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

In the matter of an Appeal in terms of the Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka and in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No. CA 348/2018 Vs.

High Court of Colombo

Case No: HC 1798/2004 Alvitigalage Don Dinesh Nimantha

Accused

And Now Between

Alvitigalage Don Dinesh Nimantha

Accused – Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12

Complainant- Respondent

Before : MenakaWijesundera J.

Wickum A. Kaluarachchi J.

Counsel : Rienzie Arsecularatne, P.C. with Chamindri Arsecularatne and Himasha Silva for the Accused-Appellant.

Sudarshana de Silva, D.S.G. for the State.

Argued on : 26.02.2024

Decided on : 20.03.2024

MENAKAWIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 31.10.2018 of the High Court of Colombo.

The accused appellant (appellant) has been indicted for being in possession and trafficking 2.40 grammes of heroin under the provisions of the Poisons Opium and Dangerous drugs Ordinance.

The appellant has pleaded not guilty and the trial has commenced and at the end of the trial, the learned judge had found the appellant guilty for the counts and had sentenced accordingly.

The main grounds of appeal raised by the Counsel for the appellants were that the

1) The trial judge had not considered the prosecution evidence in the correct perspective.
2) The trial judge had not looked for corroboration,
3) The defense case not being considered at all.

The prosecution had led evidence of witness number one who had been the main witness who had conducted the entire raid. Witness number 2 had only assisted and he had not been called by the prosecution as he had been in remand.

The evidence of witness number 1 is that on the 21st December 2003, he had been attached to the Police Narcoticsbureau and witness number 2 had received a tip off and accordingly he had organized a raid and had gone to Maradana around 12.45 in the afternoon.

He and witness number 2 had stayed watch on Siemen's Road and they had arrested the appellant who had been coming down the road and on body search they had found a substance they suspected to be heroin in his right trouser pocket.

Witness number one had taken the substance in to his custody and had arrested him and had taken to the vehicle where the other officers had been.

Then they had proceeded to his house which had been in close proximity and they had not found any offending article.

They had returned back to the PNB around 3.15 and after weighing the substance he had found around 3 grammes. Thereafter he had sealed the productions and he had duly signed and had got the signature of the appellant as well.

Thereafter he had kept it in his custody until the officer who was in charge of productions had returned to the PNB. Once he returned that is witness number 3, he had dully handed over the productions to him.

Thereafter he had finished putting his notes.

Hence the entire raid had been supervised and conducted by witness number one and he had been only assisted by witness number 2. Hence witness number 1 had put his notes and had dully sealed the productions and handed over prosecutions to PW3.

The learned President's Counsel for the appellant stated that the prosecution by not calling witness number 2 the evidence of the raid had not been corroborated and the trial judge had not been aware of this, which has denied a fair trial to the appellant.

At this point we draw our minds to the recently decided case by the Supreme Court SC Appeal 154-2010 in which Aluvihare J had very succulently dealt with the principle laid down in section 134 of the Evidence Ordinance and quoted Sir John Woodruff and Syed Amir Ali (Law of Evidence 1st Edition Vol 1 Page 601 -603,

"It is open to Court to accept the evidence of a police officer and to convict the accused on the basis thereof, if the evidence of the police officer is trust worthy and reliable. If the Court feels that the uncorroborated testimony of the police officer by itself is capable of inspiring confidence there is nothing forbidding the Court from acting upon it. The law does not require that such evidence should be corroborated.....

Court cannot reject the evidence of witnesses merely because they are government servants....The credibility of public officers should not be doubted on suspicion and without acceptable evidence." and he has continued to hold that " in this context the failure to call PC Punchihewa to testify in my view could not have given rise to an adverse inference....

Hence in the instant matter the prosecution had not called witness number 2 but had called witness number one and he had been the chief investigative officer but the recovery of the goods had been only witnessed by witness number 2 and the failure of the prosecution to call the witness does not create an adverse effect on the prosecution if the evidence of PW1 can be relied upon.

Hence merely because PW1 is a police officer his evidence need not be doubted merely based on his profession.

If the trial judge is satisfied that PW1 can be believed and his demeanor and deportment in Court while giving evidence had been satisfactory there is no bar to accept his evidence in the relevant statute under which the appellant has been indicted.

Hence the learned president'scounsel's submission on behalf of the appellant that the trial judge had not called for corroboration with regard to the raid conducted against the appellant is contrary to section 134 of the Evidence Ordinance and is without merit.

Upon the conclusion of the evidence of PW1, the prosecution had led the evidence of the Government Analyst who had said in evidence that the report pertaining to the instant matter had been prepared on the 28.72003 and the productions had been received on the 24.2.2003 and the productions had been sent back to Court on 8.8.2003.

The main concerns raised by the President's Counsel for the appellant with regard to this evidence were that,

1) **The deference in the weight of the heroin had not been explained by the prosecution,**
2) **Where were the productions kept in the Government Analyst department,**
3) **Why the preparation of the report was delayed.**

The Government Analyst in giving evidence had very clearly said that when the production reached the department and until it was examined the seals were in tact and had explained the reason for the deference in the weight at page 171 of the appeal brief.

The witness had further said that the productions had been handed over by PW3 whose evidence had been admitted by the appellant during the trial.

The Government Analyst had further said that once the productions were received the said productions were kept in a cupboard under lock and key, it cannot be accessed by unauthorized persons.

Hence, we see no merit in the submissions of the learned president's counsel for the appellant with regard to the evidence of the GA.

The next ground of appeal raised by the learned president's counsel for the appellant was that the adoption of evidence had been done after the trial judge who delivered the judgment started hearing PW1.

But we observe that this situation had arisen on the 15.3.2003 and on that day it had been recorded that evidence had been adopted and both parties had agreed to do so in journal entry and in the Court proceedings at page 145. But of course, the trial judge had written by hand later that "he is doing so" which shows that even on the said date the trial judge had been aware of the correct procedure pertaining to same and had taken steps to do so eventhough documentation had been a little out of order it has not caused a miscarriage of justice to the appellant.

Upon the conclusion of the evidence of the GA the prosecution had recorded the evidence of PW4 who had assisted PW1 and 2 in searching the house of the appellant.

Thereafter the prosecution had closed and the defense had been called and the appellant had made a statement from the dock and had said that the narcotics were introduced to him and that he was arrested while he was having lunch with the farther at home.

The farther had given evidence and had tried to corroborate the appellant but had said that the appellant was arrested because he did not know where the person called "Lala " was.

The defense also had led the evidence of the police driver who had driven the police vehicle which had gone to conduct the raid and he had been questioned on the mileage of the vehicle.

The main grouse of the defense was that the trial judge had not considered the defense at all.

But reading the judgment of the trial judge we find that he has analyzed the evidence of the defense very lengthily and has been very mindful of the law

pertaining to the rights of an accused person and the responsibility of the prosecution in proving its case beyond a reasonable doubt.

Hence, we see no merit in the submission that the defense of the appellant has not been considered.

Hence, this Court also upon reading the evidence of both parties can only conclude that the conviction and the sentence entered by the learned trial judge are reasonable and within the law.

Hence, we hold to dismiss the instant appeal and affirm the conviction and the sentence of the appellant.

Judge of the Court of Appeal

Hon. Justice Wickum A. Kaluarachchi

I agree.

Judge of the Court of Appeal