

**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/0179/2024
High Court of Negombo
Case No: HC/51/2012

Buddhika Prasanna Liyanage

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Dharshana Kuruppu with Dineru Bandara,**
Anjana Adikaramge and Ranjith Kulatunga
for the Appellant.
Tharaka Kodagoda, SC for the Respondent.

ARGUED ON : **16/10/2025**

DECIDED ON : **19/11/2025**

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 54(A) (b) and 54(A) (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for Trafficking and Possession of 4.07 grams of Heroin (Diacetylmorphine) on 06th March 2010.

After trial, the Appellant was found guilty on the second count and the Learned High Court Judge of Colombo had imposed life imprisonment on 04/04/2024.

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 had given his consent to argue this matter in his absence. At the hearing, the Appellant was connected via the Zoom platform from prison.

In this case, the raid was conducted following specific information received by PW1 IP/Hettiarachchi on 06.03.2010. The raid was headed by him with 10 police officers including a woman police constable from the Wattala Police Station. All have been named as witnesses in the indictment including the Government Analyst. The prosecution had called PW1, PW2, PW4, PW6, PW7 (Government Analyst), PW8 and PW9 and closed their case. The prosecution marked the productions P1-P2.

When the defence was called, the Appellant had made a statement from the Dock and closed the case.

Background of the case.

PW1 received information that the drugs had been trafficked in three-wheelers which operated from Negombo to Colombo. They set up a surprise checkpoint near the Gemunu Palace Theatre, on the Colombo-Negombo main road. While checking the vehicles randomly, PW2 had stopped a three-wheeler bearing the Number QC 8309 at the checkpoint. PW1 had observed that two people were in the three-wheeler. The Appellant was seated in the rear seat. As the Appellant was in a tense mood, the officer had body checked the Appellant and found a small parcel concealed in his underwear. Upon further examination, the parcel had contained some substance. As the substance tested positive for Heroin, the Appellant was arrested immediately.

The driver of the three-wheeler was also arrested as he possessed Rs.123,100/- in cash. The substance was weighed at the Wattala Gold House. The weight of the substance was recorded as 24.500 grams.

PW2, Sgt/21365 Surasinghe had corroborated the evidence of PW1, and other police witnesses called by the prosecution had established the movement of the production to the Government Analyst Department.

According to the Government Analyst Report, the weight of the brown coloured powder was 24.88 grams, which contained 4.07 grams of pure Heroin (Diacetylmorphine) within the Heroin.

The main ground urged by the Counsel for the Appellant is that the Learned Trial Judge erred in law when concluding that the prosecution proved the chain of custody beyond reasonable doubt.

“Reasonable doubt” refers to the legal principle which establishes that insufficient evidence would prevent the conviction of a defendant of a crime. The prosecution bears the weight of proving to the judge the defendant’s guilt in respect of the crime with which he has been charged, in order to prove why the defendant should be convicted. Accordingly, in this context, the phrase “beyond a reasonable doubt” indicates that the evidence and arguments brought forward by the prosecution to establish the defendant’s guilt must be done so clearly, in a manner that it is accepted as fact by any rational person.

In **Woolmington v DPP** (1935) the Court ruled that in criminal cases, the burden of proof is always on the prosecution to prove the defendant's guilt beyond a reasonable doubt. The defendant is presumed innocent until proven guilty, and it is not the defendant’s burden to prove his innocence.

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

“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....”

The Counsel for the Appellant contends that the Learned Trial Judge erred in law when concluding that the prosecution proved the chain of custody beyond reasonable doubt.

The learned Counsel argued that there is substantial doubt regarding whether the productions were correctly handed over to the Government Analyst Department for analysis, and whether the productions were properly received and processed by the Government Analyst Department. He further argued, that these lapses raise a very serious concern about the reliability of the evidence presented by the prosecution.

According to the journal entry dated 07.06.2010 of the Magistrate Court of Wattala, the court had released the production to PC 71648 Dammika of the Wattala Police to be sent to the Government Analyst Department. The Memorandum issued by the Government Analyst Department under their reference No. CD/1643/2010 was dated 14.06.2010. During the trial, the prosecution was unable to explain as to what had happened to the production between 07.06.2010 to 14.06.2010. Therefore, the Learned Counsel for the Appellant argues that this is a significant issue which certainly affects the integrity of the production.

The Learned State Counsel, in keeping with the highest traditions of the Attorney General's Department, admitted that this discontinuation of production is a serious matter which certainly affects the integrity of the production and is a shortcoming which certainly affects the outcome of the case.

In **Perera V. Attorney General** [1998] 1 Sri.L.R 378 it was held:

“the most important journey is the inwards journey because the final analyst report will depend on that.”

In the case of **Koushappis v. The State of WA** [2007] WASCA 26; (2007) 168 A Crim R 51 at para 85 the court held:

“Whilst the safe custody of critical exhibits such as these ought to be readily proved by clear and specific evidence rather than being left to inference, having regard to the way the case was conducted on both sides, the evidence here was such in my view, as to allow the jury to be satisfied beyond reasonable doubt that the drugs that were analysed... were in fact those seized by police from the appellant’s house”;

The judgments clearly highlight the critical importance of the chain of custody of evidence in drug-related offenses. They provide clear guidance on how this evidence should be presented to satisfy the trial court. Each piece of evidence requires a thorough analysis to ascertain its origin and who had access to it, ensuring no deviations from standard practice.

In drug cases, chain of custody issues is crucial. The prosecution must present undisputable evidence to establish the chain of custody of the exhibits. Additionally, they must prove that the item presented at trial is the same item originally in the possession of or taken from the accused. Relying on tainted, unreliable, or tampered evidence would undermine the judicial system's integrity. Moreover, it is not the court's role to rectify mistakes made by investigating officers.

Due to the above considered ground having a serious impact on the prosecution’s case, I conclude that the said ground bears weight and therefore has merit.

As the prosecution had failed its duty to prove this case beyond reasonable doubt, I set aside the conviction and sentence imposed by the Learned High Court Judge of Negombo dated 04/04/2024 on the Appellant. Therefore, he is acquitted from this case.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL