led by I.P., Balachandra raided the squatters house at Sarasavi Lane, Gothami Road, Borella. On seeing the police officers who were approaching the accused attempted to flee away from his house. Whereupon I.P. Balachandra and SI Rangajeeva apprehended him. A personal search which has taken place in the presence of S.I. Rangajeeva, revealed that the accused was in possession of 40 small packets of heroin. Thereafter the accused Appellant and the seized articles were taken to the police station, where all these articles were packeted, sealed and labeled in the presence of the accused. The samples were sent to the Government Analyst .

Whereupon a Report (..12..) was received that the samples gave a positive test of heroin.

#### DEFENCE CASE

The accused and two other witnesses gave evidence on behalf of the defence. In his evidence he said that he was arrested on 22.04.1999 at his own house . Further he admitted his presence at the scene but denied having a parcel containing heroin in his possession. In his defence the Appellant's position was that on the day in question when the police party led by IP Balachandra was

coming towards his house a person called Rasika ran away. Then the police officers questioned him about Rasika. The Appellant has submitted that IP Balachandra was inimical towards him and falsely implicated the Appellant in this case. Further he submitted that he is a labourer and a drug addict.

In this case five witnesses were examined by the prosecution. State Counsel appearing for the State contended that the prosecution established the case against accused beyond reasonable doubt. Two key witnesses of this case IP Balachandra and SI Rangajeeva's position was that when they were chasing after an unknown person they saw the accused Appellant in a suspicious manner inside his house. Then they searched him and he was found to be in possession of heroin. Further the prosecution's contention is at that time accused Appellant coming with a plastic bag in his right hand, and after search 40 packets of heroin were found.

After analyzing the prosecution case and the evidence, the Court holds that the prosecution witnesses are trustworthy witnesses. There is no vital contradiction or omission or material discrepancy in the evidence of prosecution witnesses. The official witnesses have fully supported the prosecution with regard to arrest and recovery of heroin. According to IP Balachandra the accused was arrested and searched by SI Rangajeeva and himself. After the search hereon packets were recovered in the accused's possession. IP Balachandra's evidence was corroborated by SI Rangajeeva. There is no material discrepancy so as to hold that they were not reliable witnesses. Further Court holds that all the official witnesses fully supported the prosecution with regard to the recovery of heroin packets and taking samples and fixing seals on them. After considering the

evidence of prosecution I find all the witnesses corroborated the prosecution story about the recovery of heroin from the accused Appellant's possession.

The accused Appellant contended that heroin was not recovered from the Appellant's possession and was recovered from somewhere else. As they could not trace the real culprit they chose to implicate the accused Appellant merely on suspicion.

Further Court holds that the prosecution had successfully proved that the heroin was in the exclusive possession of the accused Appellant. The learned trial Judge having considered the accused's evidence correctly rejected the story narrated by the accused.

In this regard I would like to cite the following authorities.

**Choo yake Chey vs Public Prosecutor** (1992) 2 M.L.J632 (Law of Dangerous Drugs by Daljitson Adel) page 182. It was held "In order to found a conviction, the prosecution must establish not only that the Appellant had knowledge of the existence of the drugs but that he also had exclusive custody or control of them.

Further **Sumanawathie vs Attorney Gneral – Appeal 1998 2 SLR page 20**  
It was held whether in the circumstances the accused should be held to have been in possession of the substance, rather than mere control, court should consider all the circumstances. The modes or events, by which the custody commences and legal incident in which it is held."

In this case the accused Appellant has not raised a doubt in regard to his knowledge of the presence of heroin packets in the plastic bag.

After analyzing the prosecution and defence evidence, the learned trial Judge had correctly observed that the accused had complete custody and control over heroin packets. Therefore I see no compelling reason to disagree with the conclusion reached by the learned trial Judge on this point.

Further the Appellant contended that the evidence of the defence witnesses should have been accepted by the trial Judge. But after considering the defence evidence this court holds that the learned trial Judge rightly not accepted the defence evidence. I hold that the prosecution has established that 6.44 grams of heroin recovered from the Appellant and sample were properly taken and sent to the Government Analyst. I am of the view that the accused Appellant has not succeeded in creating a reasonable doubt in the prosecution case

The court holds that the trial Judge has carefully and correctly evaluated the evidence of prosecution and therefore there is no reason to interfere with the learned trial Judge's findings. Therefore, we affirm the conviction and sentence imposed by the learned trial Judge and dismiss the appeal.

Appeal is dismissed.

Judge of the Court of Appeal

Sisira de Abrew J.,

I agree.

Judge of the Court of Appeal.