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/0079/2020

High Court of Panadura
Case No: HC/3324/2015

Alankarage Dilan Prasanga alias Kannadiya

Accused-Appellant

vs.

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

Complainant-Respondent

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

COUNSEL : **Malintha Jayasinghe with Naveen Jayamanna and Wazeem Ambar for the Appellant.**
Suharshi Herath, DSG for the Respondent.

ARGUED ON : **25/07/2025**

DECIDED ON : **09/09/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred as the Appellant) was indicted by the Attorney General in the High Court of Colombo under Sections 54A (b) and 54A (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984 for the Trafficking and for being in Possession of respectively 2.18 grams of Heroin (Diacetylmorphine) on 29th April 2015.

Following the trial, the Appellant was found guilty on both counts and the learned High Court Judge of Colombo has imposed a sentence of life imprisonment on him on the 24th of June 2020.

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 has given consent for this matter to be argued in his absence. During the argument he has been connected via Zoom platform from prison.

The learned Counsel, even though he raised several grounds of appeal in his written submissions, restricted his argument to the following 03 grounds of appeal.

1. That the prosecution has failed to prove the case beyond a reasonable doubt.
2. The inward journey of the materials has not been proved.
3. The dock statement of the Appellant was not taken in to consideration by the learned High Court Judge.

At the trial, PW1 SI/Lional, PW3 PC 88669 Jayasinghe, PW10 CI/Rajakaruna and PW11 Government Analyst Chandani Priyadharshika were called by the prosecution to give evidence. The Appellant made a dock statement and called his mother as a defence witness.

Background of the case albeit briefly is as follows:

PW1, attached to the Police Narcotics Bureau had received an information via PW3, about the trafficking of Heroin in the Panadura area. According to the information, a person called Dilan has been expected to arrive carrying Heroin to be delivered to somebody near Thattaya Bridge. Acting on this information, PW1 had gone for the raid accompanied by five police officers. He had used a double cab bearing plate no. WP GC 2941 for this purpose. After reaching Angulana, PW3 had contacted the informant and he had arrived at the spot at 18:55 hours. As the informant had mentioned that the Appellant was expected to be late, PW1, PW3 and the informant had got into the cab and driven in the direction of the Angulana Railway Station. After about 10 minutes of their arrival, the Appellant had arrived on a motorbike. Following the confirmation by the informant, the Appellant was stopped before he could pass them and subjected to a body search. A cellophane bag was recovered from the right-side pocket of the pair of shorts worn by the Appellant. When the cellophane bag was checked by PW1 some brown coloured substance was found, which he identified as Heroin relying on his

experience in dealing with narcotics. The Appellant was taken into custody immediately for further investigation.

During inquiry, the Appellant's name was found to be Alankarage Dilan Prasanga alias Kannadiya. Before they could proceed to the Police Narcotics Bureau, the detectives had gone to the Appellant's house for a search and they had not been able to locate any illegal items from the search.

The recovered substance was weighed at the Police narcotics Bureau and the weight of the substance with the cellophane bag had been around 15 grammes. PW1 had sealed the production and kept it in his personal locker until it was handed over to the production officer.

According to the Government Analyst Report, 2.18 grammes of pure Heroin (diacetylmorphine) had been detected from the substance, which was subjected for analysis.

When the prosecution had closed the case after leading the prosecution witnesses mentioned above, the defence was called, and the Appellant had made a dock statement and closed his case.

According to the 1st ground of appeal, the learned Counsel for the Appellant contends that the prosecution has not proved the case beyond reasonable doubt as the learned Trial Judge had failed to appreciate the inconsistency between the evidence given by PW1 and PW3 as to how they arrested the Appellant on the date of incident.

According to PW1, the appellant was arrested before he could pass PW1 and PW3. The relevant portion is re-produced below:

<u>Pages 65-66 of the brief.</u>

ප්‍ර : ඒ ආකාරයෙන් රැඳී සිටින අවස්ථාවේ දී යම් අවස්ථාවක මොනවා හරි නිරීක්ෂණය වුණා ද ?

උ : අප එම ස්ථානයේ රැඳී සිටි විට යතුරු පැදියක් පැමිණියා. එම පුද්ගලයා නිල්පාට අත්කොට ටී ෂර්ට් එකක් ඇඳලා සිටියා. අප සිට මාර්ගයේ අනෙක් පසින් අපි සිටි ස්ථානයෙන් ඉදිරියට යනවත් එක්කම අපි රථය නතර කළා.

On this point, upon examination-in-chief of the evidence given by PW3, the Appellant had come in a motor bike and had been stopped after passing the bridge named as 'Thattaya Palama'. The relevant portion is re-produced below:

Page 220-221 of the brief.

ප්‍ර : දැන් එහෙම නැවතිලා මොකද්ද සිදු වුණේ ?

