

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

**In the matter of an Appeal under and in
terms of the Section 331 of the Code of
Criminal Procedure Act No. 15 of 1979
read with Article 154(p) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka**

The Democratic Socialist Republic of Sri
Lanka

Complainant

CA HCC 453/2017

High Court of Colombo
Case No. HC 7410/14

Vs.

Nanayakkarawasamgoda Liyanage
Premasiri alias Chuti Mahaththaya

Accused

AND NOW BETWEEN

Nanayakkarawasamgoda Liyanage
Premasiri
alias Chuti Mahaththaya

Accused-Appellant

Vs,

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

Complainant-Respondent

Before: **B. Sasi Mahendran. J,**
 Amal Ranaraja. J,

Counsel: Rienzie Arsecularatne, PC with Chamindi Arsecularatne for
 the Accused-Appellant

Janaka Bandara, D.S.G. for the Respondents

Argued on: 26.01.2026

Judgment on: **18.02.2026**

Judgment

Amal Ranaraja. J,

1. The accused-appellant (hereinafter referred to as the ‘appellant’), together with another has been named the first accused in the High Court of Colombo in the Case No. HCC 7410/14. The charges in the indictment are as follows;
 - i. On or around 29.01.2013, in *Dehiwala*, within the jurisdiction of this Court, you as the first-accused, has committed an offence under Section 54A (b) of the Poisons, Opium and Dangerous Drugs (Amendment) Ordinance No.13 of 1984, by trafficking a quantity of Diacetyl Morphine, or heroin, exceeding the quantity specified in Column II of Part III, particularly, 56.16 grams and of the Third Schedule to the said Ordinance, in a manner other than as permitted by the provisions of Chapter V of the Ordinance, or in a manner other than as permitted by a license of the Director and therefore, is punishable by the penalty specified in the corresponding column iii of that part.
 - ii. At the time , location and course of action mentioned in the first charge above, you as the first-accused, has committed an offence under Section 54A (c) of the Poisons, Opium and Dangerous Drugs (Amendment) Ordinance No.13 of 1984, by having in your possession, a quantity of Diacetyl Morphine, or heroin, exceeding

the quantity specified in Column II of Part III, particularly, 56.16 grams and of the Third Schedule to the said Ordinance, in a manner other than as permitted by the provisions of Chapter V of the Ordinance, or in a manner other than as permitted by a license of the Director and therefore, is punishable by the penalty specified in the corresponding column iii of that part.

- iii. At the time , location and course of action mentioned in the second charge above, you as the second-accused, has committed an offence under Section 54B of the Poisons, Opium and Dangerous Drugs (Amendment) Ordinance No.13 of 1984, by aiding and abetting the first-accused to be in possession of 56.16 grams of the diacetyl morphine, or heroin, exceeding the quantity specified in Column II of Part III of the Ordinance, in a manner other than as permitted by Chapter V or by the license of the Director, thus allowing him to commit an offence under section 54A(c) of the Ordinance.
2. At the conclusion of the trial the learned High Court Judge had convicted the Appellant of the first and second charges and acquitted the other of the third charge. The learned High Court Judge has thereafter sentenced the Appellant to death.
3. The Appellant aggrieved by the conviction, disputed judgement and the sentencing order has preferred the instant appeal to this court.

Case of the Prosecution

4. Police Constable 73163 Dinesh (PW07) has received information from a confidential informant that a suspect was engaged in narcotics trafficking. PW07 has passed the tip to sub-inspector W.N. Ruwan Kumara (PW01). Acting on the information, PW01 has organized a raid to arrest the suspect. At about 20.00 hours on January 29th, 2013, PW01, PW03 (Police Constable 12810 Nahinna), PW07 and several other officers have travelled to a location near the *Dehiwala* Municipal Council.
5. On arrival PW07 has met the informant who had come in a three-wheeled scooter. The informant has stated that the transaction would occur near *Jayasinghe Playground on 1st Lane Dehiwala*. Accordingly, PW01, PW03 and PW07 have followed the informant in another three-wheeled scooter.

6. While positioned near the playground PW01 has observed the three-wheeled scooter approach from the direction of *Karagampitiya* and stop close to the officers. When two men got out, the informant has pointed to one of them and identified him as "*Chuti Mahaththaya*", the person previously named to PW07.
7. Thereafter, the appellant and the second accused named in the indictment have been detained by the police officers. During the search PW01 has seized a parcel from the appellant's possession. A preliminary inspection has revealed that the parcel contained a powdered substance to be heroin.
8. Both suspects have been arrested and taken to the Police Narcotics Bureau for further investigation. The parcel still in the secure custody of PW01 has been weighed in the presence of the appellant and the other named the second accused. The gross weight had been recorded as 501.6 grams. PW01 has then sealed the parcel and retained it overnight for safety.
9. On the following day PW01 has handed the sealed parcel to the designated production officer at the bureau, PW09, Inspector of Police Rajakaruna. PW9 has transported the sealed parcel to the Government Analyst's Department. After conducting a full analysis, the Government Analyst has confirmed that the powdered substance was heroin and issued an analytical report to that effect. The analyst's report has been produced at the trial and marked *ප්‍ර 10*.

Case of the Appellant

10. The appellant maintains that on that day he travelled to *Dehiwala* in a three-wheeled scooter in anticipation of inspecting a vehicle which he intended to purchase for his son. Though he had travelled to the original location the vehicle in question had not been there. Subsequently, he had been asked to come to a location named "*Tropical Inn*" to have a look at the vehicle. The appellant has proceeded to such location and has had a look at the vehicle. Thereafter, upon an invitation to have a cup of tea he has entered the inn. Upon his entering he has allegedly been locked up in a room, thereafter blindfolded, assaulted and taken to the Police Narcotics Bureau. The appellant has denied that the officers from the bureau recovered a narcotics substance from his possession.
11. The Grounds of appeal are as follows;
 - i. The learned trial Judge who continued to hear the trial, namely learned High Court Justice N.V. Karunathilake has not adopted

the evidence led before his predecessor namely, High Court Judge S.K. Weerawardane. In those circumstances has the learned High Court Judge Gihan Kulathunga adopted all evidence led in the case up until then i.e. 20.01.2017

- ii. The prosecution has failed to explain the discrepancy with regard to the gross weight of the heroin arising from the government analyst report.
- iii. Has the learned High Court Judge compartmentalized the evidence led in court?
- iv. Has the learned High Court Judge failed to consider the evidence of the defense.

12. At the trial PW01 has testified that after returning to the Police Narcotics Bureau, he weighed the powdered substance allegedly seized from the appellant. His contemporaneous notes record a gross weight of 501.6 grams. Supposedly the same exhibit has been later produced before the Government Analyst Department by pw9 Inspector of Police, Rajakaruna. According to the Assistant Government Analyst (pw10) the powdered substance was again weighed before the laboratory tests were carried out; on that occasion the gross weight had been recorded as 470 grams. *Vide the Analyst Report marked v.10*. A discrepancy of 31.6 grams therefore exists between the two measurements. The prosecution has led no evidence to explain this considerable difference. No witness has clarified whether

- i. Any portion of the substance had been removed for preliminary field tests
- ii. The weight of the packaging had been included or excluded at the second stage. If so, as to what the weight of the packaging was.
- iii. Any loss could have occurred through spillage, evaporation etc.

13. In the absence of such evidence the integrity of the exhibit remains in doubt. Because the prosecution bears the burden of proving that the substance analysed in the laboratory is the very substance seized from the appellant. The unexplained variant in weight materially undermines the prosecution's case and gives rise to a reasonable doubt that must accrue to the benefit of the appellant. Divergent weights suggest either that the exhibit was altered or that different parcels were weighed at different times.

14. Further, a 31.6 grams difference is too large to be dismissed as a mere rounding error. Without an explanation the court cannot exclude the possibility that part of the substance was removed substituted or contaminated.
15. In narcotic cases the prosecution must establish the identity and the integrity of exhibit beyond reasonable doubt. Where a doubt exists, the benefit must be given to the accused.
16. Given the aforementioned considerations I believe that it is unnecessary to explore the remaining grounds of appeal.
17. The incident referred to in the charge has occurred in the year 2013. Thirteen years have passed since the offence has been purportedly committed. Therefore, it does not seem just to call upon the appellant to defend himself again after such an unconscionable lapse of time.

In ***The Queen vs. G.K. Jayasinghe 69 NLR 314 at page 328***, Sansoni, J, has stated,

“...we have considered whether we should order a new trial in this case. We do not take that course, because there has been a lapse of three years since the commission of the offences...”

18. Hence, having considered the matters referred to above, I am of the view that this is not a fit case to order a re-trial, I set aside the conviction, the disputed judgement together with the sentencing order and acquit the appellant of the charges preferred against him.

Appeal allowed.

I make no order regarding costs

19. The Registrar of this Court is directed to send this Judgement to the High Court in Colombo for compliance.

Judge of the Court of Appeal

B. Sasi Mahendran. J,

Judge of the Court of Appeal