

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an appeal under and in terms of section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979 as amended read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

High Court Case No:

**HC/463/2018**

Court of Appeal Case No:

**CA/HCC/175/24**

Democratic Socialist Republic of Sri Lanka

**Vs**

Gamage Thilak Pushpa Kumara

**Accused**

**AND NOW BETWEEN**

Gamage Thilak Pushpa Kumara

**Accused-appellant**

**Vs**

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

**Respondent**

Before : **P. Kumaratnam, J.**  
**Pradeep Hettiarachchi, J.**

Counsel : Hafeel Farisz with Shanon Fernando for the Accused-Appellant  
Akila Dalpadatu S.C. for the Respondents

Argued on : 10.09.2025

Decided on : 02.12.2025

**Pradeep Hettiarachchi, J**

### **Judgment**

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted for the possession and trafficking of 8.31 grams of Heroin, offences punishable under sections 54 A(d) and 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.
2. The trial commenced in the High Court of Colombo, and at the conclusion of the trial, the learned High Court Judge found the Appellant guilty of the charges. Consequently, the Appellant was convicted and sentenced to life imprisonment. It is against this conviction and the sentence the Appellant has lodged the present appeal. The following grounds of appeal are advanced by the Appellant;
  - (a) The learned High Court Judge has failed to consider that the version of the prosecution is improbable;
  - (b) The learned High Court Judge has failed to analyze contradictions *per se* in the prosecution’s version;
  - (c) The learned High Court Judge failed to consider that there was no evidence whatsoever to prove that the Appellant intended on trafficking the purported Diacetylmorphine;

- (d) The learned High Court Judge failed to consider the contradictions between PW1 and PW2 *inter alia* pertaining to the purported “exclusive possession” of Diacetylmorphine found from the Appellant;
- (e) Contradictions in the version of the prosecution on the chain of productions were not considered;
- (f) The learned High Court Judge failed to give any analysis as to the version of the Defense;
- (g) The learned High Court Judge failed to analyze that there was a significant discrepancy in the weight of the Diacetylmorphine purportedly weighed by the police officers of the Mattakkuliya and the Government Analyst of the Government Analyst Department.

3. Following witnesses testified on behalf of the prosecution;

PW1- Sub Inspector of the Mattakkuliya Police Station, Sinhala Irdudipathige Rohana Jayampathi

PW2- Police Sergeant Jayantha Deepal (48876)

PW5- Police Constable Ponnamparuma Arachchilage Asanka Harrol

PW6- Kasaduruge Chandana Pushpakumara Perera

PW7- Police Sergeant Hewa Pawallage Sumith Jayantha (51873)

PW8- Police Constable Lalith Saumya Dasanayake (75077)

PW11- Senior Assistant Government Analyst, Merrinage Ayesha Jayamali Fernando

- 4. After the close of the prosecution case, the Appellant made a dock statement and proceeded to call DW1, Bandara Dewata Gedera, a retired Chief Inspector of Police served in the Mattakkuliya Police Station to give evidence.
- 5. According to PW1, on 01-05-2017, he was on patrol with another three police officers in the Mattakkuliya Summitpura area, all dressed in civil attire. While walking along the Summitpura road he has seen the Appellant standing at the beginning of the Summitpura C Lane. According to PW1, upon seeing the four police officers who were in civil attire, the Appellant appeared visibly alarmed, changed the course of his journey, and in visible distress, put his hand into the pocket in his trouser. Thereafter, upon noticing the change in his behavior, PW1 had gone and apprehended the Appellant. According to PW1, he has taken the right hand of the Appellant out of the pocket and checked. Holding tightly in his

right hand was a white color cellophane bag which contained a brown color substance similar to Heroin. The other officers were also nearby when aforesaid incident took place.

