

PERERA
v.
ATTORNEY-GENERAL

COURT OF APPEAL
GUNASEKERA, J. (P/CA),
DE SILVA, J.
CA NO. 61/96
HC PANADURA 1062/95
JULY 4, 8, 9 AND 14, 1997.

Poisons, Opium and Dangerous Drugs Act, No.13 of 1984 s. 54 (A) C – Custody of the Production – Inwards and outwards journey – Opportunity for tampering – S. 420 Code of Criminal Procedure Act, No.15 of 1979 and No. 11 of 1988 – Recording of admissions.

Held:

1. The most important journey is the inwards journey because the final Analyst Report will depend on that.

As the Defendant had admitted the correctness of the procedure adopted by the prosecution in sending the production to the Analyst Department he is estopped from contesting the validity of the correctness of the Analyst Report even if the prosecution had not led in evidence the receipt of acceptance of the productions by the Analyst Department.

2. An admission could be recorded at any stage of the trial, before the case for the prosecution is closed. The purpose of recording an admission is to dispense with the burden of proving the fact at the trial.

APPEAL from the judgment of the High Court of Panadura.

Dr. Ranjith Fernando with Ms. Kishali Pinto-Jayawardena for the appellant.

Sajeewa Samaranayake S.C. for the Attorney-General.

Cur. adv. vult.

August 21, 1997

J. A. N. DE SILVA, J.

The accused-appellant Nawagamuwage Sajeewa Priyantha Perera was indicted in the High Court of Panadura with having being in possession of 2.93 grams of Heroin on 17.02.1989, near the railway station at Moratuwa, in contravention of section 54A (c) of the Poison, Opium and Dangerous Drugs Act, No. 13 of 1984 as amended and punishable under Schedule 3 Column 11 of the said Act.

The trial had been before a Judge and after the conclusion of the case the learned trial Judge had convicted the accused-appellant and sentenced him for a term of life imprisonment. For the prosecution several witnesses had given evidence. On behalf of the defence no witnesses been called but the accused-appellant had made a statement from the dock to the effect that when he went with a friend to buy some spare parts for a car, in front of the station he saw a fight between some parties. He with the friend settled the fight. Thereafter some people came and assaulted him and his friend and both were handed over to the police with a parcel.

The case for the prosecution was that on an information received by the Moratuwa Police, Inspector Wilmot Alexander Rodrigo along with P/S Chandrani Weerasinghe and another constable had proceeded towards the Moratuwa Railway Station around 4 in the afternoon. They had observed the accused-appellant waiting for a bus at the Panadura Bus Stand which was in close proximity to the Railway Station. Since the description which was in their possession fitted the accused-appellant the Police team had questioned him and on being searched they had found 13 big packets in his trouser pocket. Each of those 13 packets had contained 20 smaller packets of brownish powder. Thereafter the accused-appellant had been taken into custody and handed over to the Moratuwa Police.

The following events had taken place in respect of the productions after they had been taken into custody. On the next day i.e. 18th of February 1989 I.P. Rodrigo had taken the accused-appellant and the production to the "City Pharmacy" for the purpose of weighing. There all the heroin packets had been emptied into one bag and weighed. The total weight had been 7,200 miligrams. Thereafter this bag had been sealed and handed back to the Police Reserve by I.P. Rodrigo. On the 28th of February the productions had been sent to the Moratuwa Magistrate's Court. I.P. Iddamalgoda had taken the productions from the Court under BR No. 57/89 to the Analyst Department on the 30th of June 1989. Having obtained a receipt for the same from the department he had given back the receipt to the Record Keeper of the Magistrate's Court the same day. P/S Silva had collected the production from the Analyst Department on 28.05.1990 and returned to the Magistrate Court.

At the trial it had been revealed that the packet which contained heroin was empty. This packet had been marked as P1. It had transpired that one end of the packet had been eaten up by rats and heroin had disappeared. The 260 small alluminium foils had been marked as P2. (13 x 20 = 260).

At the hearing of the appeal the Counsel for the appellant raised the following matters:-

- (a) Is it incumbent on the prosecution to prove the 'chain' relating to the custody of the production with regard to the inwards and outward journey in obtaining the analyst report?
- (b) Can an admission be recorded under section 420 of the Code of Criminal Procedure Act, No. 15 of 1979 after the commencement of the trial?
- (c) Has the learned trial Judge misconstrued the admission recorded in this case?

It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore it is correct to

state that the most important journey is the inwards journey because the final Analyst report will be depend on that. The outward journey does not attract the same importance.

In the instant case the prosecution had led evidence of several witnesses to establish this fact and at one stage had amended the indictment to include several more witnesses for this purpose. However from the proceedings of 23.01.96 it is clear that the defence had admitted the correctness of the procedure adopted by the prosecution up to the time of sending the productions to the Analyst.

The learned counsel for the appellant submitted that the admission relates only to the "inwards" journey to the Analyst Department and as the receipt of the Analyst Department had not been produced by the prosecution to show that the productions were in fact received by them and therefore to that extent there is a break in the 'chain'.

The admission recorded by the High Court Judge on 23.01.96 was as follows: "It is admitted that the packets containing heroin alleged to have been taken into custody from the possession of the accused by I.P. Rodrigo on 17.02.89 were kept in safe custody at the Police Station till they were produced to the Government Analyst through the Magistrate's Court under BR No. 57/89". The defence Counsel at the trial had further stated that in view of the above admission it is not necessary to call the Government Analyst as a witness. (page 181).

The learned trial Judge had approached the question raised by the counsel for the appellant in the light of the above admissions recorded by court. The learned trial Judge had stated that since the defendant had admitted the correctness of the procedure adopted by the prosecution in sending the production to the Analyst Department, the defendant is estopped from contesting the validity or the correctness of the analyst report even if the prosecution had not led in evidence the receipt of acceptance of the productions by the Analyst Department. Furthermore the defence had suggested not to call the analyst. In these circumstances defendant should not be permitted to take advantage of his own conduct and complain that the report of the Analyst is diffective or inaccurate. We are in agreement with these observations of the learned trial Judge.

The 2nd question is that at what point of time can an admission be recorded under section 420 of the Code of Criminal Procedure Act, No. 15 of 1979. The purpose of recording an admission is to dispense with the burden of proving that fact at the trial. Therefore we are of the view that an admission could be recorded at any stage of the trial before the prosecution close the case. The Learned State Counsel pointed out that by the Code of Criminal Procedure (Amendment) Act No. 11 of 1988 this matter has been put beyond doubt. In the circumstances we see no merit in this argument.

The 3rd question raised by the learned Counsel for the defence is whether the learned trial Judge had misconstrued the admission recorded by him. In the judgement the learned trial Judge had erroneously stated that the accused-appellant had admitted both the inward and outward journey. However in view of the reasons given by him with regard to the admissibility of the analyst report we consider this as an oversight. We see no reason to interfere with the findings and the sentence of the learned trial Judge and dismiss this appeal.

GUNASEKERA, J. (P/CA) – I agree.

Appeal dismissed.