

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

Sivaneshan Raja alias Nesha

Accused-Appellant.

C.A. Appeal No. 20/2009

H.C. Welikada Case No: 303/2006

-Vs-

Republic of Sri Lanka

Respondent

Before : **Sisira J. de Abrew,J. (Acting P/CA) &
P.W.D.C. Jayathilaka,J.**

Counsel : Ms. Sharmila Amarawickrama for the Accused-
Appellant.
Dileepa Peeris SSC for the Respondent.

Argued &

Decided on : 09.12.2013

Sisira J. de Abrew,J. (Acting P/CA)

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted for being in possession of 1068.4 grams of heroin and for trafficking the same amount. The learned trial judge after trial sentenced him to death on both counts.

Being aggrieved by the said conviction and the sentence he has appealed to this Court. According to the prosecution case the police officers arrested the accused-appellant with a parcel of heroin. The weight of the parcel was over 2 kilograms. The accused-appellant in his evidence admitted that the parcel was found with him, and he further took up the position that one Rajan gave the parcel to him. When the police officers examined the parcel they found heroin inside the parcel. Police officers however took the accused-appellant in order to find where Rajan was. Police officers took him to Nawagampura area but did not find a person called Rajan. However police officer admits that at Nawagampura bus halt he searched a person called Rajan. The Government Analyst has confirmed that net heroin in the parcel was 1068.4 grams. Learned State Counsel when cross-examining the accused-appellant marked 03 contradictions. One contradiction was marked as P14. According to P14, he, in his statement made to the police, has admitted that Rajan does the heroin business. State Counsel marked another contradiction marked P15. According to P15 the accused-appellant, in his statement made to the Police, has said that the accused's brother has

helped Rajan in his business. Learned Counsel appearing for the accused-appellant contends that these 02 contradictions are confessions. She contends that these 2 contradictions suggest the inference that the accused-appellant has admitted in his statement made to the police that he had made a confession. When we consider both P14 and P15, in our opinion, they do not suggest the inference that the accused-appellant has made a confession to the police. We therefore reject the said submission.

Learned counsel for the accused-appellant tried to contend that the learned trial Judge had considered the statement made by the accused-appellant to the police as evidence. But when we consider the judgment we do not find that the learned trial judge had considered the statement made by the accused-appellant to the police as evidence. We therefore reject the said submission.

Learned counsel contended that although the accused-appellant has admitted the fact that the parcel was found with him, the prosecution has failed to prove mens rea. I now advert to this contention. In a criminal case, it is difficult for the prosecution to find direct evidence to prove the mens rea. Mens rea will have to be understood in a case. In considering whether the accused-appellant had mens rea or not it is relevant to consider the following matters. The accused-appellant admits that he did not associate with Rajan. Although he says that he does not associate with Rajan, he

admits that one Rajan had helped him in his brother's alms giving. The question that arises is if the accused-appellant does not associate with Rajan as to why he accepted a parcel contents of which were unknown to him (according to him) from Rajan. Will a person accept a parcel weight of which is over 2 kilograms from a person with whom he does not associate.

This incident has taken place in 2001. The accused has been arrested near Kelanitissa Power Station. When we consider the situation that prevailed in the country in 2001, the question that arises is whether a person would accept a parcel from another person without asking about the contents of the parcel. This question has to be answered in the negative. When we consider all these matters, the fact that the accused-appellant did not have mens rea cannot be accepted.

When we consider the evidence led at the trial, we hold the view that the accused-appellant was aware of the contents in the parcel and that he had accepted the parcel knowing what the contents were. It is significant to note that the police officers in their evidence had stated that the street value of the heroin was 5-6 millions.

When we consider all these matters, we are unable to accept the contention of the learned counsel for the accused-appellant. When we consider the evidence of the accused-appellant, we hold the view that the

accused-appellant's evidence cannot be believed and is not capable of creating a reasonable doubt in the prosecution case.

We have gone through the evidence led at the trial and are of the opinion that the prosecution has proved its case beyond reasonable doubt. We therefore affirm the conviction and the sentence imposed by the learned trial judge and dismiss the appeal.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-