6. He has arrested the Appellant at around 2.00 pm and taken into his custody the Heroin that was recovered from the possession of the Appellant. Thereafter, he has proceeded to the Modara Police Station with PW2 and the Appellant in a three wheeler. At the Modara Police Station, PW1 has weighed the cellophane bag containing Heroin, sealed it and taken the finger prints of the Appellant. According to PW1, weighing and sealing of the productions were done in front of the Appellant. The gross weight of the cellophane bag containing Heroin was 19 grams.
7. PW1 and his team of officers had come to the Mattakkuliya police station at around 4.00 pm on the same day and upon arrival, PW1 has handed over the sealed productions bearing the finger prints of the Appellants to PW5. At the trial, PW1 identified the productions.
8. It was contended by the Counsel for the Appellant that the prosecution's version of events regarding the manner in which the arrest took place was highly improbable. Upon cross examination, PW1 stated that they saw the Appellant about 500m away and the Appellant started acting in a suspicious manner, when he saw them. It was also stated that the Appellant started to walk towards Summitpura C Lane when the police officers were about 20-30 meters away from the Appellant and the Appellant did not make any attempt to run away.
9. It is my opinion that if the Appellant was a seasoned criminal who was into drug trafficking business, it is very likely that he would be on alert as to what is happening around, for they are aware of the disastrous consequences that they might have to face, if get caught by the law enforcement officers. In fact, it was stated by the PW1 that although the police officers were in civil attire, the Appellant, nevertheless, appeared to have recognized them which made him panic. Therefore, version of PW1 and PW2 that the Appellant did not make any attempt to escape even after noticing the presence of the police officers and instead put his right hand into the pocket of his trouser thereby making it more obvious to the police officers that he was concealing something seems highly improbable.

10. Moreover, the evidence of PW2 indicates that the appellant was known to them prior to the arrest. If that were the case, it is highly unlikely that the appellant would not have attempted to escape upon seeing the police officers. Further, according to PW2, the appellant was taken to the Modera Police Station by a three-wheeler, yet not even the registration number of the three-wheeler has been noted. This omission further casts doubt on the credibility and probability of the prosecution's version of the arrest.
11. Furthermore, when testifying PW1 stated that he has conducted nearly 300 raids, indicating that he is a seasoned officer with substantial experience in handling drug-related cases. Despite this, when questioned by the Defense Counsel during cross examination as to whether he did any background inquiry to verify the address and the name of the Appellant, PW1 conceded that he did not do any such inquiry at the time of arrest. He stated that he did not check the identity card of the Appellant. Nor did he go to inspect the house of the Appellant that was located in the same area. When questioned, PW1 explained that they did not do any search due to the fear that it might cause some chaos and attract unwanted public attention to the arrest.
12. Moreover, it is important to note that, PW1 never made any note explaining the reason as to why he failed to examine the identity card or inspect the residence of the Appellant. It is my considered view that this behavior of PW1 is atypical of a seasoned police officer who has dealt with similar cases and further casts serious doubts on the prosecution's version regarding the manner in which the arrest was made.
13. Another critical piece of information that this Court should not lightly disregard is the inability of PW2 to identify the productions at the trial before the High Court. It is significant to note that, PW2 accompanied PW1 throughout the incident. However, when asked by both the learned State Counsel and the Defense Counsel whether he could identify the productions, PW2 responded in the negative.

*Vide Page 120 (Evidence in Chief)*

- ප්‍ර : ඔය දිනයේදී භාරයට ගන්න නඩු භාණ්ඩ හඳුනා ගැනීමේ හැකියාවක් තිබෙනවද මහත්මයා?
- උ : නඩු භාණ්ඩ හඳුනා ගැනීමේ හැකියාවක් මට නැහැ.

Vide Page 133 (Cross Examination)

- ප්‍ර : දැන් තමා මේ අධිකරණයේ රජයේ නීතිඥතුමිය ගරු අධිකරණයේ විනිශ්චයකාරතුමා ඉදිරියේ අහන කොට කිව්වා නඩු භාණ්ඩ හඳුනාගන්න බෑ කියලා.
- උ : එහෙමයි.
- ප්‍ර : එතකොට ඔය මහත්මයා නඩු භාණ්ඩ දැක්කෙම නැද්ද?
- උ : නඩු භාණ්ඩ දුටුවා.

Vide Page 134 (Cross Examination)

- ප්‍ර : .....අවුරුදු 4ක් ගියාම ඉලිය අඳුර ගන්න බැරි තරම් අමතක වීමක් වුනාද මහත්මයාට?
- උ : සියයට සියයක් හඳුනා ගැනීමේ හැකියාවක් නෑ.
- ප්‍ර : අඳුරගන්න බෑ
- උ : සියයට සියයක් හඳුනා ගැනීමේ හැකියාවක් නෑ.
- ප්‍ර : බැහැයි කියන එකනේ?
- උ : බැහැයි කියන එක නෙවෙයි. හඳුනා ගැනීමේ හැකියාවක් මට මේ අවස්ථාවේදී නෑ.
- ප්‍ර : මෙවැනි ආකාරයේ වැටලීමක් වෙලා නෑ. ඒ නිසා තමාට ඒවා අඳුරගන්න බැහැ කියලා යෝජනා කරනවා තමාට?
- උ : මෙවැනි ආකාරයේ වැටලීමක් සිදුවුණා. මේ අවස්ථාවේදී හඳුනාගැනීමේ හැකියාවක් මා සතුව නෑ

