

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

In the matter of an appeal in terms of
Section 33(1) of the Code of Criminal
Procedure Act No. 15 of 1979 read with
Article 138 of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal No:

CA/HCC/193/2019

High Court of Colombo

Case No: HC/1578/2003

Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Lewis Amar Raj *Alias* Dubai Rajah

Accused

AND NOW BETWEEN

Lewis Amar Raj *Alias* Dubai Rajah

Accused – Appellant

Vs.

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Complainant-Respondent

Before : Menaka Wijesundera J.
Wickum A. Kaluarachchi J.

Counsel : Harshana Ananda with Lahiru Widushanka and
Danushka Bandara for the Accused-Appellant.
Shamil Kularatne, SDSG for the Respondent.

Argued on : 12.06.2024

Decided on : 16.07.2024

MENAKA WIJESUNDERA J.

The accused-appellant (appellant) has been indicted for the possession of 102.8 grammes of heroin under the provisions of the **Poisons, Opium and Dangerous Drugs Ordinance**.

The appellant had pleaded not guilty and trial has commenced, upon the conclusion of the trial, the appellant has been sentenced accordingly.

The trial related to the instant appeal has been upon a retrial ordered by this court, which had commenced in September 2014 and the prosecution had led the evidence of four Police Narcotics Bureau officers and the Government Analyst.

The defence had led the evidence of the wife of the accused and the accused had made a dock statement.

The grounds of appeal raised by the appellant is as follows,

1. **The trial judge had failed to consider the improbability of the prosecution version.**
2. **The trial judge rejecting the defence on a minor contradiction.**

The version of the prosecution is narrated by police officers, who had assisted Chief Inspector **Amarajith Silva** at the time of the raid.

This is unfolded by PW-02 and PW-03. These two witnesses had been extensively cross examined by the defence, but they had stood the test of cross examination without causing any major contradictions or omissions in their evidence.

The evidence of PW-02 and PW-03 are that on the 10th Of April, 2002, on a tip off received by **C.I Amarajith Silva** and **I.P Nimal Perera**, PW-02 and PW-03, has been involved in the raid conducted by **C.I Amarajith Silva**.

The team of Police Narcotics Bureau officers had gone to the Madampe town around 03.35 in the morning and had stayed watch till 04.10 in the morning along with **CI Amarajith Silva** and **I.P Nimal Perera**. At this time, there had been street lamps burning in the town. They had seen the accused approaching and upon seeing the group, he had tried to run away. But the appellant had been stopped and searched by PW-01. PW-02 and PW-03 had been in close proximity watching PW-01. A parcel of a substance, which is similar to heroin had been taken in to custody from his possession. He had been arrested by PW-01. Thereafter, with the appellant and the productions, PW-01, PW-02, PW-03 and I.P Nimal Perera had gone to search the houses of **W. Kamalachchi** and **Marie Sundari**, but nothing illegal has been found from their houses. At 5.30 am the group had gone to search the house of the accused along with him, but nothing had been found from his house too.

Thereafter, the group of officers along with the accused had gone to the Police Narcotics Bureau and had sealed the parcels. This has been done by PW-01, in the presence of PW-02 and PW-03.

PW-02 and PW-03 has been cross examined as stated above by the defence and they had been suggested to the witnesses, that they arrested the accused while sleeping at home, that they planted the narcotics and that the accused was arrested on the tip off received by **W. Kamalachchi** and **Marie Sundari**. All these suggestions had been denied by PW-02 and PW-03.

Upon the sealing of the productions, PW-01 had handed over the productions to PW-04, who had been in charge of the production room in the Police Narcotics Bureau. This handing over process had taken place in the presence of PW-02 and PW-03.

PW-04 has given evidence on oath and had said that he duly took over the productions from PW-01 and kept it in safe custody, till it was handed over to the Magistrates Court.

PW-06, that is **IP Nimal Perera**, has also given evidence and has corroborated the evidence of PW-02 and PW-03.

