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.

Court of Appel No:
CA/HCC/0058-059/21
High Court of Negombo
Case No: HC/300/2014

1. Sembu Thanthrige Chamara Asanka Sampath
2. Sumedha Manjula Punchihewa

Accused-Appellants

Vs.

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

Complainant-Respondent

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

COUNSEL	:	**Kamal Suneth Perera for the 1st the Appellant.** **Saliya Peiris, PC with Susil Wanigapura for 2nd Appellant.** **Lakmini Girihagama, DSG for the Respondent.**
ARGUED ON	:	**23/06/2025**
DECIDED ON	:	**29/07/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) were indicted by the Attorney General before the High Court of Negombo under Sections 54(A)(d) and 54(A)(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984 for being in possession and trafficking (respectively) of 04.13 grams of Heroin on 10th June 2013.

After the trial both the Appellants were found guilty on both counts and the learned High Court Judge of Negombo has imposed life imprisonment for both counts on 06th of August, 2021.

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

The Counsel for the Appellants informed this Court that the Appellants had given their consent to argue this matter in their absence. Hence, argument was taken up in their absence but they were connected via Zoom platform from prison.

Both Appellants had jointly raised a single ground of appeal contending that the learned High Court Judge erred in law by failing to consider the vital discrepancy with regard to the quantity of Heroin recovered from the Appellants.

PW1, CI/Randeniya, was the Officer-in Charge at the Kandana Police Station, when he conducted this raid. He had received an information about an impending drug deal at a hotel named Sancharina, situated in the Wattala police area, when he was attending a class conducted by the Superintendent of Kelaniya Division. Following the instructions of his superior officers, he had gone to the Wattala Police Station and organised a team to conduct the raid. As per the information, the team had arrived at the hotel at about 13:00 hours. When PW1 and PW4 entered Room No.23, they had seen two persons sitting on a bed busy packaging some product. After introducing himself to the two persons, PW1 had checked the room and found 13 small polythene bags with a small parcel in it. Out of 13, 10 parcels were fastened with a knot and three were not so fastened. Upon further examination, each parcel was seen to contain 40 small packets with some substances suspected to be Heroin inside of them. In total, 520 packets were taken in to the custody by the police during that raid. Both persons were arrested and brought to the Wattala Police Station for further investigations. At the police station, the substance contained in the packets were put on to a half sheet paper and weighed using an electronic scale. The gross quantity of the substance weighed about 16.100 grams. All productions had been properly sealed, finger prints of the Appellants were obtained, and entered in the PR register and handed over to the reserve police officer.

PW4 PC 48908 Sisira Kumara was called by the prosecution to corroborate the evidence of PW1.

In their dock statements, the Appellants took up the position that they were never in possession of any dangerous drugs as claimed by the prosecution. They had been arrested while they were in a hotel in Wattala. According to the 2nd Appellant, narcotics which had been recovered from persons whom were in Room No. 22 were introduced on to them by the police.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond a reasonable doubt. There is no burden on the Appellant to prove his innocence. This is the "Golden Thread" as discussed in **Woolmington v. DPP** [1935] A.C.462. In this case Viscount Sankey J held that:

> *"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt…… If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner…..the prosecution has not made out the case and the prisoner is entitled to an acquittal.*

In trials of this nature, the prosecution does not only need to prove the case beyond a reasonable doubt but should also ensure, with cogent evidence that the inward journey of the production has not been disturbed at the all-material points.

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

> *"A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences 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 where the identity of the good analysis for examination has to be proved beyond reasonable doubt. A prosecutor should take pains to ensure that the chain of events pertaining to the productions that had been taken charge from the*

Appellant from the time it was taken into custody to the time it reaches the Government Analyst and comes back to the court should be established".

The Appellants take up the position that there is a significant discrepancy between the weight of Heroin said to have been recovered from the Appellants and the Government Analyst Report. The Counsel for the Appellants contend that the learned Trial Judge misdirected himself by failing to analyse the discrepancy of the weight of the substance allegedly recovered from the Appellants which disturbs the production chain. He further submits that this is a substantial fact, which the prosecution has to prove beyond a reasonable doubt.

This ground of appeal directly relates to the evidence given by PW1 and PW4. According to PW1, the recovered substance was weighed at the Wattala Police Station in front of the Appellants. According to both PW1 and PW4 the substance was weighed using a scale obtained from the police. The gross aggregate weight of the substance was 16.100 grams.

When the productions were taken to the Government Analyst Department, a notable difference had been noted in the parcel. According to the Government Analyst Report the weight of the parcel was mentioned as 8.64 grams. This is 8.46 grams less than the original weight recorded by the police. Hence the Appellant argues that the weight difference creates a serious doubt in the prosecution case as the weight difference is quite significant.

When this Court invited the Respondent to explain the discrepancy regarding the weight of the productions which transpired from the evidence, the learned Deputy Solicitor General following the best traditions and highest standard of the Attorney General's Department admitted the weight discrepancy in the production and further added that she is unable to explain the reason.

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

> *"the most important journey is the inward 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 afore-mentioned judgments clearly highlight the critical importance of the evidence with regards to the chain of custody in drug-related offences. They provide clear guidance on how this evidence should be presented to satisfy the trial court. Each piece of evidence requires thorough analysis to ascertain its origin and who had access to it, ensuring no deviations from standard practice.

In cases regarding drug related offences, chain of custody issues is of critical importance. 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 integrity of the judicial system.

In this regard, the learned High Court Judge had not made any comment about the weight discrepancy in his judgment. This has caused great prejudice to the Appellants by refusing them the right to a fair trial.

Further, although PW1 and PW2 had said that the finger prints of the Appellants were taken to seal the production after weighing, at the trial it

was revealed that one of the Appellant's signatures was absent on the sealed envelope, regardless of which the learned High Court Judge had arrived at the conclusion that the production had been properly sealed in the presence of the Appellants. This is a clear misdirection and had deprived the Appellants a fair trial.

The evidence presented by the prosecution with regard to the inward journey of the productions creates a serious doubt on the conviction against the Appellants. Further, the evidence given by the prosecution witnesses consists of contradictions and improbabilities.

Considering the ground of appeal discussed above, it clearly supports the stance taken by the Appellants in defence as well as in the dock statement and certainly affects the root of the case.

Therefore, I set aside the conviction and sentence imposed on the Appellants by the learned High Court Judge of Negombo dated 06/08/2021. Therefore, they are acquitted from all charges.

Accordingly, the appeal is allowed.

The Registrar of this Court is directed to send a copy of this judgment to 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