

**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 Article 138 (1) of the Constitution together read with the section 11(1) of the High Court the Provinces (Special Provisions) Act No. 19 of 1990 with the section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No.

CA/HCC/0233/2023

High Court of Colombo Case No.

HC 246/18

Vs

David Anton Kumara

Accused

AND NOW BETWEEN

David Anton Kumara

Accused –Appellant

Vs

Hon. Attorney General

Complainant - Respondent

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

Counsel : Niranjan Jayasingha with Randunu Heelage for the Accused-Appellant
Yohan Abeywikrama DSG for the Respondent

Argued on : 17.11.2025

Decided on : 10.02.2026

Pradeep Hettiarachchi, J.

Judgment

1. This appeal arises from the judgment and sentence dated 08.09.2023 of the learned High Court Judge of Colombo. The accused –appellant (hereinafter referred to as the appellant) was indicted for possessing and trafficking of 7.71 grams of Heroin which are offences punishable under Sections 54A(d) and 54A(b) of the poisons Opium and Dangerous Drugs Ordinance as amended by the Act No 13 of 1984.
2. At the conclusion of the trial, the learned Judge of the High Court convicted the appellant on both counts and sentenced him to life imprisonment. Aggrieved by the said conviction and sentence, the appellant has preferred the instant **appeal** before this Court.
3. Following are the grounds of appeal advanced by the appellant.
 - a. No analysis of evidence by the learned trial Judge and hence the judgment is not in compliance with section 283 of the Code of Criminal Procedure Code;
 - b. The prosecution has failed to prove the chain of custody of production;

- c. The prosecution has failed to explain the discrepancy of the gross weight when weighed at the Government Analyst Department; and,
- d. The dock statement of the appellant was not evaluated and the trial Judge has failed to give reasons for rejecting the defence evidence.

Credibility of the prosecution evidence:

- 4. According to the prosecution, the appellant was arrested at Maligawatta while he was driving a three-wheeler. The raid was carried out pursuant to information received by PW1 from one of his informants. It is alleged that PW1 recovered heroin from the right trouser pocket of the appellant upon conducting a search. The substance was temporarily sealed at the scene, after which the police proceeded to the Police Narcotic Bureau with the appellant, where the substance was weighed and sealed once again. According to the evidence, the weight of the substance allegedly recovered from the appellant was 26.15 grams when weighed at the Police Narcotic Bureau.
- 5. Upon returning to the Mardana Police Station, both the appellant and the production were handed over to Sub-Inspector Kalum (PW3) at the police reserve. Subsequently, the appellant and the productions were produced before the learned Magistrate of Maligakanda. According to the prosecution, the productions were thereafter forwarded to the Government Analyst's Department by PW3.
- 6. It is to be noted that the identity of the productions marked P1 to P12 was admitted by the parties. It was also admitted that the chain of custody was intact up to the point at which the productions reached the Government Analyst's Department.
- 7. The Government Analyst's Report dated 31.10.2016, marked as P14, was admitted by consent of both parties. However, it is noteworthy, that the report specifically records a discrepancy between the weight stated in the covering letter and the weight measured at the Government Analyst's Department in respect of the gross quantity of the substance. The recorded difference of 1.07 grams is significant when considered in relation to the total quantity and raises a legitimate concern regarding the integrity and continuity of the chain of custody.

8. This discrepancy in weight has a direct bearing on the credibility of the chain of custody, particularly given the relatively small quantity involved, which the learned trial Judge ought to have carefully considered, especially as it was specifically noted in the Government Analyst's Report. Unfortunately, this matter appears to have escaped the attention of the learned trial Judge, and in the absence of any explanation from the prosecution, it adversely affects the integrity of the chain of production, notwithstanding the admission of the Report.
9. It was strenuously contended on behalf of the appellant that the prosecution had failed to establish that the seal of the production was intact at the time it was received by the Government Analyst's Department. It must be noted that the prosecution did not call any officer from the Government Analyst's Department when marking Report P14. While it is true that the report was admitted in evidence under Section 420 of the Code of Criminal Procedure Act, such admission does not absolve the prosecution of its duty to explain material discrepancies appearing on the face of the report.
10. More importantly, where a discrepancy in weight is reported, it is incumbent upon the prosecution to provide a satisfactory explanation, and the failure to do so inevitably casts doubt on the integrity of the productions.
11. While prosecution witnesses claimed the substance was weighed at the Police Narcotic Bureau including the cellophane bag, the difference of 1.07 grams cannot be assumed to be the weight of the bag without supporting evidence or a proper explanation. Despite the weight discrepancy being explicitly mentioned in report **P14**, the learned trial Judge has failed to address or comment on this inconsistency.
12. PW3 stated in his evidence that the productions were handed over to one Mrs. Jayasekara at the Government Analyst's Department. However, several vital questions remain unanswered, namely: who conducted the field test; who examined the seal at the time the productions were accepted by the Government Analyst's Department; who issued the receipt; and to whom such receipt was issued. These are not peripheral matters.
13. In cases involving narcotic substances, any discrepancy in weight cannot be lightly disregarded, as it directly bears upon the trustworthiness of the prosecution case. The

burden rests on the prosecution to satisfactorily explain such discrepancies. In the present case, the substance was initially weighed at the Police Narcotics Bureau, which is equipped with highly accurate and sophisticated weighing scales. Accordingly, the weight difference noted in the Government Analyst's Report cannot be attributed to any defect or inaccuracy in the scales at the Police Narcotics Bureau. The absence of evidence addressing these matters creates a serious lacuna in the prosecution case and undermines the credibility of the prosecution evidence.

14. In a case of this nature, one of the most important components the prosecution must establish beyond a reasonable doubt is the chain of custody. This refers to the chronological documentation of the custody, transfer, and disposition of the substance recovered from the Appellant. It tracks the movement of the seized drugs from the time of recovery to their presentation as evidence in court. The chain of custody serves as a safeguard against contamination, substitution, tampering, or loss of evidence, thereby ensuring its reliability and authenticity.
15. Indispensably, the prosecution must establish that the productions were forwarded to the Government Analyst from proper and lawful custody, without leaving any room for suspicion that there was any opportunity for tampering, substitution, or interference with the productions prior to their receipt by the Government Analyst.
16. The object and purpose of proving the chain of productions is to ensure that what was recovered is sent to the Government Analyst, and to exclude any possibility of mixing up or tampering with the production. This position was emphasized in *Witharana Doli Nona vs Republic of Sri Lanka (CA-19/19)* and in *Perera vs Attorney General [1998] 1 S.L.R. 378* as follows:

“The prosecution must prove the chain relating to the inward journey. The purpose is to establish that the productions have not been tampered with and that the very productions taken from the accused-appellant was examined by the Government Analyst. To this end, the prosecution must prove all the links of the chain from the time it was taken from the accused-appellant to the Government Analysts’ Department”

17. In *Mahasarukkalige Chandrani vs AG (CA 213/2009 C.A.M. 30.09.2016)* Court observed: *Government Analyst Report which is the principal evidence in a drug offense is entirely dependent on the inward journey of the production chain and therefore, there is a duty cast on the prosecution to establish the inward journey of the production with reliable evidence.*
18. The importance of proving the chain of evidence was emphasized In *S v Matshaba 2016 (2) SACR 651 (NWM)* as follows:
- “The importance of proving the chain of evidence is to indicate the absence of alteration or substitution of evidence. If no admissions are made by the defence, the State bears the onus to prove the chain of evidence. The State must establish the name of each person who handles the evidence, the date on which it was handled and the duration. Failure to establish the chain of evidence affects the integrity of such evidence and thus renders it inadmissible”.*
19. In the present case, the unexplained weight discrepancy, the absence of evidence regarding the examination, and the failure to establish who received, tested, and acknowledged the productions at the Government Analyst’s Department cumulatively create a serious and reasonable doubt as to the integrity of the productions. Such doubt must necessarily ensure to the benefit of the appellant, rendering the conviction unsafe and unsustainable in law.
20. It is also important to observe that the learned trial Judge failed to properly analyze the prosecution’s evidence, specifically regarding whether any inconsistencies exist between the testimonies of PW1 and PW2. Beyond merely reproducing the prosecution’s evidence, the learned trial Judge did not adequately evaluate the testimonies of these witnesses, particularly with regard to their consistency inter se, the internal consistency of each witness’s account, and the presence of any improbabilities.
21. By failing to engage in such an analysis, the trial Judge’s approach did not fully comply with the established principles of evaluating oral testimony, thereby undermining the rigor of the factual findings.

22. Furthermore, the Judge rejected the appellant's dock statement on the grounds that it was merely designed to evade the charge, concluding it held no evidentiary value, a finding with which I cannot agree.
23. A dock statement is an unsworn statement made by an accused person from the dock, which constitutes evidence that must be considered by the court, though it carries less weight than sworn testimony because it is not subject to cross-examination. If the court believes it, it must be acted upon, and if it raises a reasonable doubt, the defence must succeed. Therefore, it is incumbent on the trial judge to properly analyze and evaluate a dock statement, and failure to do so can render a judgment legally unsustainable.
24. The law pertaining to the evidentiary value of a dock statement, the proper manner of its evaluation, and its potential impact on the prosecution case has been succinctly articulated in several authoritative decisions.
25. In ***Kathubdeen vs Republic of Sri Lanka [1998] (3) Sri L.R.107***, it was observed:

It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt.

26. In ***Gunasiri and two others vs. Republic of Sri Lanka [2009] 1 SRI.L.R 39*** it was held that:

In evaluating a dock statement, the trial Judge must consider the following principles: (1) If the dock statement is believed it must be acted upon. (2) If the dock statement creates a reasonable doubt in the prosecution case the defence must succeed.

27. In the present case, the learned trial Judge's conclusion that the dock statement has no evidentiary value is inconsistent with the above-mentioned settled legal principles. A dock statement does carry evidentiary value, albeit subject to certain infirmities, in that it is not made on oath or affirmation and is not subject to cross-examination. By disregarding the dock statement entirely, the trial Judge failed to give due weight to a piece of evidence that could illuminate the appellant's version of events. Accordingly, his evaluation of the dock statement is erroneous in law.

28. For the reasons stated above, it is unsafe to allow the conviction of the appellant to stand. Accordingly, the conviction and sentence imposed on the appellant are set aside, and the appellant is acquitted of all charges. The appeal is therefore allowed.

Judge of the Court of Appeal

P.Kumararatnam, J.

I agree.

Judge of the Court of Appeal