The Government Analyst has testified in court and had stated that the productions were duly received and the seals and the relevant signatures on the parcels had been in place. The Government Analyst had further observed 102.3 grammes of heroin in the parcel submitted for analysis.

Throughout the prosecution's case, PW-02, PW-03 and PW-06, had been lengthily cross examined but they had stood the test of probability and trustworthiness. The prosecution has had no chance of leading the evidence of **IP Amarajith Silva** but PW-02, PW-03 and PW-06, who had assisted **IP Amarajith Silva**, have unfolded the story of the prosecution.

The accused had made a statement from the dock, according to which he had said that he had been arrested while he was sleeping at home and the narcotics were introduced by the Police Narcotics Bureau officers.

The defence had led the evidence of a police officer by the name of **Susantha**, who had been the jeep driver during the raid, to establish that PW-02 was inside the jeep and not with PW-01 at the time of the detection.

But upon cross examination, he had admitted that his notes were wrong.

The wife of the accused had also been called upon and she had tried to corroborate what the accused had said in the dock statement, but she had not been successful.

The line of cross examination for the prosecution witnesses had been that the accused was arrested while he was sleeping in the house and the narcotics introduced to him were taken from the custody of **Kamalachchi** and **Marie Sundari**, who was arrested before him and that they came to the house of the accused at the time of arrest .

But if that is so, the wife of the accused who opened the door of the house, according to the accused, had not said so in her evidence, which is quite surprising, because the accused himself in the dock statement had spoken to the presence of the two women at the time of the arrest.

Hence, the Dock statement and the version of the defence witnesses do not corroborate each other.

Hence upon the consideration of the evidence of the prosecution, the prosecution witnesses had corroborated each other. They had stood the test of cross examination without causing any major contradictions or omissions. The defence had referred to minor contradictions in their evidence, which is the time difference between PW-02 and PW-03 and the mix up of a name of a road in the route taken by the prosecution's witnesses, to reach the place of incident. But it is the opinion of this court that the said contradictions in the evidence of the prosecution do not go to the route of the case.

In the decided case of **Mazur Ivegen vs Honourable Attorney General (SC Appeal No. TAB/1/2015)**, former Chief Justice, the Honourable Priyasath Dep held that, "the defence marked several contradictions and referred to several omissions in the evidence of the prosecution witnesses and thereby challenged the testimonial trustworthiness of the witnesses. However, these contradictions and omissions are minor, which do not go to the root of the prosecution's case. The High Court at Bar correctly disregarded the contradictions and omissions. At this stage it is appropriate to refer to the Indian case of **BhoginbhaiHirjibhai v State of Gujarat** (AIR 1983-SC 753 at pg 756-758)".

When a criminal charge is forwarded against an accused person, the cardinal rule in criminal law is that proving the charge against the accused is the responsibility of the prosecution and it has to be proved beyond a reasonable doubt.

In the instant matter, the cross examination by the defence and the material taken up in the dock statement and the defence witnesses has not created a reasonable doubt in the case of the prosecution.

The grounds of appeal taken up by the counsel for the appellant is that the improbability in the case for the prosecution and that the defence had been rejected by the trial judge due to a minor contradiction in the defence's case. But upon consideration of the evidence led by both parties, I observed that the story of the prosecution has stood the test of the probability satisfactorily and the trial judge has evaluated the same accordingly. Therefore, we see no merit in the first ground of appeal. The second ground of appeal is the fact that the trial judge had rejected the defence case due to minor contradictions but we observe that the defence witness, that is the wife of the accused, had omitted to state some of the facts mentioned by the accused in the dock statement and in the cross examination put to the witness of the prosecution. Therefore, this court is of the opinion that the trial judge is correct in rejecting the Defence's case. As such, we see no merit in the second ground of appeal taken up by the accused-appellant.

As such, there is no reason to set aside the conviction and sentence entered by the trial judge, hence, the instant appeal is dismissed and the conviction and the sentence of the appellant is hereby affirmed.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal