

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an appeal in terms of  
section 331 (3) of the Code of Criminal  
Procedure Act.15 of 1979

Democratic Socialist Republic of Sri  
Lanka.

**Complainant**

**Vs**

Herath Hitihamilage Don Ronald Regal  
Appuhamy

**Accused**

**AND NOW BETWEEN**

Herath Hitihamilage Don Ronald Regal  
Appuhamy

**Accused-Appellant**

**Vs**

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

**Respondent**

Court of Appeal Case No:

**CA/HCC/0071/20**

High Court of Negombo Case No:

**HC-0313/2017**

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

Counsel : Chathura Amarathunga with Dilini Hettiarachchi for the Accused-Appellant.  
Suharshi Herath, DSG for the Respondents.

Argued on : 05.12.2025

Decided on : 27.02.2026

**Pradeep Hettiarachchi, J**

### **Judgment**

1. The accused-appellant (hereinafter referred to as “the appellant”) was indicted before the High Court of Negombo on charges of possession and trafficking of 2.29 grams of heroin, offences punishable under Sections 54A(d) and 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance. At the conclusion of the trial, the learned High Court Judge found the appellant guilty on both counts and accordingly convicted him. The appellant was sentenced to life imprisonment on each count.
2. Being aggrieved by the said conviction and sentence, the appellant has preferred the present appeal.

The appellant relies on the following grounds of appeal:

- a. The learned trial Judge had failed to evaluate discrepancies regarding the inward journey of chain of production;
- b. The learned trial Judge had failed to evaluate the evidence of PW4 as corroborative evidence;
- c. The learned trial Judge has not evaluated the evidence of Government Analyst regarding the discrepancy of gross weight of the substance forwarded to the Government Analyst Department; and
- d. The learned High Court Judge had failed to evaluate the defence evidence.

3. Nine witnesses testified on behalf of the prosecution. The appellant made a dock statement. PW1, Ananda Wimalasuriya Herath, was the first witness to testify for the prosecution. According to the evidence of PW1, the arrest was effected pursuant to information received from one of his officers, namely Police Constable 97138 Wanniarachchi. However, PW1 had not made any note regarding the time at which the said information was received.
4. According to the testimony of PW1, eight officers proceeded to Periyamulla Depot Junction in a three-wheeler. After reaching the junction, they used two three-wheelers. While they were at Depot Junction, PW1 observed the appellant walking along the main road and turning into St. Anthony's Road. At that moment, PW1 stopped the three-wheeler, approached the appellant, and arrested him.
5. Upon searching the appellant, PW1 recovered a small parcel wrapped in a pink-coloured cellophane sheet from the right-side pocket of the appellant's trousers. The arrest was effected on 31.03.2016 at about 14.00 hours. After the arrest, they proceeded to a jewelry shop named Roshmi Gold House, where the parcel was weighed and sealed. Thereafter, they returned to the police station and handed over the parcel to Police Sergeant 23823 Yapa at the police reserve under Production Register No. 1366/06. The appellant's statement was recorded by Police Constable 82068 Sampath.
6. The other officer who testified to corroborate the evidence of PW1 was PW4, Newton Wijerathne (Police Sergeant 55362), who had also taken part in the raid. According to the evidence of PW4, the team consisted of eight officers. The arrest was effected at Periyamuilla Depot Junction when the appellant was approaching the junction. The heroin parcel was recovered from the right-side pocket of the appellant's trousers. Thereafter, they proceeded to Roshmi Gold House, where the productions were weighed and sealed, and subsequently returned to the police station along with the appellant.
7. The prosecution also called the officers attached to the police reserve who had custody of the productions until they were produced before the Magistrate's Court and thereafter forwarded to the Government Analyst. At the conclusion of the prosecution case, the appellant made a dock statement denying the prosecution version. The appellant stated

that the drugs had been planted on him by the police following an argument he had with them when several police officers in a three-wheeler approached him.

8. First, I shall examine the probative value of the evidence of PW4 in light of the testimony of PW1 as certain infirmities may be observed in the testimonies of PW1 and PW4. According to PW1, at the time of arresting the appellant, he introduced himself by producing his official identity card. It is noteworthy that neither PW1 nor PW4 stated anywhere in their evidence that they were in civil attire at the time of the arrest. If, in fact, they had been in civil attire, it would have been expected that they made a note to that effect and testified accordingly. However, no such evidence was forthcoming to establish that the officers were in civilian clothing. In those circumstances, the necessity of producing an official identity card to the appellant becomes questionable.
9. Moreover, there exists a discrepancy regarding the location of the arrest. According to PW1, he arrested the appellant when the latter turned into St. Anthony's Road, whereas PW4 stated that the appellant was arrested when he approached Depot Junction.
10. Evidently, the appellant's residence is located approximately 800 meters from the place of arrest. The information received by the police indicated that the appellant was engaged in trafficking heroin. Despite this, the police made no attempt to search the appellant's house, even though it was in close proximity to the place of arrest. If the information correctly suggested that the appellant was involved in drug trafficking, and he was arrested in possession of the drugs, it is reasonable to expect that the police would have conducted a search of his residence. No plausible explanation was provided by the prosecution for this omission.
11. Another aspect of the evidence, which is difficult, if not impossible, to accept, is PW4's assertion that all eight officers travelled together in the same three-wheeler. (Vide page 62 of the appeal brief). Moreover, PW4 testified that, following the arrest, three officers accompanied by the Appellant travelled in a single three-wheeler to the jewellery shop, with the Appellant seated on one of the officers' laps. This account is also inherently improbable, particularly in light of PW1's evidence that two three-wheelers were involved.
12. A further lapse in the investigation that emerges from the evidence is that the signatures or thumb impressions of the appellant were not obtained on the envelopes used to

enclose and seal the contraband prior to their dispatch to the Government Analyst's Department. This constitutes a significant omission on the part of the prosecution, as the absence of such signatures or thumb impressions, which ordinarily serve as identifying marks on the samples of the contraband, gives rise to the possibility of misplacement or tampering.

13. The purpose of obtaining the suspect's signature or thumb impression is to ensure and verify that the samples forwarded to the Government Analyst are the very same items that were seized at the time of the arrest. The absence of such identifying authentication renders it difficult to establish that the integrity of the exhibits remained intact, particularly in circumstances where the chain of custody has not been clearly and satisfactorily proved. It is noteworthy that the appellant's consistent contention throughout the trial was that the heroin had been planted on him.
14. It is also pertinent to note that the gross weight of the contraband allegedly recovered from the possession of the accused is less than the gross weight recorded when it was subsequently examined at the Government Analyst's Department. This discrepancy in weight has been specifically noted in the Government Analyst's Report.
15. This discrepancy in weight casts a serious doubt on the integrity of the productions, particularly in light of the defence consistently taken up by the appellant, namely that the heroin had been introduced to him by the police.
16. Furthermore, the evidence relating to the sealing of the productions also reveals certain discrepancies and improbabilities which go to the root of the prosecution case, but which appear to have escaped the attention of the learned trial Judge. The envelope marked P3 bears only the official seal of the Magistrate's Court, whereas the envelope marked P4 contains only the seals placed by the police.
17. It is significant to note that, according to the evidence-in-chief of PW1, subsequent to the arrest of the appellant, the officers proceeded to Roshmi Gold House, Negombo, where the substance allegedly recovered from the appellant was weighed and thereafter sealed upon being enclosed in an envelope. Notably, neither the signature nor the thumb impression of the appellant was obtained on any of the envelopes used to seal the substance.

18. The Appellant's thumb impression was present only on the white sheet upon which the substance was allegedly placed for weighing. These omissions assume greater significance in the context of establishing the chain of custody and ensuring the authenticity and integrity of the productions from the point of seizure up to their examination by the Government Analyst.
19. Inside envelope P3, there was another envelope marked P4, in which the heroin packet was contained. However, the police failed to obtain the appellant's signature or thumb impression on either P3 or P4. Additionally, there was another envelope marked P7, containing the cellophane bag, on which the appellant's signature or thumb impression was likewise not affixed.
20. The absence of the appellant's signature or thumb impression on these envelopes further undermines the assurance that the seized substance remained intact and untampered with from the point of seizure until it reached the Government Analyst.
21. It is the duty of the prosecution to prove that the seized articles were properly sealed and that no tampering occurred during their retention by the police officers. In the absence of such evidence, a reasonable doubt arises as to the reliability and integrity of the productions. In the present case, the prosecution has not provided any plausible explanation as to why the appellant's thumb impression or signature was not obtained on the productions at the time of sealing. I consider this to be a serious shortcoming in the prosecution's case, which materially strengthens the appellant's defence.
22. This aspect of the evidence is particularly significant when evaluating the probability of the prosecution's version in light of the appellant's defence that the contraband was introduced to him. Specifically, it raises a doubt regarding the mode of detection and the manner in which the substances were allegedly recovered, as narrated by the prosecution.
23. The learned trial Judge failed to adequately appreciate this aspect, which weighs in favour of the appellant. It must be emphasized that issues relating to the chain of custody are of critical importance in cases involving drugs. To establish a proper chain of custody, the prosecution is required to present cogent and compelling documentary evidence demonstrating that the items produced before the Court are, in fact, the same items that were originally recovered from the possession of the accused.

24. In cases involving drugs, contradictions within the prosecution evidence, or between the prosecution and the defence, can significantly weaken the prosecution's case and, in appropriate circumstances, may result in acquittal. While trivial inconsistencies are usually of little consequence, substantial discrepancies affecting material facts may impair the credibility of witnesses and create a reasonable doubt as to the guilt of the accused.
25. In the present case, it was argued on behalf of the appellant that the learned trial Judge failed to properly evaluate the discrepancies concerning the inward journey of the chain of custody. In cases of this nature, a fundamental requirement for the prosecution is to establish, beyond reasonable doubt, the chain of custody. This entails a clear chronological record of the seizure, sealing, transfer, and eventual presentation of the substance recovered from the appellant. The chain of custody ensures that the seized drugs are properly accounted for from the time of recovery to their production in court, serving as a safeguard against contamination, substitution, tampering, or loss, and thereby preserving the reliability and authenticity of the evidence.
26. In cases of this nature, the prosecution bears the onus of proving the key events beyond reasonable doubt. Witnesses in such cases are afforded the advantage of relying on notes made during the raid, a facility not available to ordinary lay witnesses. It is therefore their duty to ensure that such notes are accurately maintained, particularly in relation to the critical events that took place during the raid. Any failure in this regard inevitably affects the credibility of their testimony, particularly where they are unable to clearly recount the events themselves.
27. In the present case, PW4 did not make any note when he, together with the other officers, departed the police station for the raid. He further testified that he was present when the substance was weighed and sealed, but could not recollect whether PW1 had made any notation on the white sheet upon which the heroin was placed for weighing, suggesting that he himself had made no such record. Significantly, the location of the arrest as described by PW4 is inconsistent with the evidence of PW1.
28. Accordingly, where material contradictions and inconsistencies are apparent between the testimonies of PW1 and PW4, the Court cannot treat such evidence lightly, nor can

it evaluate it by the same standard that would apply to the testimony of an ordinary witness relying solely on recollection.

29. In *Witharana Doli Nona vs. Republic of Sri Lanka (CA 19/19)*, Sisira De Abrew J., observed that:

*“It is a recognized principle that in drug-related cases the prosecution must prove the chain relating to the inward journey. The purpose of this principle is to establish that the productions have not been tampered with. The prosecution must prove that the productions taken from the accused-appellant were examined by the government analyst. To prove this, the prosecution must prove all the links of the chain from the time it was taken from the accused-appellant to the Government Analyst's department.”*

30. In *Perera vs. AG [1998] 1 SLR 378*, J.A.N de Silva J., (as he then was)] opined that;

*“It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore, it is correct to state that the most important journey is the inward journey because the final analyst report will depend on that. The outward journey does not attract the same importance.”*

31. Another significant issue that calls into question the credibility of the prosecution evidence relates to the transfer of the productions from the Magistrate's Court to the Government Analyst Department. It is noted that in the memorandum, PW1 is mentioned as the person who handed over the productions to the Government Analyst. However, according to the testimony of the production clerk of the Magistrate's Court, it was PS 35426 who signed the production ledger, marked as P12, acknowledging receipt of the productions. This creates a discrepancy, as the memorandum identifies PW1 as the individual responsible for the handover, contrary to the evidence of the production clerk.

32. The prosecution re-summoned PW1 to explain the discrepancy regarding the handover of the productions to the Government Analyst Department. PW1 testified that, although

the production register was signed by PS 35426 Priyantha, he personally accepted the productions from the Magistrate's Court and delivered them to the Government Analyst Department. However, PW1 did not make any note indicating whether PS 35426 accepted the productions on his behalf. Such discrepancies cannot be lightly disregarded in a trial of this nature, as police officers are required to maintain precise and contemporaneous notes for every critical step taken during the inward journey of seized items. The primary purpose of these records is to ensure the integrity and authenticity of the productions from the moment of detection until their production before the Government Analyst Department.

33. The cumulative effect of the foregoing infirmities, particularly the absence of the appellant's thumb impressions on the bags used to seal the contraband, the discrepancies regarding who accepted and handed over the productions to the Government Analyst Department, PW1's failure to record the time of receiving the information, the significant discrepancy between the gross weight mentioned in the covering letter and the weight recorded by the Government Analyst, as well as other procedural lapses during the investigation, including contradictory evidence regarding the place of arrest, raises serious doubts about the credibility and reliability of the prosecution's version of events.
34. It is also significant to emphasize that the dock statement, when examined in conjunction with the discrepancies apparent in the prosecution evidence, gives rise to a reasonable doubt as to the veracity of the prosecution's case. Such doubt must, in accordance with settled principles, be resolved in favour of the appellant.
35. The learned High Court Judge, in recording the conviction, failed to give due attention to the procedural lapses apparent on the testimonies of the prosecution witnesses, and erroneously concluded that the accused was guilty of the offences set out in the indictment. This finding is contrary to the evidence on record and established legal principles. The learned Trial Judge appears to have overlooked and failed to properly consider these aspects in accordance with accepted legal standards. Had these matters been duly considered, no reasonable Court could have reached the finding of guilt as recorded.
36. Upon a careful consideration of the totality of the evidence and the material infirmities discussed above, it is my considered view that the conviction of the appellant is unsafe

and unsustainable in law. Accordingly, the conviction and sentence imposed on the appellant are set aside, and the appellant is acquitted of all charges.

**Judge of the Court of Appeal**

**P.Kumararatnam, J.**

I agree.

**Judge of the Court of Appeal**