14. In *Iswari Prasad v. Mohamed Isa* 1963 AIR (SC) 1728 at 1734 it was held that;

*“In considering the question as to whether evidence given by the witness should be accepted or not, the court has, no doubt, to examine whether the witness is, an interested witness and to enquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is whether there is a ring of truth surrounding his testimony.”*

15. The aforementioned facts would certainly make the prosecution’s version improbable and hard to believe. At the same time, it is desirable to emphasize that, in a criminal trial, the Court has a duty to evaluate and assess the credibility and probability of the evidence of

official witnesses irrespective of their accuracy and consistency. It is incumbent on the trial judge to examine and evaluate their evidence, especially the probability of the prosecution’s narration of events since in drug cases probability of the prosecution’s version of events is often challenged by the defense. Therefore, it is quite unfortunate that these facts have escaped the attention of the learned High Court Judge.

16. The learned Counsel for the Appellant also contended that there exist several *inter se* contradictions between the versions of PW1 and PW2 which go to the root of the case.

17. For instance, PW1, when testifying stated that he took the right hand of the Appellant out of the pocket of the trouser and found out that the Appellant was clasping tightly in his hand a cellophane bag that contained Heroin. The relevant portion of PW1’s evidence is produced below;

*Vide Page 50, Evidence in Chief*

- උ : පසුව මා හා ස්ථානයට ගොස් එම පුද්ගලයා අල්ලා ගන්නා ස්ථාමීනි. අල්ලාගෙන ඔහුගේ දකුණු අත ඉවතට ගෙන මා පරීක්ෂා කිරීමේ දී ඔහුගේ අතෙහි මීට මොළවාගෙන සිටි සුදු පැහැති සෙලෝෂේන් කවරයක දමා ගැටගැසු කුඩු වැනි යමක් අඩංගු පාර්සලයක් හමුවුණා ස්ථාමීනි.
- ප්‍ර : ඒ කියන්නේ ඔබ දකුණු අත ඉවත් කරලා ඒ කියන්නේ පිටතට ගන්නා කියලා කිව්වානේ?
- උ : එහෙමයි ස්ථාමීනි.
- ප්‍ර : ඒ පිටතට ගන්න අවස්ථාවේදී දකුණු අත තිබ්බේ කොයි ආකාරයටද?
- උ : දකුණු අතේ සාක්කුවේ මීට මොළවාගෙන හිටියේ ස්ථාමීනි.
- ප්‍ර : ඒ කියන්නේ කලිසමේ දකුණු සාක්කුවක මීට මොළවාගෙන තමයි හිටියේ?
- උ : එහෙමයි ස්ථාමීනි.

*Vide Page 78-79, Cross Examination*

- ප්‍ර : අල්ලා ගන්න වෙලාවේත් දකුණු අත සාක්කුවේ තිබුණේ?
- උ : මා විසින් සාක්කුවෙන් එළියට දකුණු අත ගන්නා.
- ප්‍ර : ඔය අත එළියට ගන්න වෙලාවේ තමයි ඔය පාර්සලය අතේ තිබුණේ?
- උ : අත මීට මොළවාගෙන සිටියේ ස්ථාමීනි.
- ප්‍ර : සාක්කුව ඇතුළේ නෙමෙයි තිබුණේ?
- උ : අත මීට මොළවාගෙන සාක්කුව ඇතුළට දමාගෙන සිටියේ ස්ථාමීනි.

- එහෙමීම මම නමයි එළියට ගන්නේ ස්වාමීණි.
- ප්‍ර : මහත්මයා දකුණු අතින් ඇඳලා එළියට ගන්නකොටත් අත මිටමොළවාගෙන නමයි විත්තිකාරයා සිටියේ?
- උ : එහෙමයි ස්වාමීණි.
- ප්‍ර : සාක්කුවට දාගෙන තිබුණේ නැහැ?
- උ : අත සාක්කුවට දමාගෙන සිටියේ ස්වාමීණි.
- ප්‍ර : නැහැ, මම අහන්නේ පාර්සලය සාක්කුවට දාලා තිබුණේ නැහැ?
- උ : නැහැ ස්වාමීණි.
- ප්‍ර : ඒ විදියටම අත ගුලි කරගෙන සිටියේ?
- උ : එහෙමයි ස්වාමීණි.

18. However, contradicting the version of PW1, PW2 stated that the Appellant put his hand into the pocket of the trouser after seeing them and they checked the Appellant’s pockets. The relevant portion of PW2’s evidence is produced below;

*Vide Page 112- 113, Evidence in Chief*

- ප්‍ර : දැන් මේ සුවරුවම ආසන්නයට යනකොට මේ නිලධාරීන් කණ්ඩායම යමකිසි දෙයක් නිරීක්ෂණය කලාද මහත්මයා?
- උ : නිරීක්ෂණය කලා. ජරපමයෙන් ගමන් කළේ කණ්ඩායම් භාර නිලධාරියා. දෙවනුව මමත් ගමන් කලා. ඒ අවස්ථාවේදී අප දෙසට පැමිණි පුද්ගලයෙකු සුවරුවම අසල ඉඳලා තැනිගත් ස්වභාවයකින් අප මග හැර යෑමට උත්සාහ කරන බවත්, ඔහුගේ අතේ තිබී යමක් කලිසමේ දකුණු සාක්කුවට දමාගන්නා බවත් නිරීක්ෂණය වුණා.

19. In this regard, it is pertinent to note that, despite the contradictions that exist between the evidence of PW1 and PW2, the notes taken by both PW1 and PW2 seems strikingly similar in content. Both PW1 and PW2 in their notes have stated that, PW1 took the Appellant’s right hand out from the pocket of his trouser and found out that the Appellant was holding tightly in his right hand a cellophane bag containing Heroine.

20. However, despite such similarities in the notes, PW1 and PW2 have contradicted each other whilst giving evidence. Also, considering the similarity that exists between the

notes taken by both PW1 and PW2, the only possible inference that could be drawn is that they did not take notes independently, but copied from the other person's notes.

21. It is noteworthy that according to PW2, it was PW1 who searched the appellant and recovered the parcel of Heroin from the appellant's pocket, which totally contradicts the evidence of PW1. In my view, this is a vital contradiction that goes to the root of the matter, as the charge against the appellant is primarily based on the alleged recovery of Heroin from his possession. When the two officers who participated in the raid provide two entirely contradictory versions as to the manner in which the parcel of Heroin was recovered from the appellant, the very foundation of the prosecution case is irreparably shaken. Regrettably, this vital contradiction appears to have escaped the attention of the learned High Court Judge.
22. Furthermore, according to PW1, sealing equipment was with PW2. However, PW2, upon cross examination stated that the sealing equipment was with PW1 and he never did mention that he took the possession of these equipment at any time during the course of the investigation.
23. As regards the contradictions that exist between the evidence given by PW1 and PW2, it is desirable to emphasize that official witnesses such as PW1 and PW2 have the privilege of referring to their field notes and refresh their memory while testifying, an opportunity which is not available to other lay witnesses in a criminal trial. While one may argue that the aforesaid inconsistencies between the two testimonies of PW1 and PW2 are minor/trivial in nature, considering this privilege that is available to them, as opposed to other lay witnesses in a trial, I am of the opinion that, it is not unfair or unrealistic to expect more accurate evidence from the official witnesses in a trial of this nature.
24. Thus, when PW1 and PW2 contradicts on some material points which go to the root of the matter, it would adversely affect the credibility of the prosecution case.
25. In the *Attorney General v. Sandanam Pitchi Mary Theresa* [2011] 2 Sri LR 292 the Court held that:

*“Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must*

*exercise its judgment on the nature of the inconsistency or contradiction and whether they are material to the fact in issue”*

26. Hence, it is not safe to allow the conviction to stand, given the above-mentioned inconsistencies and the improbableness of the prosecution’s version of events.

27. For the reasons set out above, we allow the Appeal and we proceed to quash the conviction and the sentence imposed on the Appellant by the learned High Court Judge of Colombo. Accordingly, we acquit the Appellant of all the charges leveled against him.

**Judge of the Court of Appeal**

**P. Kumararatnam, J.**

I agree,

**Judge of the Court of Appeal**