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

In the matter of an Appeal made under Section 331(1) of the Code of Criminal Procedure Act No.15 of 1979 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:
CA/HCC/0187/2024
High Court of Colombo
Case No: HC/35/2018

Mathagadeera Arachchige Saliya Kumara

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

COUNSEL : **K.V.D.V. Raja Wijegunaratne for the Appellant.**
Sudharshana De Silva, ASG for the Respondent.

ARGUED ON : **25/08/2025**

DECIDED ON : **29/09/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Colombo under Sections 3(1) of the Prevention of Money Laundering Act No. 05 of 2006 as amended by Act No. 40 of 2011 for executing a transaction that is depositing Rs.2,500,000/- being the proceeds of the crime of Heroin Trafficking in a fixed deposit at the Edirisinghe Trust Investment Finance Company.

Following the conclusion of the trial, the Appellant was found guilty as charged and was sentenced to 7 years rigorous imprisonment with a fine of Rs.5,000,000/-. The fine is subjected to a default sentence of 2 years rigorous imprisonment.

Additionally, acting under Section 13 of the Money Laundering Act, the Rs.2,500,000/- cash deposit was confiscated by and was vested in the State.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence. At the hearing, the Appellant was connected via Zoom platform from prison.

The following Grounds of Appeal were raised on behalf of the Appellant.

1. Did the learned High Court Judge err by not considering the attempt by police to merge the fixed deposit which forms the subject matter of the charge with allegedly tainted money to cause undue prejudice to the Appellant?
2. Did the learned High Court Judge misdirect himself by failing to consider the plausibility of the Appellant's explanation to rebut the presumption, within the perspective of the socio-economic standing of the Appellant?
3. Did the learned High Court Judge misdirect himself by not considering the denial of a fair trial to the Appellant due to:
    a) Material irregularities caused by the exclusion of material evidence from the defence that has been used mainly to construct the police narrative alleging a nexus between the Appellant and the international drug trafficker Wele Suda.
    b) Non availability of an effective legal representation to the Appellant in a situation in which his personal legitimate assets have been seized and he is financially constrained.

Background of the case albeit briefly is as follows:

The Appellant was indicted under Section 3(1) of the Money Laundering Act for depositing Rs.2,5000,000/- which he was unable to explain as to how he came to be in possession of.

According to PW1, the Assistant General Manager of the ETI Finance Company, confirmed that the Appellant had opened a fixed deposit on

31.01.2012 at the Kiribathgoda Branch for Rs.2,500,000/- for a period of one year. The fact that the said deposit was a joint deposit was admitted by the defence under Section 420 of the Code of Criminal Procedure Act No. 15 of 1979 (hereinafter referred to as the CPC).

PW2, the mother of the Appellant had stated that when she went abroad, the Appellant was only 15 years old. She had worked for 8 years and the Appellant had been working in a poultry farm. Later the Appellant had engaged in business related to coconut trade using a lorry bought by PW2. She was not aware about the income generated from the said coconut business.

PW6, the Grama Sevaka of the area could remember the Appellant selling coconut. However, PW6 confirmed that the Appellant did not have a registered coconut business.

Three bank officials gave evidence about the accounts maintained by the Appellant in their respective banks and this was admitted by the Appellant under Section 420 of the CPC.

PW10 and PW11 confirmed that they had deposited money into the Appellant's account several times. PW11 went on to say that he knew the Appellant's engagement in drug related business.

The Appellant in his dock statement stated that he had worked for 5 years in a poultry farm, engaged in coconut business for 4 years, had lent money to people on interest for 5 years and received financial support from his mother for about 10 years. He admitted that he was arrested by the Police Narcotics Bureau for possession of Heroin in the year 2012.

In every criminal case the burden is on the prosecution to prove the case beyond a reasonable doubt against the accused person and this burden only shifts in specific circumstances. Hence an accused person has no burden to prove his case unless he pleads a general or a special exception given under the Penal Code.

In the case of **Mohamed Nimnaz V. Attorney General** CA/95/94 it was held that:

> *"A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences in relation to drugs, we are of the view that the prosecutor should not be given a second chance to fill the gaps of badly handled prosecutions…."*

In **the Attorney-General v. Rawther** 25 NLR 385, Ennis, J. states: [1987] 1 SLR 155

> *"The evidence must establish the guilt of the accused, not his innocence. His innocence is presumed in law, from the start of the case, and his guilt must be established beyond a reasonable doubt".*

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 the court held that:

> *"the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice".*

In a case of Money Laundering, the prosecution has to establish the known income and the alleged expenditure of the Accused during the material period. When the prosecution established the income and the expenditure of an Accused during the said period, he or she must establish to a standard

of balance of probabilities that he had means for such expenditure. In this regard Section 4 of the Prevention of Money Laundering Act No. 5 of 2006 come into operation.

Section 4 of the Act states:

> For the purpose of any proceedings under this Act, it shall be deemed until the contrary is proved, that any movable or immovable property acquired by a person has been derived or realized directly or indirectly from any unlawful activity, or are the proceeds of any unlawful activities, if such property-
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> a) Being money, cannot be or could not have been-
>
> i. part of known income or receipts of such person; or
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> ii. money of which his known income or receipts; or
>
> b) being property other than money, cannot be or could not have been;
>
> i. property acquire with any parts of his known income or receipts; and
>
> ii. property which is or was part of his known income or receipts; and
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> iii. property to which is any part of his known income or receipts has or had been converted.

