

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

In the matter of an Appeal made  
against the order of High Court  
Colombo in terms of Section 331 of  
the Code of Criminal Procedure Act  
No.15/1979.

**C.A.No.263/2017**

**H.C. Colombo No.5043/2009**

Samban Chandrasekeran

**Accused-Appellants**

**Vs.**

Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent**

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**BEFORE** : DEEPALI WIJESUNDERA, J.  
ACHALA WENGAPPULI J.

**COUNSEL** : S. de Zoysa for the Accused-Appellant.  
Azard Navavi S.S.C. for the respondent

**ARGUED ON** : 25.07. 2018

**DECIDED ON** : 05<sup>th</sup> October 2018

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**ACHALA WENGAPPULI J.**

The Accused-Appellant was indicted before the High Court of Colombo under Section 54A(b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended, for illegal trafficking and possession of 4.29 grams of heroin on or about 10.05.2007. After trial, he was found guilty of both counts and was imposed an imprisonment for life in respect of each of them.

Being aggrieved by the said conviction and sentence, the Accused-Appellant invoked appellate jurisdiction of this Court seeking to set them aside. In support of his appeal, the Accused-Appellant contended that the trial Court had not properly considered the infirmities of the prosecution's case and, in addition, it failed to properly consider his statement made from the dock.

In relation to the complaint that the trial Court had not properly considered the infirmities of the prosecution's case, the Accused-Appellant submitted that there is inconsistency between PW2 SI *Kariyawasam's* evidence as to where and when the notes of investigations were made, when compared with the evidence of PW1 IP *Ranasinghe*. It is submitted the notes of investigations were pasted in the Information Book only after a lapse of 11 days from the date of detection. In addition, PW4 PC 49631 *Kamal*, although participated in the detection, has not made any notes of investigation at all.

The evidence before the trial Court revealed that the detection was made by a Police party led by PW1 IP *Ranasinghe* and soon after returning to *Kotahena* Police, where he was attached to at the time, made his notes of investigation. The evidence of PW2 SI *Kariyawasam* also revealed that he too made his notes on the same day at 5.40 p.m. and handed them over to PC 61072 *Bandara* to be pasted in the Information Book. He had done so only on 21.05.2007, after 11 days delay. When confronted with the suggestion during the cross examination that the notes were in fact made belatedly, the witness stated he made notes on the same day but in pasting a delay had occurred which could be attributed to other more pressing official obligations.

It seems that the Accused-Appellant's contention is that the pasting of notes belatedly would make an adverse impact on the credibility of the evidence of the said witness. There was clear uncontradicted evidence

before the trial Court that the two officers who conducted the detection had made notes soon after their return to the Police station. Admittedly there was a gap of 11 days in pasting them in the Information Book. This fact could not be stretched into justifying an inference that the notes were made belatedly and therefore his evidence could not be relied upon.

In fact, the trial Court had devoted significant space in its judgment to deal with this aspect of the prosecution evidence. Thereafter, it had rightly decided to accept the prosecution evidence as a truthful and reliable version of events in relation to the detection made.

The fact that PW4 had not made any notes was also considered by the trial Court. It noted that the said witness was called by the prosecution as a witness to the "chain of productions" and only upon cross examination he gave evidence about the detection. In the absence of any notes to refresh his memory, the witness nonetheless gave consistent evidence with the other officers who had benefit of perusing their notes. The mere absence of notes would not make his evidence unreliable or false.

It was contended by the Accused-Appellant that, judging by the ordinary conduct, it is improbable for the Police not to conduct a search of his house as they claim he was arrested near his house with a parcel weighing 30 grams of heroin. PW1, when confronted with this suggestion,

provided an explanation as to why they did not conduct a search of his house. According to him they made a successful detection upon an information received from a private informant. As such there was no necessity to further conduct a search and he had used his discretion as the team leader not to carry out a search although he had the necessary man power to carry out such a search.

This submission had already been considered by the trial Court when it undertook to evaluate the credibility of prosecution evidence by applying the test of probability and improbability on them. It had rightly arrived at the conclusion, that it was not improbable for the Accused-Appellant not to possess any personal items such as a NIC, purse or some cash since the detection was made near his house.

In view of these considerations, it is our considered view that the said ground of appeal is devoid of any merit.

The second ground of appeal related to the contents of the dock statement made by the Accused-Appellant. It is contended that the trial Court failed to properly evaluate his statement from the dock, in relation to his narration of the sequence of events which led to his arrest.

It is stated in the judgment that the basis on which it rejected the dock statement of the Accused-Appellant, is on the following grounds;

- i. the claims by the Accused-Appellant that there was a scuffle with some others at the time of his arrest, his reason for going out of the house, possession of his NIC and phone at the time of arrest had not been suggested to any of the prosecution witnesses and had raised for the first time only in his statement as an afterthought,
- ii. there was no definitive and specific denial of possession of the packet of heroin detected, coupled with his belated claim that it was detected from another person and “introduced” to him,
- iii. inconsistency of the basis on which he cross examined the prosecution witnesses in relation to the sequence of events leading up to his arrest and the position he had advanced in his statement from the dock.

Having considered these infirmities in the dock statement, the trial Court had correctly rejected it as a false one. Before it ventured to analyse the statement, the trial Court reminded itself as to the applicable legal principles in relation to evaluation of dock statements and the three positions it must consider. We see no misapplication of any legal principles or an illegal imposition of an evidentiary burden on the Accused- Appellant with regard to contents of his dock statement.

In view of the above considerations, it is our firm view that the appeal of the Accused-Appellant has no merits and therefore ought to be dismissed.

Accordingly, we affirm the conviction and sentence of life imprisonment imposed on the Accused-Appellant.

The appeal of the Accused-Appellant is therefore stands dismissed.

JUDGE OF THE COURT OF APPEAL

DEEPALI WIJESUNDERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL