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

*In the matter of an Appeal in terms of Section 331 (1) of the Code of Criminal Procedure Act No- 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

**Court of Appeal Case No:**

CA/HCC/0464/2017

**High Court of Colombo**

**Case No:** 1661/2004

Democratic Socialist Republic of Sri Lanka

**COMPLAINANT**

**Vs.**

Sandanam Pichchai Mary Matilda

**ACCUSED**

**AND NOW BETWEEN**

Sandanam Pichchai Mary Matilda

**ACCUSED-APPELLANT**

**Vs.**

The Attorney General

Attorney General's Department,

Colombo 12.

**COMPLAINANT-RESPONDENT**

| | |
|---|---|
| Before | : Sampath B. Abayakoon, J. |
| | : P. Kumararatnam, J. |
| Counsel | : Niranjan Jayasinghe with Harshana Ananda for the Accused-Appellant |
| | : Shanil Kularatne, S.D.S.G. for the Respondent |
| Argued on | : 15-11-2023 |
| Written Submissions | : 04-03-2021 (By the Accused-Appellant) |
| | : 19-08-2021 (By the Respondent) |
| Decided on | : 20-03-2024 |

**Sampath B. Abayakoon, J.**

This is an appeal by the accused-appellant (hereinafter referred to as the appellant) on being aggrieved of her conviction and sentence by the learned High Court Judge of Colombo, dated 11-12-2017.

The appellant had been indicted before the High Court of Colombo for having in her possession, 11.80 grams of Diacetylmorphine, commonly known as Heroin, on 27-01-2001 at Colombo 14 within the jurisdiction of the High Court of Colombo, and thereby committing an offence punishable in terms of the Poisons Opium and Dangerous Drugs Ordinance as amended by Amendment Act No. 13 of 1984.

After trial, the learned High Court Judge of Colombo found the appellant guilty as charged, and she was sentenced to life imprisonment.

It is against this conviction and sentence the appellant has preferred this appeal.

The facts that led to the arrest and prosecution of the appellant can be summarized as follows.

## Facts in Brief

PW-01 has been attached to the Police Narcotic Bureau (PNB) as an Inspector of Police during the time relevant to this detection. On 24-01-2001, he, along with 11 other officers of PNB, has left their station around 5.25 a.m. on vice-prevention duties in a van belonging to the PNB.

They have conducted a raid at the Katawalamulla area, but it had not been successful. While conducting the said raid, at about 7.15 a.m., Police Inspector Welagedara, who was a member of the raiding party has received an information through an informant about a female called Mary, who lives near Stace Road, Colombo 14, that she has gone to bring drugs and will be returning. After receiving this information, PW-01 and his team had gone to Stacepura area and has reached the labour housing situated in the area. They have met the informant and he has informed that the mentioned Mary has gone to bring drugs and he can point out her on her return.

Accordingly, PW-01 has instructed the vehicle to be parked near the fuel station situated in the junction and he, along with IP Welagedara and another officer called Wimalaratne, had walked towards the direction pointed out by the informant. According to his evidence, when they reached the area, it was about 7.40 a.m. While waiting for about 20 minutes, the informant who was a little distance away has gestured, pointing a female walking past them and signaled that she is the person mentioned. Thereafter, the informant had discretely left the area.

PW-01 along with IP Welagedara has followed the female for about 30-40 feet and had stopped her near a by-lane that led to a small houses situated in the area. There had been a common water tap nearby. After stopping her, PW-01 had introduced himself and had observed that she was in a highly excited state, and when questioned about her name, she had not answered. She has had a small purse in her hand, PW-01 has taken the purse to his hand and searched it. The purse has had six compartments and he has found a cellophane bag

which contained brown-coloured powder inside. PW-01 has identified the substance as Heroin through his experience as a PNB officer and has arrested the appellant at 8.10 a.m. after informing her of the charge.

He has identified the said person as the appellant, namely Sandanam Pichchai Mary Matilda, and has taken steps to search the house of the appellant which was nearby. He had not found anything suspicious at the house. After the arrest, the productions and the suspect had been kept under his custody, and upon his return to the PNB, PW-01 has done a field test and has found that the substance taken into custody was showing positive results for Heroin.

He has weighed the substance along with the cellophane bag where the said substance was found and it has shown a weight of 21 grams and 520 milligrams. After that, he has taken the due steps to seal the productions and enter it under PR number 159. The purse which was taken into custody had been given the PR number160. PW-01 has then handed over the productions to the officer who was doing police reserve duties at the PNB, namely PS-13775 Nandasena. He has followed this procedure, as the regular officer who was in charge of the production room of the PNB was not available at that time. He has also taken steps to hand over the appellant to the police reserve.

PW-01 had identified the said productions at the trial, and he has also testified that when the quantity of Heroin was recovered inside the purse, it was found to be spreaded in the cellophane bag so that it could not be felt from outside.

The witness had been subject to a lengthy cross-examination, and during the cross-examination, he has admitted that when he received the information from IP Welagedara, he did not make a note of that, and was unaware whether IP Welagedara entered that information in his pocket notebook. He has also testified to the effect that when they received the information, they were near Katawalamulla area in Maradana, near Ananda College. After receiving the information, they have left that area around 7.25 a.m., and has stated that by the time they reached Orugodawaththa area and got down from their vehicle, it

was about 7.30 a.m. When questioned about the time line, he has stated that he entered his notes after reaching the PNB and it was around 9.50 a.m., therefore he is mentioning the time line on a rough basis, which may not be the exact time.

He has also stated that he found Rs. 1450/- inside the purse and has testified that he took steps to handover the money to the brother of the appellant when he searched her house.

On behalf of the appellant, it had been suggested to PW-01 that the appellant was arrested not at the place stated by the witnesses, but when she was seated near her front door, and the purse was a one taken from her house, which had nothing inside. It has also been suggested that the witness has introduced Heroin found when they searched a house of a person named Loku Putha at Katawalamulla to the appellant. The witness has denied that suggestion saying that although they searched the house, there was no detection of drugs from the said house.

Explaining the reasons as to why he did not seal the productions at the place of the detection, he has stated that since he had the capacity to bring the productions safely and as soon as possible to his station, he immediately left the area and sealed the productions at PNB. He has stated that there were no other productions under his custody at the time of this detection.

The prosecution has called the mentioned IP Welagedara (PW-02) to corroborate the evidence of PW-01. He is the person who had received the information when they were at another raid. He has confirmed that the information was received at 7.15 a.m., and after informing to his superior officer who was PW-01, they left Katawalamulla area at 7.25 am. He has corroborated the evidence of PW-01 as to how the arrest was made, and the manner in which the suspected substance was found inside the purse the appellant was carrying. He has also substantiated the procedures followed by PW-01 after the arrest of the appellant as stated by him.

Under cross-examination, it has also been suggested to him that they introduced drugs found in the house of Kankanam Aarachchige Sujeewa *alias* Loku Putha to the appellant, which the witness has denied saying no drugs were found when that house was searched previously to this detection. When questioned about the initial information received by him, he has stated that when he received the information, he did not have his pocket notebook with him, and therefore, he entered the notes about the information only after reaching the PNB. He has denied the suggestion that his failure to enter the information in his pocket notebook was a result of a false detection.

When questioned about the occupiers of the house when the house of the appellant was searched, the witness has stated that her brother and the small daughter of the appellant, were present at the house. It has been suggested to him that the appellant was in the house looking after her sick daughter at that time, and the raiding party came and took the appellant away to PNB and she had no Heroin with her at the time of the arrest. The witness had denied this suggestion and had stated that she was arrested near the water tap situated in the road that leads to her house and that she had Heroin in her possession at the time of the arrest. The witness also had denied the suggestion that the Heroin recovered from the person called Loku Putha was introduced to the appellant.

When questioned about the absence of a female police officer, it had been his position that they had no time to call for a female police officer, although they knew that they are going to look for a female Heroin peddler.

In this trial, the officer of the Government Analyst who accepted the productions has given evidence to confirm that the productions have been duly accepted by the Government Analyst Department.

The Analyst who conducted the analysis has also given evidence and has stated that when the substance was weighed at the Department, it had a pure weight of 21 grams, and when tested for drugs, it was found that the substance had 11.8 grams of Heroin. The said report had been marked as P-13.

At the trial, the police officers who took the productions to the Government Analyst has also given evidence and the prosecution has led evidence to establish the chain of custody.

It was PW-05 who has taken charge of the productions from PW-01 at the PNB police reserve on 27-01-2001 at 10.30 a.m., and he has handed over the productions to the production keeper, namely IP Sunil Perera on the same day at 13.52 hours. The said IP Perera has given evidence stating that he had the productions under his custody until 02-02-2001, and it was he who handed over the productions to the Government Analyst Department.

At the conclusion of the prosecution evidence, and when the appellant was called upon for her defence, she has chosen to give evidence under oath.

In her evidence, she had admitted that she was arrested on 27-01-2001. However, her stand had been that she was arrested not in the manner stated by the witnesses while she was walking towards her home, but when she was inside the house. She had stated that she was on the bed with her 6-year-old daughter as she was sick, and some persons came near her house around 7.00 or 8.00 in the morning and knocked at the door, while calling her name. She has opened the door and has found several persons in civilian clothes. It had been her stand that they identified themselves as officers from the PNB and came inside the house, where they asked her to give the things. She has denied having had anything in her possession. She has claimed that the police officers searched the house for about half an hour. When they were unable to find anything inside the house, she was arrested and taken into the PNB. She has denied that she was arrested with Heroin while walking on the road.

She has been subjected to a lengthy cross-examination by the prosecution. Although she has not mentioned anything about the purse produced by PW-01 to substantiate his version of events, under cross-examination, she had denied that it belonged to her. In her evidence, she has failed to say anything about the

prosecution witnesses' claim that the money found in the purse was handed over to her brother.

The learned High Court Judge in his judgement had found the appellant guilty as charged on the basis that the prosecution has proved the charge against her beyond reasonable doubt.

After having considered the previous conviction record and the other relevant factors, the learned High Court Judge has sentenced the appellant to life imprisonment.

**The Grounds of Appeal**

At the hearing of this appeal, the learned Counsel for the appellant formulated the following grounds of appeal for the consideration of Court.

1. The evidence of the prosecution witnesses fails the test of credibility and the probability.
2. The prosecution has failed to prove the chain of custody of productions.
3. The evidence given by the accused-appellant has been rejected on unreasonable grounds.

This Court heard the submission of the learned Counsel for the appellant in relation to the grounds of appeal urged, and the submissions of the learned Senior Deputy Solicitor General (SDSG) on behalf of the complainant-respondent.

**Consideration of the Grounds of Appeal**

**The 1st Ground of Appeal:-**

In this matter, the stand of the appellant when the relevant PW-01 and PW-02 were giving evidence had been that, they introduced the Heroin that they found when they searched a house of a person called Sujeewa to the appellant.

Therefore, I find it necessary to consider whether this suggestion has created any credibility issue in relation to the evidence of PW-01 and PW-02.

In giving evidence, PW-01 who was the officer-in-charge of the police team that conducted this raid has given clear evidence that they left the PNB at 5.30 in the morning and conducted a raid by searching the house of a person called Sujeewa. However, the witnesses had been clear that they could not find any suspicious material in the house and the raid was unsuccessful.

I find that there was no basis for the appellant to know about the previous raid unless after perusing the notes of this raid prepared by the police officers where they may have stated about the previous unsuccessful raid. I am of the view that the knowledge gained by the said notes where the appellant had access, has been used to beat up a position of this nature without an acceptable basis.

The main contention of the learned Counsel for the appellant to justify his submission as to the improbability of the version of events as narrated by the prosecution witnesses had been the time alleged to have taken by the raiding party to reach the place of detection from the place where they were at the time the information was supposed to have received. It was contented that according to PW-01's and PW-02's evidence, when the information was received, they were at the Katawalamulla area near Ananda College, and if they left that place at 7.25 a.m., it was impossible for them to reach Stacepura Road within five minutes time during the peak traffic hour on a weekday.

It is trite law that evidence in a case has to be considered as a whole, and not by taking pieces of evidence out of context.

It was held in the case of **Don Samantha Jude Anthony Jayamaha Vs. The Attorney General, C.A. 303/2006 decided on 11-07-2012** 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 evidence that is in the light of the evidence for the prosecution as well as the defence."*

In the Privy Council judgement in **Jayasena Vs. Queen 72 NLR 313,** it was held:

*"A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalizing and, ask himself whether a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty."*

In his evidence in chief PW-01 has stated that he received the information at 7.15 a.m. while he and his team were at Katawalamulla area, and after receiving the information, they left that area and reached the Stacepura area around 7.40 a.m. in the morning. The arrest of the appellant had been at 8.10 a.m. After coming to PNB after the arrest, the relevant notes had been entered.

Under cross-examination, he has stated that he left the Katawalamulla area around 7.25 am and reached the Orugodawatta junction around 7.30 in the morning. However, he has given specific answers stating that it maybe five or six minutes, but he has not entered his notes stating a specific time but assuming the relevant times as he entered his notes after returning to the PNB.

The evidence of PW-02 has been that they left the Katawalamulla area at around 7.25 a.m. in the morning and reached the area where the raid was conducted in about five minute's time.

The contention of the learned Counsel for the appellant was that there is no possibility for the police party to travel within five minutes as they claim to the place of the arrest. However, it needs to be noted that their evidence as to the time taken by them to travel had not been based on specific times but on assumptions.

Although it is the duty of the prosecution to prove its case in considering the probability aspect as argued, I find it necessary to consider the stand taken up by the appellant also in this instance. The appellant has not denied that she was arrested at the Stacepura area on the day of the incident around the time stated by the witnesses. Her position had been that she was not arrested while walking on Stacepura, Road, but while sleeping at her house. The difference between the

place where the police witnesses say that the arrest was made and what is claimed by the appellant had been a distance of few meters.

Under the circumstances, I am of the view that the alleged time taken by the police party to reach the place of the incident, should become relevant whether it was probable under that context. Since there was no denial that the arrest was made at the time and at the place, as I have stated above, I am of the view that the time taken by the police party to travel to that place is an insignificant factor when taken the evidence in its totality, in relation to that fact.

Another matter taken up by the learned Counsel was, the failure by the police team to obtain the services of a female police officer knowing very well that they were going to look for a female suspect, to claim that a doubt arises as to the alleged raid.

The explanation of the witnesses had been as they received this information while engaging in another raid, they had no time to get down a female officer. There again, I am of the view that this become relevant if the police party left the PNB knowing very well that they are going to search a female suspect without having a female officer to accompany them. According to the prosecution evidence, since this was an information received while engaging in another raid, the explanation given by the prosecution witnesses, in my view, are acceptable. This argument also needs to be considered in the context of the appellant not denying her arrest.

The learned Counsel for the appellant also pointed out that the initial information has not been recorded in the pocket notebook of PW-02 as required, but it had been recorded after they reached the PNB, and that was also on the crime notebook.

I find that the PW-01 has sufficiently explained the reasons for him being unable to endorse the information received by PW-02. PW-02 has explained that he did not have his pocket notebook with him at the time of receiving the information as a reason for his failure to enter the information as police regulations require.

I find that although this maybe an instance where police officers had failed to follow the necessary instructions, that in itself would not be a reason to doubt such an information. It needs to be considered whether such a failure contributes towards creating a doubt as to the alleged raid conducted. As there is no denial of such a raid, although the appellant claims it happened in a different way, I find that such a failure would not constitute a reasonable doubt on the evidence of the prosecution witnesses.

The learned Counsel for the appellant also doubted the evidence where PW-01 has stated that when he searched the purse carried by the appellant, he found the substance in a cellophane bag evenly spread inside the bag, whereas, the evidence of PW-02 had been that when he saw it was similar a small lump like parcel (කුඩා ගුලියක් වැනි පාර්සලයක්).

I find that this has also been well explained by PW-01 in his evidence. He has stated that when he searched the parcel, it was in a powder-like form and was flattened in the purse, and that he could not observe any lump from outside of the purse. It is PW-01 who had searched the appellant and taken out the parcel. When such a content is taken out, another person observing the state of it may be different. I am of the view that when taking the entire episode as a whole, it cannot be said that a doubt arises as to the evidence of the witnesses in that regard.

The learned Counsel further raised doubt as to the evidence where the witnesses say that they found only Heroin and some cash inside the purse to argue that no person, especially a female from an ethnic minority, will travel outside without having her National Identity Card or any other form of identity in her possession.

Here again, I am of the view that it is a subjective matter depending on the facts and the circumstances of a case. The mere fact where the witnesses says that she had only the suspected substance and money with her cannot be a question of probability on the basis that the suspect had no identification papers with her.

It is settled law that any contradiction, omission or a question of probability has to be a material question in relation to the evidence led in a case under given circumstances. A mere contradiction or an omission which does not create a reasonable doubt in the prosecution evidence does not warrant dismissing the prosecution evidence on such a basis alone.

It is well-established law that for a contradiction to be relevant in a case, such a contradiction or contradictions should have the effect of shaking the core of the case, and trivial contradictions should not be considered in such a manner when considering the totality of the evidence. I am of the view that same principles should apply when evaluating any argument as to the probability of any fact.

**Shiranee Thilakawardena, J.** in the case of **The Attorney General Vs. Potta Naufar and Others (Ambepitiya Murder Case) (2007) 2 SLR 144** observed that;

> *"…when faced with contradictions in a testimonial of a witness, the Court must bear in mind the nature and the significance of the contradiction.*
>
> *…the Court must come to a determination regarding whether these contradictions were an honest mistake on the part of the witness or whether it was a deliberate attempt to mislead Court."*

In the case of **Mahathun and Others Vs. The Attorney General (2015) 1 SLR 74** it was held:

(1) When faced with contradictions in a witness testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness.
(2) Too great a significance cannot be attached to minor discrepancies, or contradictions.
(3) What is important is whether the witness is telling the truth on the material matters concerned with the event.
(4) Where evidence is generally reliable much importance should not be attached to the minor discrepancies and technical errors.

(5) The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of testimony of a witness unless it is manifestly wrong.

In the case of **State of U.P. Vs. M. K. Anthony, AIR 1985 SC 48**, it was held:

> *"While appreciating the evidence of a witness the approach must be whether the evidence of a witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to tender it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole."*

For the reasons as considered, I find no basis in the first ground of appeal urged by the learned Counsel for the appellant.

**The 2nd Ground of Appeal:-**

The argument of the learned Counsel for the appellant that the chain of custody of productions has not been proved to the satisfaction of the trial Court had been based on the questions and answers given by PW-01, while under cross-examination (at page 207 of the appeal brief), and on what was stated by PW-02 when he gave evidence in that regard (at page 354 of the appeal brief).

For matters of clarity, I will now reproduce the relevant portions of evidence.

At page 207 of the appeal brief- evidence by PW-01,

ප්‍ර. ඇයට දැනුම් දීමෙන් පස්සේ ඊට පස්සේ මහත්මයලා ගත්ත ක්‍රියාමාර්ගය මොකක්ද පර්ස් එකයි මුදලුයි මහත්මය අතේ නඩු භාණ්ඩත් මහත්මය අතේ නේද?

උ. පර්ස් එකයි මුදලුයි නඩු භාණ්ඩයි සියල්ලම පර්ස් එකේ. ඒ පර්ස් එක තමයි මගේ බාරයේ තිබුනෙ ඒ අවස්ථාවේ.

ප්‍ර. නඩු භාණ්ඩ එකෙන් එලියට අරගෙන බලලා ආයෙ ඒක ඇතුලට දැම්මා?

උ. එහෙමයි පර්ස් එකෙ තිබුන තැනටම එහෙම්මම ඒ ආකාරයට තබා ගත්තා.

ප්‍ර. එතකොට ඒ පර්ස් එක රදවා ගත්ත තැන පිළිබඳව මහත්මයා සටහන් යොදලා නෑ?

උ. මගේ බාරයේ තබා ගත්තා කියලා පැහැදිලිව සටහන් ඇතුලත් කරලා තිබෙනවා.

ප්‍ර. ඔතන සිට පොලිස් ස්ථානයට එනකම්ම මහත්මයාගේ බාරයේ තමයි මේ නඩු භාණ්ඩ සහ පර්ස් එක තිබුනේ?

උ. එහෙමයි.

At page 354 of the appeal brief - evidence of PW-02,

ප්‍ර. ඊට පස්සේ ඒ කවරය පිටින්ම ඔහු එම නඩු භාණ්ඩ සාක්කුවට දා ගත්තා ද?

උ. ලියනගේ මහත්තයා සන්තකයට ගත්තා සාක්කුවේ දා ගත්තාද අතේ අරගෙන ගියාද කියලා මගේ සටහනේ නැහැ.

ප්‍ර. ඒ නඩු භාණ්ඩ අත් අඩංගුවට ගත්ත තමුන්ලා කියන මැය සන්තකයේ තිබුණු පර්ස් එකේ දාලා ද නැත්නම් වෙනමද රදවා ගත්තේ?

උ. වෙනම

ප්‍ර. මහත්තයා දැක්කාද?

උ. මතකයක් නැහැ

Reading the above evidence of the two witnesses, it is clear that there had been no break in the chain of custody. The productions had been with PW-01 from the moment it was taken from the appellant, until the productions were handed over to the police reserve. His evidence had been clear that after checking the substance, he put it inside the purse and kept the purse with him. The evidence

of PW-02 had been that after checking the substance, it was taken charge by the PW-01. He has stated that he had not made notes as to whether PW-01 kept the productions in his trouser pocket or on is hand. He has stated that he cannot remember whether the substance was put inside the purse or not.

I find that this is not a basis to consider that there was a break in the chain of custody of the productions. As I have stated before, the productions had been in the custody of PW-01 until they were handed over to the police reserve. Hence, I find no basis to the considered ground of appeal.

**The 3rd Ground of Appeal:-**

In the 3rd ground of appeal, the contention of the learned Counsel for the appellant was that the learned High Court Judge has failed to consider the defence taken up by the appellant in its correct perspective and had considered irrelevant considerations to reject the dock statement of the appellant.

It is abundantly clear from the judgment that the learned High Court Judge has well considered the defence taken up by the appellant. After having considered the evidence of the prosecution, the defence taken up by the appellant when the witnesses were giving evidence, and the evidence of the appellant in her defence, the learned High Court Judge has come to a conclusion that there is no possibility for the prosecution witnesses to concoct a story in this manner against the appellant.

He has found that the defence taken up by the appellant has not created a doubt as to the evidence of the prosecution, and has determined that the defence was not consistent, rejecting the defence taken up by the appellant.

In a criminal case, the onus is on the prosecution to prove its case beyond reasonable doubt against an accused. An accused person has no obligation in that regard.

In **SC Appeal No. 99/2007 decided on 30.07.2009,** it was observed that:

> *"What needs consideration now is when the evidence led for the prosecution in this case is closely scrutinized, whether it could be satisfied that prosecution had discharged the burden of proving the case beyond reasonable doubt. If not the Appellant is liable to be acquitted of the charges. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness in the defence, and when the guilt of the accused is not established beyond reasonable doubt, he is liable to be acquitted as a matter of right and not as matter of grace or favour."*

In the Indian Supreme Court case of **Narender Kumar Vs. State (NCT of Delhi), AIR 2012 SC 2281 : (2012) Cri LJ 3033 : (2012) 3 JCC 1888 : (2012) 5 SCALE 657 : (2012) 7 SCC 171 : (2012) AIRSCW 3391 : (2012) 4 Supreme 59,** it was held:

> *"Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.*
>
> *Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony."*

However, it is well settled law that when a strong *prima facie* case has been established by the prosecution against an accused, a duty is cast upon such an

accused to give a reasonable explanation as to the facts and the circumstances or at least create a reasonable doubt in relation to the evidence of the prosecution. In such a situation, any reasonable doubt has to be considered in favor of the accused and he or she should be acquitted of the charges.

In the instant matter, when PW-01 and PW-02 were giving evidence, the stand taken by the appellant had been that Heroin taken from another suspect when the raiding party searched another house was introduced to her, which the witnesses have denied.

As I have considered earlier, there was no plausible basis for such a suggestion to be considered as relevant. The suggestion made to PW-01 as to the place of arrest of the appellant (at page 191 of the brief) had been that she was arrested while waiting near the front door of her house. The suggestion made to PW-02 has been similar to that.

In giving evidence, the appellant has stated that on the day of the arrest between 7.00 and 8.00 in the morning, she was on the bed with her young daughter who was sick. She has stated that she opened the door when someone knocked on it, and the persons who were in front of the house identified themselves as from PNB and searched the house for about half an hour. When they could not find anything, they took her to the PNB and introduced Heroin to her, was her stand.

She has failed to disclose as to how she came to know about the previous raid conducted by the officials on that day and her basis for suggesting that the Heroin taken in the previous raid was introduced to her. She has not disputed the evidence that money was handed over to her brother by the PW-01.

This shows that, as considered correctly by the learned High Court Judge, the defence taken up by the appellant has not been consistent, and had not created any reasonable doubt as to the evidence of the prosecution.

I am unable to conclude that the learned High Court Judge has rejected the defence on unreasonable grounds. On the contrary, I am of the view that the

learned High Court Judge has considered the evidence with a clear understanding of the principles of evidence that he has to keep in mind when considering evidence in a case of this nature.

It has been considered whether the prosecution evidence can be considered reliable and trustworthy by analyzing the evidence in its totality. After having come to a firm finding that a strong *prima facie* case has been established by the prosecution, the learned High Court Judge has well considered whether the defence taken up by the appellant has caused a reasonable doubt or has provided a reasonable explanation as to the evidence placed before the Court. Having satisfied that he has no basis to accept the defence taken up by the appellant, the learned High Court Judge has proceeded to convict the appellant on a sound basis after having considered the relevant evidence and the law in that regard.

Accordingly, I find no basis to agree with the 3rd ground of appeal as contended by the learned Counsel for the appellant.

For the reasons as set above, the appeal is dismissed for want of merit.

The conviction and the sentence dated 11-12-2017 by the learned High Court Judge of Colombo is affirmed.

Judge of the Court of Appeal

**P Kumararatnam, J.**

I agree.

Judge of the Court of Appeal