

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

In the matter of an appeal made in terms of Article 331(1) of the Code of Criminal Procedure Act No. 15 of 1979 (as amended) read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

Complainant

CA Appeal Case No. 95/18

Vs.

H.C. Colombo Case No: 7831/2015

Hussain Farook Mohomad Ziyam

Accused

AND NOW BETWEEN

Hussain Farook Mohomad Ziyam

Accused – Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12

Complainant- Respondent

Before : Menaka Wijesundera J.
B. Sasi Mahendran J.

Counsel : I.B.S.Harshana, assigned counsel for the Accused –
Appellant.
Anoopa De Silva, D.S.G. for the Hon. Attorney General.

Argued on : 29.11.2023

Decided on : 06.12.2023

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 4.4.2018 of the High Court of Colombo.

The appellant has been indicted for possession and trafficking of 3.84 grammes of heroin.

The grounds of appeal raised by the Counsel for the appellant were that,

- 1) Chain of productions being questionable**
- 2) The trial judge taking over the role of the prosecutor and there by denying a fair trial to the appellant,**
- 3) The dock statement of the appellant not being considered by the appellant.**

The version of the prosecution is that a team of police officers at the Police Special Task Force led by SI Dinesh Sanjeeva on a tip off received had gone on raid to the house at Seevali Place Borella of the appellant and had discovered a parcel of heroin concealed in the genital area of the appellant. This raid had been done on 20.7.2013 around 1.30 in the midnight.

Upon taking the parcel into custody the police party had proceeded to the Police Narcotics Beurea to weigh the productions in the presence of the appellant. Upon doing so they had returned back to the station and PW1 in whose custody the productions had been, had handed over the productions to PS Ramanayake at 2.30 on the same day.

Thereafter the said Ramanayake had handed over the productions to PS 50141 Jayatilleke on 22.7.2013 at 6.30.

Thereafter CI Rajakaruna had taken over the production at 15.30 hours on 22.7.2013 and had kept it in the safe until it has been sent to the Government Analyst.

One of the main grounds raised by the appellant had been that there had been a break in the chain of productions.

Upon perusal of the brief, we find that PS 50181 Jayatilleke's number had been rewritten over in the note book of PW1 and thereby the Counsel for the appellant alleged that the notes had been tampered with.

PW1 had been very lengthily cross-examined including other witnesses and they had been found fault with that it has not been altered according to police regulations.

But one has to be mindful of the fact that these notes had been put at about 4.30 in the morning at which time any normal human being is likely to make mistakes, and this had been gone in to by the trial judge very carefully at page 318 of the judgment.

Therefore, we see no breaking of the chain because it is only a human error and we all as human beings are susceptible to such errors.

The next point raised by the Counsel for the appellant is that the trial judge had taken over the role of a prosecutor.

Upon careful perusal of the appeal brief we find that it is a completely unfounded allegation because the trial judge had intervened in the proceedings at very few times and it had been for very good reason. At one point he had asked 6 questions from the Government Analyst (page 284) but he had given the defense and the prosecution both to ask questions if they wish to, but they have not done so. The other times had been at pages, 219,244 ,258,254,263 and 284 according to which all had been not less than three questions and all for very good reason .

The Counsel for the appellant cited several judgements where it has been held that the trial judge should not take the role of the prosecutor but in this instance, we find that it had not been so and that the Counsel for the appellant has made a baseless allegation.

At this point we draw our attention to the case of Hattuwan Pedige Sugath Karunaratne vs The Attorney General SC Appeal 32-2020 decided on 20 10 2020 by Aluviare J it has been held that "Judges have a duty and are required to control the proceedings....and to intervene where necessary to ensure the proceedings are conducted in a faire manner to all parties. In

this respect the judges should follow the proceedings closely and should be alive to the events unfolding before them”.

As such in the instant matter we see no unfair interference by the trial judge but instead he had been very vigilant in ensuring a faire trial to the appellant.

The third ground of appeal raised by the Counsel for the appellant was that the trial judge had failed to consider the dock statement made by the appellant. This to we find is baseless because the trial judge had very carefully considered the contents in the dock statement. (pages 323-325).

Therefore, we find that the grounds of appeal raised by the Counsel for the appellant are all baseless and without merit.

But upon consideration of the evidence led at the trial for the case for the prosecution we find that the prosecution has led cogent evidence which had been very lengthily cross-examined but the witness had stood the test of cross-examination very well and the prosecution had built up a very formidable case for the prosecution.

The defense had suggested to the witnesses that the so-called raid had not taken place at the given time but before and at that time the appellant had been beaten up by the police.

This position had been put to the witnesses and the appellant also had taken up the same in the dock statement, but the case for the prosecution had been very formidable and consistent.

Thereby the trial judge had upon analyzing all the evidence led by the defense and the prosecution had found the appellant guilty for the charges in the indictment.

As such we see no merit in the grounds of appeal raised by the Counsel for the appellant. Hence the instant appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Hon. Justice B. Sasi Mahendran

I agree.

JUDGE OF THE COURT OF APPEAL