

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

**In the matter of an appeal under  
and in terms of Section 333(1) of  
the Criminal Procedure Code Act  
No. 15 of 1979.**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka.

**Complainant**

Gangodawila Sujeewa Nilanthi Dabare

**Accused**

**Court of Appeal  
Case No. CA 201/2012**

**Vs,**

**And Now Between**

Gangodawila Sujeewa Nilanthi Dabare

**Accused-Appellant**

**High Court of Colombo  
Case No. HC 4726/ 2009**

**Vs,**

The Attorney General of the Democratic  
Socialist Republic of Sri Lanka

**Complainant-Respondent**

**Before : S. Thurairaja PC, J &  
A.L. Shiran Gooneratne J**

**Counsel : Saliya Pieris PC with Susil Wanigapura for the Appellant.  
Chethiya Gunasekara DSG for the Respondent.**

**Written Submissions : Accused Appellant - 9<sup>th</sup> May 2018.**

Complainant Respondent- 2<sup>nd</sup> February 2018.

**Argument on** : 16<sup>th</sup> November 2018.

**Judgment on** : 30<sup>th</sup> November 2018.

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## **JUDGMENT**

### **S. Thurairaja, PC. J**

Honourable Attorney General preferred an indictment against the Accused-Appellant, Gangodawila Sujeewa Nilanthi Dabare (Hereinafter sometimes referred to as the "Appellant"), for trafficking and possession of 385.1 grams of Heroin (dicetyl morphine) which is punishable under Section 54 A (b) and 54 A (d) of the Poisons, Opium and Dangerous Drugs Act.

Trial was held before the High Court of Colombo, prosecution led the evidence of Inspector of Police (IP) Moses Neomal Rangajeeva(PW1), Wannakuwaththa Mitiwaduge Ashoka Nandani Perera (Registrar of Magistrate Court of Attanagalle), Sub Inspector of Police (SI) Gunasinghe Mudiyanseelage Rohan Chinthaka Gunasinghe (PW2), Inspector of Police (IP) Chirath Buddhika Gunasekara and Government Analyst Pathirage Sandhya Kumuduni Rajapakse.

According to the prosecution witnesses, on the 16<sup>th</sup> May 2006, IP Rangajeeva received an information from his personal informant, that a woman and her husband are involved in trafficking of Heroin. He formed a team and went to Poorvarama Road, kirilapone, Colombo 5 and laid in ambush in front of a corner shop. Other officials were stood in a vehicle at the temple. When the IP was waiting with the team, his personal informant, had told them "here they come", and he left that place. IP Rangajeeva and SI Gunasinghe rushed towards the Appellant. There the Appellant was seen carrying a box and standing in front of a gate and calling someone "Akke". There IP Rangajeeva identified himself as an officer attached to PNB and searched the box. It had another telephone box (carton). When they opened it, they found 11 packets containing of brown coloured powder in polythene bags. Initially they

examined and suspected as Heroin. Both were arrested and taken to the office of PNB, there substance was weighed and sealed. The brown coloured powder weighed and it contained 1 kilogram and 214 grams (1214 grams) in total, which was sent to the Government Analyst Department. After analyzation, it was found that it contained 385.1 grams of dicetyl morphine, commonly known as Heroin.

The honourable Attorney General preferred an indictment against the Appellant and the Appellant was tried before the High Court of Colombo. After the trial she was found guilty and sentenced to death.

Being aggrieved with the said conviction and sentence the Appellant had preferred this appeal to the Court of Appeal and submitted following grounds of appeal.

- 1) Prosecution Witness No. 1 is unreliable and unworthy of credit.
- 2) There is a doubt cast as to the chain of production.
- 3) Contradictions between Prosecution Witness No.1 and No. 2.
- 4) Defence case was wrongly rejected by the High Court Judge.
- 5) Submissions were not heard before the sentence is passed.

We consider 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal together.

The PW 1, IP Moses Neomal Rangajeeva and PW 2, SI Gunasinghe Mudiyansele Rohan Chinthaka Gunasinghe gave evidence. These two were actively involved in the raid. It should be mindful that they have conducted this raid on an information provided to them by personal informant. The quantity recovered was 1214 grams which has a huge market value. After analyzation it was found that, it contained 385.1 grams of Heroin. There are no contradictions marked on the evidence of these two witnesses except on one factor, there was no difference between these two witnesses. The Counsel submits that, since they are trained Police Officers no contradictions can be marked. We have seen numerous Police Officers and other trained officers were giving evidence. We cannot have a common opinion against all of them. Evidence of every witness was evaluated by the Trial Judge after considering

many material factors. To make witness uncreditworthy, it depends on many factors. One of those contradictions are *per se* and *inter se*. In this case we did see contradictions regarding the Registration number of the vehicle. That issue will be discussed subsequently.

The evidence of the witnesses was weighed and assessed by the Learned Trial Judge. He had found that, the evidence of these two witnesses were acceptable and had stated the reasons in his judgment. We carefully perused the evidence of these two witnesses and submissions made by Counsels before us. We find that, the findings of the Learned Trial Judge is well considered and we have no reasons to interfere with same.

When the productions were taken over by the 1<sup>st</sup> witness, it was in his custody until it reached the PNB, there it was weighed and sealed in the presence of the Appellant and the other witnesses. Thereafter it was entered in the relevant registry and handed over to Buddhika who was in reserve. At page No.274 it says it was given at 0305 hours. But when we perused it says it was returned to the PNB at 2145 hours and he followed the formalities. Thereafter he reserved them at 2310 hours. When we read 272-274 pages, that the 0305 hours was a typographical error. PW1 was extensively cross examined of time, distance and many other issues and it was not suggested or questioned about handing over at 0305 hours. That further confirms the time marked, there was a typographical error, by the Court typist.

We carefully considered all factors, especially the possession and the chain of custody. We are convinced that, there are no discrepancies hence these three grounds of appeal fails on its own merits.

Further the Counsel shown more emphasis on a contradiction which appeared regarding the registration number of the vehicle they used. PW 1 said they used 61-7448 and at another occasion he said they used 61-7456. The running chart was also

produced. It appears that there is a mistake in the vehicle number. The PW2 categorically said that, they travelled in 61-7448 and the 2<sup>nd</sup> vehicle 61-7456 was used to send productions to the Government Analyst. The witness who transported the Accused persons to the Magistrate Court used the vehicle which was bearing No. 61-7446. It appears that these are two vehicles at the PNB and both have been used at different times in this raid.

The question arises whether this contradiction goes to the root of the case and creates a reasonable doubt. We carefully perused the judgment of the Learned Trial Judge which contained 26 pages. The Learned Trial Judge has independently analysed all factors before him including this contradiction and concluded that, this is not a material contradiction which creates a reasonable doubt in the case of the prosecution hence he rejected the same and come to his own conclusion.

Considering all factors, we find that, there is no merit in this ground of appeal.

The 4<sup>th</sup> ground of appeal is that the defence case was wrongfully rejected. It appears that the Appellant had taken two distinct defences among other minor issues. During the prosecution case, it was suggested that the production was found in the house of the Appellant. When the Appellant made a dock statement, she said that when the Police were about to leave the house after searching, a neighbour lady had came there and told a parcel was in front of the house compound. It is evidence by the Court that the Appellant was living in a tiny house of which, her house, front wall starts from the road and the adjacent house was separated by a same wall of the house (similar to shanty, line houses). If it was found out of the house as she claims in her dock statement it was on the road. Will any person leave such a big quantity with high financial value on the road? The Learned Trial Judge had carefully considered all factors and rejected the defence version. We are in agreement with

the findings of the Learned Trial Judge. We find that, this ground of appeal also fails on its own merits.

The Counsel for the Appellant submits that, she was not given an opportunity on submission regarding the sentence. Our law provides only two sentences, to any person who is possessing Heroin of 2 grams or more, it is death sentence or life imprisonment. In fairness to the Appellant we invited the Counsel under Article 145 of the Constitution, to submit any ground in mitigation of the sentence. Counsel fails to submit any reasonable ground for us to reconsider the sentence. It could have been better the Learned Trial Judge had give an opportunity to the Appellant to make submissions before imposing the sentence. But considering the facts of this case and opportunity given by this Court, we find the Learned Trial Judge absolutely justified in imposing the sentence as he imposed. We have no reason whatsoever to interfere with the said sentence.

After carefully considering the submissions, judgment and all facts of the case, we dismiss the appeal and affirm the conviction and the sentence.

**Appeal Dismissed.**

**JUDGE OF THE COURT OF APPEAL**

**A.L. Shiran Gooneratne, J**

I agree,

**JUDGE OF THE COURT OF APPEAL**