උ : එතැන නැවතිලා අපි එම ස්ථානයේ මඳ වේලාවක් රැඳී සිටියා ස්වාමිණී. රැඳී සිටින විට පැය 19.30 ට පමණ ගාලු පාර දෙස සිට යතුරු පැදියකින් පුද්ගලයෙක් ඇවිල්ලා පාලම පහු කරලා ඔහුගේ වම් පස ඒ යතුරු පැදිය නතර කළා.

ප්‍ර : දැන් එතකොට ඔහු යතුරු පැදිය නවත්තපු පැත්තට පාරේ විරුද්ධ පැත්තේ තමයි ඔබලා ඉන්නේ ?

උ : ඔව් ස්වාමිණී.

ප්‍ර : දැන් එම යතුරු පැදිය ඔබලාව පසු කරලා ටික දුරක් ගිහිල්ලානේ නැවැත්තුවේ ?

උ : එහෙමයි.

ප්‍ර : ඊට පස්සේ මොකද්ද සිද්ධ වුණේ එතැන ?

උ : තොරතුරුකරු ඔහු පෙන්වලා අපිට පැවසුවා ඒ තමයි කණ්ණාඩි දිලාන් කියන්නේ අනිවාර්යෙන්ම බඩු ඇති සර්ලා ගිහින් චෙක් කරන්න කියලා දැනුම් දුන්නා.

ප්‍ර : ඒ තොරතුරුකරු ඒක දැනුම් දුන්නේ ඒ යතුරු පැදිය නැවැත්තුවාට පස්සේ ද නවත්වන්න කලින් ද ?

උ : නැවැත්තුවාට පස්සේ ස්වාමිණී.

During the cross examination of PW1, he had tried to change his stance by saying that the Appellant had stopped the bike.

The relevant portion is re-produced below:

Page 128 of the brief.

ප්‍ර : මහත්තයා අපි රථය නතර කළා කියලා කියලා තියෙනවානේ ?

උ : නැහැ. ඔහු රථය නතර කළා.

At this time the learned State Counsel had tried to amend the evidence given by PW1 to tally with PW3 regarding how the Appellant was arrested by the police. As the defence Counsel vehemently objected to this move, the learned High Court Judge ruled that the Appellant was arrested after he was stopped by the police. The ruling of the learned High Court Judge is re-produced below:

Page 132 of the brief.

පෙරවරුවේ මෙම නඩුව විභාගයට ගත් අවස්ථාවේ දී 2017.03.27 වන දින මෙම සාක්ෂිකරු විසින්ම අධිකරණයේ සාක්ෂි දෙමින් ප්‍රකාශ කරන ලද සාක්ෂි බණ්ඩයක් සම්බන්ධයෙන් දෙපාර්ශවය අතර මත භේදයක් ඇති වූ අතර අදාළ සාක්ෂි බණ්ඩය වන්නේ සාක්ෂිකරු පිළිතුරු දෙමින් “අප සිටි මාර්ගයේ අනෙක් පසින් අප සිටි ස්ථානයෙන් ඉදිරියට යනවාත් එක්කම අපි රථය නතර කලා” යනුයෙන් සඳහන්ව තිබීමය. මෙහිදී විත්තියෙන් ප්‍රකාශ කරන්නේ අපි රථය නතර කලා යන්නේ ගම්‍ය වන්නේ මෙම සාක්ෂිකරු ඇතුළු පොලිස් කණ්ඩායම විසින් අදාළ යතුරු පැදිය නතර කරනු ලැබූ බවය. නමුත් රජයේ අධිනීතිඥ තුමිය දන්වා සිටින්නේ එය යතුරු ලියන දෝෂයක් බවත් අදාළ යතුරු පැදිය ස්වේච්ඡාවෙන්ම ස්ථානයේ නතර කළ බව පැමිණිල්ලේ ස්ථාවරය බවය. කෙසේ වෙත් සටහන් වී ඇති අයුරුන් බැලු බැල්මට එහි තේරුම වන්නේ අදාළ සාක්ෂිදෙන නිළධාරී සහ ඔහු සමඟ සිටි අනෙකුත් නිළධාරීන් විසින් යතුරු පැදිය නතර කළ බව යන්න තීරණය කරමි.

With the above ruling it is very clear that the prosecution witnesses have taken contradictory positions with regard to how they apprehended the Appellant when it came to the part regarding the motor bike.

In drug-related cases, contradictions within the prosecution's evidence or between the prosecution and defence can seriously weaken the case and may even result in an acquittal. While minor inconsistencies are generally not decisive, major discrepancies can damage witness credibility and create reasonable doubt about the accused's guilt, particularly when they concern crucial facts in dispute.

In every criminal case the burden is on the prosecution to prove the case beyond a reasonable doubt against the accused person. In a case of this nature, the prosecution needs to not only prove the case beyond a reasonable doubt with cogent and credible evidence sans any contradictions or omissions but should also ensure that the arrest, detection, weighing and sending the substance for analysis is conducted in accordance to due process which will otherwise affect the root of the case.

In **Iswari Prasad v. Mohamed Isa** 1963 AIR (SC) 1728 at 1734 His Lordship held that;

> *"In considering the question as to whether evidence given by the witness should be accepted or not, the court has, no doubt, to examine whether the witness is, an interested witness and to enquire whether the story deposed to by him is probable and whether it has been shaken in cross-examination. That is whether there is a ring of truth surrounding his testimony."*

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 Denning J in the Kings Bench held that:

> *"The evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability"*

In this case although PW1's stance was that they stopped the Appellant and checked him, PW2 in his evidence very clearly stated that the Appellant was only checked when he stopped his motorcycle after passing the bridge. This is a very serious contradiction between important prosecution witnesses. Further, this inter se contradiction raises very serious questions as to the credibility of the so-called detection.

The effect of a valid and serious contradiction in a criminal trial has been discussed in several judicial decisions. A contradiction which affects the root of the case will certainly overturn the original decision pronounced by the trial court. The appellate court will not encourage the provision of a second chance to the prosecution to rectify the ambiguity created by the police investigators in a case of this nature.

In **Udagama v. AG** [2000] 2 SLR 103 the court held that;

> *"Material questions and contradictions go to the very root of the prosecution case".*

In the **Attorney General v. Sandanam Pitchi Mary Theresa** [2011] 2 SLR 292 the court held that:

> *"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are material to the fact in issue".*

The learned High Court Judge had not properly evaluated this inter se contradiction in his judgment. This clearly shows, as contended by the learned Counsel for the Appellant that the learned High Court Judge has gone beyond evaluating the evidence that had been led before him and has

arrived at his own conclusion, which is not supported by the evidence that was led in the trial. It shows that he arrived at the decision based on assumptions.

When the appellant satisfactorily proves that an inter se contradiction affects the root of the prosecution case, the court has no option but to award the benefit of that doubt to the Appellant. Therefore, I conclude that this ground of appeal has merit and afford the benefit of the doubt to the Appellant accordingly.

PW1, under cross examination admitted that he gave false evidence with regard to who approached the Appellant when he was apprehended. It was the position of PW1 that he together with PW3 and the informant had approached the Appellant in order to search him. But in the cross examination, he had said that the informant did not come with them. This clearly affects the credibility of the witness.

Next, I will consider the third ground of appeal advanced by the Appellant. In that ground the Appellant complains that the learned trial Judge has failed to properly evaluate the dock statement in accordance with legal principles.

The Appellant had denied that he was arrested as stated by the prosecution witnesses. He had admitted that he was a drug addict and that he had gone to a house where he could purchase Heroin. The learned High Court Judge in his judgment disregarded the dock statement of the Appellant on the basis that he had only made a dock statement and failed to create a doubt on the prosecution case during the cross examination of prosecution witnesses.

In **Samantha Jayamaha v. Attorney General** CA Appeal 303/2006 and C.A.L.A. 321/2006 decided on 11/07/2012 the court held that:

> *"Even if the dock statement is rejected the burden always remains on the prosecution of proving the case against the accused, beyond reasonable doubt... Whether the evidence of the defence or the dock*

statement is sufficient to create a doubt cannot be decided in a vacuum or in isolation because it needs to be considered in the totality of the evidence that is in the light of the evidence for the prosecution as well as the defence… Finally, having considered the case for the prosecution as well as the dock statement it is only then the learned Judge can decide whether or not the dock statement is sufficient to create a doubt in the case for the prosecution."

In **Udagama v. AG** [2000] 2 SLR 103 the court held that:

> *(1) "Evidence is infirm, unsafe and unreliable to act upon considering the following,*
> *…*
> *(iii) failure to evaluate and consider the dock statement of accused.*

Test of reasonable doubt plays a vital role in the evaluation of defence evidence. The evidence of the Appellant may not be so convincing yet it may be capable of creating a reasonable doubt in the prosecution case.

Hence, I agree that the failure to properly consider the dock statement of the Appellant as argued by the learned Counsel, would have a detrimental impact on the prosecution story.

The single most important criterion in evaluating the fairness of a trial is the observance of the principle of equality of arms between the defence and the prosecution. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner ensuring their procedurally equal position during the course of a trial.

When the defence evidence creates a reasonable doubt on the prosecution case, the benefit of the same should be given to the Appellant.

The failure of the witnesses to pass the test of credibility and probability and the inter se contradiction of the prosecution witnesses are substantial enough to vitiate the conviction.

Due to the aforesaid reasons, I set aside the conviction and the sentence dated 24/06/2020 imposed on the Appellant by the learned High Court Judge of Panadura. Therefore, he is acquitted from both charges.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL