

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

*In the matter of a Special Leave to Appeal in  
terms of Article 128(2) of the Constitution of the  
Republic of Sri Lanka.*

**SC/SPL/LA No. 43/2023**

CA/HCC/ No. 122/2019

High Court Colombo Case No. 7580/2014

The Democratic Socialist Republic  
of Sri Lanka

**COMPLAINANT**

**Vs.**

Albaradura Rumesh De Silva.  
87/38 B,  
Mahawatta Road,  
Colombo.

**ACCUSED**

***AND THEN BETWEEN***

Albaradura Rumesh De Silva.  
Angunakolapelessa Prison,  
Angunakolapelessa.

**ACCUSED-APPELLANT**

**Vs.**

Hon. Attorney General,

Attorney General's Department,  
Colombo 12.

**COMPLAINANT-RESPONDENT**

***AND NOW BETWEEN***

Albaradura Rumesh De Silva.  
Angunakolapelessa Prison,  
Angunakolapelessa.

**ACCUSED-APPELLANT-  
PETITIONER**

***Vs.***

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**COMPLAINANT-  
RESPONDENT-REPOUDENT**

**BEFORE** : **P. PADMAN SURASENA, J.  
JANAK DE SILVA, J. &  
ARJUNA OBEYESEKERE, J.**

**COUNSEL** : Shanaka Ranasinghe, PC with Niroshan  
Mihindukulasuriya and Sandamali Peiris for  
Accused-Appellant-Petitioner.

Janaka Bandara, DSG for Complainant-  
Respondent-Respondent.

**ARGUED &**

**DECIDED ON** : 17<sup>th</sup> July 2024

**P. PADMAN SURASENA, J**

Court heard the submissions of the learned President's Counsel for the Accused-Appellant-Petitioner as well as the submissions of the learned Deputy Solicitor General for the Complainant-Respondent-Respondent.

Having considered the submissions, Court decides to grant Special Leave to Appeal in respect of the following question:

Whether the learned Judges of the Court of Appeal were able to evaluate the case for the defence in the correct perspective according to law, when they had entertained the thought "*No reasonable person can believe those Police Officers would assault and arrest an innocent man who says he is unaware of the drug traffickers in the area*".<sup>1</sup>

At this stage, the learned Counsel for the Petitioner as well as the learned Deputy Solicitor General for the Respondents agree that this Court can proceed to hear and determine the question of law in respect of which we have granted Special Leave to Appeal forthwith dispensing with compliance with the provisions of the Supreme Court Rules in regard to taking other relevant steps preparatory to the hearing of the case. Accordingly, having heard the submissions of the Counsel, we proceed to forthwith determine the above question of law.

The indictment forwarded against the Accused contains two counts. The first count is for trafficking of 2.77 grams of Heroin and the second count is for possession of the same quantity. After the Prosecution closed its case, the Accused has made a Dock

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<sup>1</sup> Vide page 10 of the Judgment, dated 10-01-2023, of the Court of Appeal.

Statement denying the charges and taking up the position that he was assaulted by the Police Officers who had then taken him to the Police Station.

In the course of the Judgment, the Trial Judge had taken the view that the defence taken up by the Accused in the Dock Statement has not been suggested to the witnesses in the course of cross examination. However, the Court of Appeal had not agreed with that position. The learned Deputy Solicitor General also submitted before us that that the assertion made by the learned Trial Judge that the defence taken up by the Accused in the Dock Statement has not been suggested to the witnesses in the course of cross examination is erroneous.

The Court of Appeal, without relying on the reasons given by the Trial Judge for the rejection of the Dock Statement, had proceeded to give their own reasons and decided to reject the Dock Statement made by the Accused. It is in that process that the Court of Appeal had taken the view that no reasonable person can believe the Police Officers would assault an innocent man who says he is unaware of the drug traffickers in the area.

We regret our inability to subscribe to such a view. Moreover, we are of the view that such a view taken by the Court of Appeal at the very beginning of the process of evaluating the Dock Statement made by the Accused, particularly in the light of the nature of the defence taken in the Dock Statement by the Accused in the instant case, would vitiate the conclusion reached by the Court of Appeal that the Dock Statement of the Accused must be rejected. We are also of the view that such a conclusion would also vitiate the final conclusion of this case arrived at by the Court of Appeal to dismiss the Appeal before it.

In our view this is sufficient for us to decide not to allow the Judgment dated 10-01-2023, pronounced by the Court of Appeal to stand.

As regards the Judgment of the High Court, the reason for the rejection of the Dock Statement of the Accused has been adverted to earlier in this Judgment. For those

reasons we are of the view that the Judgment of the High Court should also not be permitted to stand.

For those reasons, we decide to set aside both the Judgment of the High Court of Colombo dated 20-06-2019 and the Judgment of the Court of Appeal dated 10-01-2023.

The Appellant neither complained about the conduct of the trial before the High Court nor complained about the manner in which evidence was recorded in the trial. Thus, the complaints in this proceeding, are against the Judgments of both Courts. In view of the above, we have no basis to direct a fresh trial to be conducted from the very beginning. Therefore, we set aside the conviction and the sentence imposed on the Accused-Appellant-Appellant and send this case back to High Court of Colombo with a direction that the High Court of Colombo must takes steps to pronounce a fresh Judgment on the evidence already adduced in the trial.

The High Court Judge of Colombo is directed to allow both parties to make submissions in order to facilitate the preparation of the Judgment .

Appeal is allowed.

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**ARJUNA OBEYSEKERE, J**

I agree.

**JUDGE OF THE SUPREME COURT**

NS