Under the first ground of appeal, the Appellant contends that the learned High Court Judge erred by not considering the attempt by police to combine the fixed deposit which forms the subject matter of the charge with alleged tainted money to cause undue prejudice to the Appellant.

The learned Counsel for the Appellant contends that the evidence presented by the prosecution reveals significant disparity between the facts reported by

the police and the actual evidence presented in court. To substantiate his claim, the Counsel had referred to several B Reports available in the appeal brief. As correctly submitted by the learned Additional Solicitor General, the referred B Reports were neither led in evidence by the prosecution nor were they considered by the learned High Court Judge in his judgment.

Further, the learned Counsel for the Appellant contends that great prejudice has been caused to the Appellant by leading unrelated convictions without direct proof of involvement in large scale drug operations which risks diverting the Court's focus from specific charges at hand.

Section 54 of the Evidence Ordinance states:

> In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.
>
> Explanation 1.- This section does not apply to cases in which the bad character of any person is itself a fact in issue.
>
> Explanation 2.- A previous conviction is relevant as evidence of bad character in such case.

In **D. W. Wanigasekara v The Republic of Sri Lanka** [177-78] 1 SLR 241 the Court held:

> *"(1) That the 'basic fact' to be proved was that the accused acquired property which could not have been acquired with any part of his sources of income or receipts known to the prosecution after investigation and that the prosecution is not required to prove that the acquisitions were made with income or receipts from bribery. An interpretation based on the appellant's contention would defeat the very purpose for which the section was included in the Bribery Act since section 23A is designed against a person in respect of whom there is no proof of the actual receipt of a gratification, but there is presumptive evidence of bribery."*

As the evidence led in the trial falls clearly within the legal frame work, the contention raised by the Appellant is not tenable in this case. For these reasons, the first ground of appeal cannot be sustained.

Considering the second ground of appeal the learned Counsel for the Appellant argues, that the learned High Court Judge misdirected himself by failing to consider the plausibility of the Appellant's explanation to rebut the presumption, within the perspective of the socio-economic standing of the Appellant.

In this case, when the defence was called, the Appellant opted to make a statement from the dock. Most of the facts submitted in the Appellant's written submission were not led in evidence at the trial. The prosecution by marking necessary documents had led plausible evidence against the Appellant, which had not been challenged by the defence. Hence, this ground too lacks merit.

Under the final ground of appeal, the learned Counsel for the Appellant contends that the learned High Court Judge misdirected himself by not considering the denial of a fair trial to the Appellant due to:

(a) Material irregularities caused by exclusion of material evidence from the defence that has been used mainly to construct the police narrative alleging a nexus between the Appellant and the international drug trafficker Wele Suda.
(b) Non availability of an effective legal representation to the Appellant in a situation in which his personal legitimate assets have been seized and he is financially constrained.

The concept of a fair trial is a fundamental principle in every judicial system. In another sense, the notion of a fair trial secures justice. A trial in criminal jurisprudence is a judicial examination or determination of the issues at hand of the Court to arrive at a conclusion whether the accused is guilty of the offence or not.

The single most important criterion in evaluating the fairness of a trial is the observance of the principle of equality of arms between the defence and the prosecution. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner ensuring their procedurally equal position during the course of a trial.

As correctly argued by the learned ASG, there is no charge that the Appellant is linked to the notorious drug lord 'Wele Suda's drug network. As such, the prosecution had not led any evidence that links the Appellant with Wele Suda. Hence, no prejudice has been caused to the Appellant.

In this case the Appellant was represented by an assigned Counsel. On perusal of the case record there is no evidence that the assigned Counsel has not performed her professional duty diligently. During the trial there is no complaint from the Appellant that the assigned Counsel was not carrying out her duties in a proper manner.

In this case the prosecution had called all necessary witnesses to prove the charge. In a case of this nature, when the prosecution establishes that the impugned investment could not have been made from the known income of the Appellant, the burden shifts to the Appellant to prove the contrary.

In **Liyanage Nishantha Perera v The Attorney General** CA/HCC/222/2011 decided on 25.08.2020 Justice Wengappuli held that:

> *"This Court already noted the evidence presented by the prosecution in relation to the circumstances under which the officers have taken charge of the large amount of bank notes from the possession of the Appellant. The trial Court, although acquitted the Appellant by its judgment, had nonetheless disbelieved the explanation offered by him as to the presence of the large amount of bank notes. The contention that the High Court, in its judgment had observed that the said amount of money was not earned by the Appellant by "reasonable business activity" which is not the applicable criterion as envisage by Section 425, cannot be accepted since*

the High Court, in its impugned order and in rejecting his application clearly concluded that the Appellant had earned the said amount of money through criminal activity. Clearly the High Court had applied the correct legal criterion in making the impugned order."

As discussed under the grounds of appeal advanced by the Appellant, the prosecution had adduced strong and incriminating evidence against the Appellant. The learned High Court Judge had accurately analyzed all the evidence presented by both parties to arrive at the correct finding that the Appellant was guilty of the charge levelled against him. Therefore, I dismiss the Appeal and affirm the conviction and sentence imposed on the Appellant on 17.05.2024 by the learned High Court Judge of Colombo. Considering all the circumstances, the sentence is operative from the date of conviction.

The appeal is dismissed.

The Registrar of this Court is directed to send this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL