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

In the matter of an appeal in terms of Section 331 of the Code of Criminal Procedure Act No 15 of 1979 (as amended)

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Mohamed Asmeer Mohamed Asmeen

Accused

AND NOW BETWEEN

Mohamed Asmeer Mohamed Asmeen

Accused – Appellant

Vs

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

Complainant – Respondent.

Court of Appeal Case No:
CA/HCC/0157/2023
High Court of Colombo Case No:
HC/7560/2014

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

Counsel : Sarath Jayamanne, PC with Prashan Wickramaratne, Sanjeewa Meegahawaththe and Dinindu Rathnayake instructed by Wasantha Pitigala for the Accused- Appellant.
Azard Navavi, DSG for the Respondent.

Argued on : 22.10.2025

Decided on : 02.12.2025

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the Judgment dated 28.02.2023 of the Learned High Court Judge of Colombo where he convicted the Accused –Appellant (hereinafter referred to as the Appellant) of possession and trafficking of 170 grams of Heroin.

2. Accordingly, the Appellant was imposed a life sentence by the Learned High Court Judge.

3. The grounds of appeal urged by the Appellant are as follows,

    a. The Learned High Court Judge has failed to consider the improbability of the prosecution version.

    b. The Learned High Court Judge erred in Law by failing to consider inter se contradiction of PW 1 and PW 11.

    c. The Learned High Court Judge has unjustly shifted the burden of proof to the Appellant.

4. The facts of the case, in brief, are as follows;

5. On information received by Police Constable Mahinda of the Police Narcotic Bureau this raid was organized.

6. After receiving the information, PW 11 informed the same to PW 1 Rangajeewa and it was Rangajeewa who arranged a team of officers for the raid. The raiding party consisted of 8 officers including a WPC named Chandani. On 05.03.2003, around 9.50 a.m. while they were on their way to the David Pieris Company Maligawaththa, the informant joined them at Technical Junction and got into the car in which some of the officers were travelling.

7. Around 10.10 a.m. they approached the David Pieris Company and parked the car 15 m before the entrance. Thereafter, PW 1, PW 11 and the informant got down from the vehicle and walked up to the gate of the David Pieris Company.

8. Two officers, namely PC Jayasinghe PW 5 and PC Wakishta PW 4, came on a motorcycle and were positioned in front of Dambulu furniture, which was situated right opposite the David Pieris Company. PC Susantha and WPC Chandani who traveled in the other motor bike were waiting at the beginning of the road running towards Khettarama Cricket stadium.

9. In the meantime, the informant noticed a three-wheeler about 20 m away and identified it by the registration number and after informing the officers that it was the Appellant who had come in the three-wheeler, entered the David Pieris Company premises.

10. The three-wheeler arrived and stopped directly in front of PW 1 and PW 11. The person who came in the three-wheeler got out from the vehicle with a parcel and walked about 2-5 m forward when PW 1 and PW 11 arrested him. Subsequently, the said parcel was examined by PW 1 and PW 11 and was found to be heroin. Thereafter, the Accused was handcuffed and was taken to his house at Wellampitiya around 11.05 a.m. and his house was also searched by the officers of the Police Narcotic Bureau for around 45 minutes.

11. After that the PNB officers along with the Appellant left his house around 11.15 a.m. and went to the printing shop in Wellawatta named “Maximum Printers” around 1.00p.m. Around 2.00p.m. the PNB officers along with the Accused left Maximum Printers and reached PNB at 2.45 p.m.

12. On behalf of the prosecution PW 1, PW 11 testified. Thereafter, since it was informed by the counsel that the Appellant could not be present in court due to death threats, steps were taken under section 241 of the Code of Criminal Procedure Act and thereafter conducted the trial in absentia. PW 9 the Senior Assistant Government Analyst and PW 8 K.M.N.P.Rajakaruna also testified. At the conclusion of the

prosecution case the defense did not call any witnesses and accordingly the trial was concluded.

13. I will first consider the ground of improbability. It was argued on behalf of the Appellant that the evidence of prosecution witnesses, in particular PW 1, PW 11 when considered in its entirety, demonstrates the improbability of the events as alleged by the witnesses.

14. According to PW 1 the raid was conducted on information received by him from one of his private informants. Needless to say, that even being a police informant is a very risky job, in particular when the information is linked to drug trafficking. Moreover it is a life and death situation given the extensively spread drug network operating within the country. Therefore, Police always takes every endeavor to conceal the identity of the informant as far as they can.

15. As can be observed from the testimony of PW 1, he along with PW 2 and the informant got down from the vehicle and walked along the road about 15 m and were standing near the entrance of the David Pieris Company. This was also during broad daylight. The other significant but unbelievable part of the evidence is that the informant was there until the three-wheeler driven by the Appellant was seen by them. According to the information received by PW 1 he knew the registration number of the three-wheeler in which the Appellant was supposed to bring heroin. Prior to the raid PW 1 knew the registration number of the three-wheeler as WPQI 6363. If that was the case, what was the necessity to have the informant in their company until the three-wheeler was seen by them? It would definitely give anybody a chance to identify the informant which would put him at a grave risk. Had they known the registration number of the three-wheeler as per the information they received, they could have easily stopped the three-wheeler without the informant being present.

16. Hence, the fact that the informant walked along the road with PW 1 and waited at the entrance of the David Pieris Company until the Appellant reached there is difficult to believe.

17. It is also significant to note that according to the notes entered by PW 1 regarding the information, it was revealed that a person was coming near David Pieris Company to distribute heroin. During cross examination PW 1testified as follows :

ප්‍ර : හරි මං දැන් අහන්නේ ඔබතුමා කියපු එක අනුව ඔය සටහනේ තියෙන්නේ ඩේවිඩ් පීරිස් සමාගම අසලට හෙරොයින් බෙදාහැරීමට එනවා කියලා එහෙම නේද ලියලා තියෙන්නේ ?

උ : එහෙමයි උතුමාණනි.

18. Thus, a person of PW 1's caliber should have reasonably anticipated that someone who was supposed to take the parcel form the Appellant would have been roaming in the vicinity. If that was the case, allowing the informant to be there with PW 1 and PW 11 until the Appellant came by three-wheeler would certainly enable any interested party to know who the informant is. This again questioned the credibility of the PW 1's evidence.

19. Furthermore, according to PW 1 when the three-wheeler was stopped, the Appellant was found carrying the heroin parcel on his lap in a bag. When the bag was checked four parcels were found inside. It is interesting to note that although the Appellant was arrested there he was not searched, nor was the three-wheeler. Having received information that the Appellant was coming to distribute heroin to the persons in the David Pieris Company it was strange that the raiding party did not search even the David Pieris Building to see whether there were some people who are linked to this distribution network.

20. Another critical piece of evidence that the court should not overlook is that the informant was said to have gone inside the David Pieris Company, despite the information that some people who were waiting to receive heroin from the Appellant were inside the David Pieris Building. In such a situation, it is highly improbable that the informant would have gone inside the David Pieris Company.

21. It is noteworthy that PW 1 himself has admitted during cross examination that they could not make notes pertaining to the information that they received from the

informant, as there would be a grave risk to the informant's life given the nature of his role. That is the very reason that it would be difficult if not impossible to believe that the informant would have walked accompanied by PW 1 and PW 11 in broad daylight for 50 m until they reach the entrance of the David Pieris Company.

22. As stated earlier, if they had known the registration number of the three-wheeler and given the grave threat to the life of the informant, they could have easily made the informant stay in a vehicle without exposing himself to anyone. These facts directly and largely shake the credibility of the evidence of the prosecution.

23. When PW 11 Mahinda Ranasinghe was being cross examined, he very clearly stated the nature of the information he had received from the informant. He testified page 219/220 as follows:

ප්‍ර : මේ තොරතුර තමුන්ට ලැබුනහම තමන් තොරතුරු කරුගෙන් ප්‍රශ්න කරන්න ඇතිනේ මේ ජාවාරම වෙන්නේ කොහේද, මොකක්ද එතන වෙන්නේ, කී දෙනෙක් එනවාද මේ බඩු ගන්න කියලා,

උ : එහෙමයි උතුමාණනි. තොරතුර සම්බන්ධයෙන් සාර්ථක භාවයක් සූදානම් කරගෙන තමයි වැටලීමක් සංවිධානය කිරීමට පෝ.පො. රංගජීව මහතාට දැනුවත් කිරීමක් කලේ.

ප්‍ර : තමුන් ඔක ඇහුවාම තමුන්ට දැනගන්න ලැබුනද, කී දෙනෙක් එනවාද කියලා, ඒ බඩු ගන්න. දැන් මිනිහා එන්නේ විකුණන්න කියලා කිව්වානම් කී දෙනෙක් එනවාද බඩු ගන්න කියලා තොරතුරුකරු කිව්වාද ?

උ : උතුමාණනි මත්ද්‍රව්‍ය රැගෙන එන පුද්ගලයා අත් අඩංගුවට ගැනීමට තමයි අපි මෙහෙයුම ක්‍රියාත්මක කරේ. මත්ද්‍රව්‍ය ගන්න එන පුද්ගලයා සම්බන්ධයෙන් අපි අවධානය යොමු කිරීමක් කලේ නැහැ.

ප්‍ර : බොහොම හොඳ උත්තරයක් මත්ද්‍රව්‍ය ගන්න එන පුද්ගලයා ඔන වෙන් නැහැ. ගේන කෙනා විතරයි ඔන. ඒ කියන්නේ තමුන්නහන්සේට කවුරුහරි ආවොත් මත්ද්‍රව්‍ය ගන්න එයාව අල්ලන්න උවමනාවක් තිබුනේ නැහැ, අරන් එන කෙනාව අල්ලන්න විතරයි උවමනාව තිබුණේ.

උ : මට තොරතුරු ලැබුනේ ගරු උතුමාණනි මත්ද්‍රව්‍ය රැගෙන අස්මත් යන පුද්ගලයා ඩේවිඩ් පීරීස් ආයතනය තුළට එනවා ඒවා බෙදාහැරීමට කියලා. එහෙමයි තොරතුර ලැබුනේ. ඒ අනුවයි උතුමාණනි මේ පුද්ගලයා අත් අඩංගුවට ගැනීමට සිදු කලේ.

24. The above evidence very clearly shows that the Appellant was coming to distribute drugs inside the David Pieris Company and therefore, any prudent person can reasonably expect that the Appellant's agents or recipients are inside the David Pieris Company. If that was the case, can a reasonable and prudent person expect that the informant knowing that some people waiting to receive heroin from the Appellant were inside the building still went inside the same building?

25. Unarguably, PW 1 is a well experienced officer who has been engaged in anti-Narcotic operations for a considerable period and hence it is difficult to believe that a person of his experience would have allowed the informant to go inside the David Pieris building where some people were waiting to receive heroin from the Appellant.

26. This evidence would certainly make the prosecution's version improbable and difficult to believe. Unfortunately, the aforementioned improbabilities have escaped the attention of the Learned High Court Judge.

27. It is desirable to emphasize that official witnesses of a case of this nature have the privilege of referring to their field notes and refreshing their memory while testifying, an opportunity which is not available to lay witnesses in a typical criminal trial. Therefore it is not unfair or unrealistic to expect more accurate evidence from the official witnesses in a trial of this nature.

28. At the same time, it is important to note that in a criminal trial, court has a sacred duty to evaluate and assess the credibility and probability of the evidence of official witnesses irrespective of their accuracy and consistency. If two official witnesses make notes at the same time regarding a particular raid conducted by them, inconsistencies or contradictions in their testimonies are going to be hardly present. Nevertheless, it is incumbent on the trial Judge to examine and evaluate their

evidence, especially the probability of the events that they had explained in their notes in the context of the entire incident.

29. The aforementioned improbabilities certainly cast doubt on the truthfulness of the prosecution evidence. It is also noteworthy that the drugs alleged to have been recovered from the appellant were not sealed until the police team returned to the Police Narcotics Bureau. As admitted by PW1 during cross-examination, their notes contained no reference to taking any equipment for sealing purposes, which further calls into question the credibility of their evidence.

30. When PW1 was questioned as to why the substance was not subjected to a field test soon after the arrest, he stated that it was difficult to conduct a field test at the location. However, the evidence reveals that the appellant was taken to his residence and thereafter to a printing press at Wellawatta. If that is so, the raiding party had ample opportunity to carry out a field test and to seal the substance before reaching the Police Narcotics Bureau.

31. This Court has also not lost sight of the questionable circumstances discernible in the chain of production. It is evident that PW1 kept the productions in his custody for two days before handing them over to the reserve. The explanation provided by PW1 to justify his failure to hand over the productions on the same day is far from satisfactory.

32. According to the prosecution, the raid was conducted pursuant to information received by PW1. In those circumstances, there is no reasonable explanation for the failure to bring sealing equipment, particularly given PW1's seniority and experience. These deficiencies inevitably weaken the prosecution case and widen the doubt regarding the credibility and reliability of the prosecution evidence.

33. Upon a perusal of the impugned judgment, it is evident that the learned trial Judge failed to address the improbabilities in the prosecution version and, more importantly, the failure of the raiding party to seal the substance until it reached the PNB. It is also noteworthy that the learned trial Judge erred in law by effectively shifting the burden of proof onto the appellant, as he stated that the appellant had failed to adduce

evidence to establish the suggestions made during the cross-examination of the prosecution witnesses.

34. It must be emphasized that the defence is under no obligation to offer any explanation until the prosecution has first established its case against the accused beyond reasonable doubt. A weak or deficient prosecution case cannot be strengthened merely because the defence has chosen not to provide an explanation. The following authorities provide guidance on this principle.

35. In ***Narendra Kumar Vs. State (NCT of Delhi), AIR 2012 SC 2281***, the Indian Supreme Court held:

> *"Prosecution case has to stand on its own legs and cannot take support from the weaknesses of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the Court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt."*

36. In ***Kalinga Premathilake Vs. The Director General of the Commission to Investigate Allegations of Bribery or Corruption, SC Appeal No. 99/2007*** decided on 30-07-2009, it was held:

> *"What needs consideration now is when the evidence led for the prosecution in this case is closely scrutinized, whether it would be satisfied that prosecution had discharged the burden of proving the case beyond reasonable doubt. If not, the appellant is liable to be acquitted of the charges. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weaknesses in the defence, and when the guilt of the accused is not established beyond reasonable doubt, he is liable to be acquitted as a matter of right and not as a matter of grace or favour."*

37. In ***Dilum Iroshana Panditharathne vs A.G. CA/HCC/267/19*** decided on 06.06.2023, it was held:

    It is a well understood principle of criminal law that the party making the allegation must prove the same beyond reasonable doubt, but if there arises a doubt with regard to the prosecution story, the benefit of the doubt must be given to the accused. But in the instant matter the trial Judge had failed to analyze the improbability of the situation.

38. For the reasons stated above, this appeal succeeds. Accordingly, I set aside the judgment of the High Court. Thus, the conviction and sentence also stand set aside.

Judge of the Court of Appeal

P. Kumararatnam, J.
I agree,

Judge of the Court of Appeal