

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

**In the matter of an Appeal in terms of
Section 320 of the Code of Criminal
Procedure Act No. 16 of 1979.**

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

Court of Appeal
Case No. CA HCC 286/2024

Complainant

Vs.

High Court of Colombo
Case No. HC/7008/13

Dharmakeerthi Uddika Shrimal Perera

Accused

AND NOW BETWEEN

Dharmakeerthi Uddika Shrimal Perera

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Ruwan S. Jayawardena for the Accused-Appellant.

Hiranjan Peiris, A.S.G. for the Respondent.

Argued on: 03.02.2026

Judgment on: 09.03.2026

JUDGMENT

AMAL RANARAJA, J.

1. The accused appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Colombo* in High Court case number HC 37008/13.

The charges in the indictment are as follows:

Charge 01

That on or about, July 01, 2011, at *Modara*, in the District of *Colombo*, within the jurisdiction of this Court, the appellant did possess 3.44 grams of Diacetyl Morphine, an offence punishable in terms of section 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

Charge 02

That on or about, July 01, 2011, at *Modara*, in the District of *Colombo*, within the jurisdiction of this Court, the appellant did traffic 3.44 grams

of Diacetyl Morphine, an offence punishable in terms of section 54A(d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

2. At the conclusion of the trial, the appellant has been found guilty of the charges and sentenced to a term of life imprisonment.
3. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

4. Police witness 01 (PW01) *Inspector Samanjith*, police witness 02 (PW02) *Sub-Inspector Udara* and police witness 09 (PW09) *Police Constable 3997 Amila* have been assigned to the Police Narcotics Bureau.
5. On July 01, 2011, at approximately 18.30 hours, PW09 has received a tip-off from his informant. The tip-off has concerned a person named '*Shrimal*' who was reportedly trafficking a narcotics substance near the *Kali Amman Kovil* in *Modara*. PW09 has promptly informed PW01 of this intelligence.
6. Based on the information, PW01 has decided to conduct a raid to apprehend the individual involved. Accordingly, PW01, PW02, PW09, and other officers have set out to *Modara*. En route, PW09 has met his informant who then has accompanied the officers. The vehicle has stopped a short distance from the temple. PW01, PW09 and the informant have alighted and proceeded on foot towards the temple.

7. Upon reaching the vicinity, the informant has pointed out to a person standing nearby, identifying him as *Shrimal*, the individual mentioned in the tip-off. The informant has then departed.
8. PW01 and PW09 have accosted the individual, verified his identity as *Shrimal* and detained him. During the subsequent search, a parcel has been recovered from his possession. Based on his experience, PW01 has concluded that the parcel contained heroin. Consequently, PW01 supported by the other officer, has arrested *Shrimal* who has since been identified as the appellant.
9. Thereafter, the team of officers accompanied by the appellant, have proceeded to *Thotalanga* and *Kochchikade* for the purposes stated in PW01's narrative.
10. From *Kochchikade*, the team has returned to the Bureau where PW01 has retaken possession of the parcel relevant to the appellant, which on the directions of PW01, had been securely held by PW02, proceeded to weigh the parcel's content and seal it.
11. PW01 then has securely retained the sealed parcel and handed it over to the production officer (PW07) the following day. PW07, *Inspector of Police Rajakaruna* has also handled the sealed parcel securely prior to handing it over to the Government Analyst for analysis. Following the analysis of the content, the Government Analyst has prepared a report. This report has been subsequently submitted as evidence and marked 08.

Case of the appellant

12. The appellant has maintained that he and two others were detained on the day in question. One of them was subsequently released while the appellant and the remaining suspects were taken to the Police Narcotics Bureau. At the bureau, heroin allegedly introduced, and the two men were later produced before a Magistrate.

13. In a narcotic trafficking case, the prosecution bears the burden of proving a defendant's guilt beyond a reasonable doubt. To secure a conviction, the prosecution must establish several core elements.

A) Identity and possession

- i. The prosecution must prove that the accused is the person who committed the offence.
- ii. The prosecution must show that the accused had a command, arrangement, capacity or control over the dangerous drug.

“For the purposes of this ordinance, anything in the order, disposition, power or control of a person is deemed to be in his possession.”

(Vide Section 2(2) of the Ordinance)

- iii. The accused must be shown to have known that the substance was present and also knew of its illegal nature, i.e., a dangerous drug.

B) Nature and quantity of substance

- i. The prosecution must prove the substance is a dangerous drug, typically through a certificate of an analyst confirming its identification.

- ii. The quantity is critical in distinguishing trafficking from personal possession. Large quantities often trigger presumptions of trafficking.
- iii. The prosecution must prove an unbroken chain of custody for the seized drugs, ensuring the substance tested in the lab is the same one seized from the accused.

C) Intent to traffic

- i. The prosecution must demonstrate that the possession was for the purpose of selling, distributing, transporting or delivery of the drug, etc. (vide the definition of trafficking in section 54 of Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984)
- ii. Intent is often inferred from circumstantial evidence including:
 - a) Packaging – Drugs individually wrapped or divided into small baggies.
 - b) Equipment – Possession of scales, cutting agents or mixing equipment.
 - c) Cash – Large amounts of cash, particularly in small denominations.
 - d) Quantity – If the amount of drugs exceed what would typically be considered for personal use.

14. In the matter at hand, an informant has provided PW09 with intelligence concerning an individual engaging drug trafficking at a specific location in *Modara*. Upon being briefed about this tip-off, PW01 has coordinated a raid which has resulted in the appellant's arrest and custody.

15. The appellant has been initially detained, searched and a parcel recovered from the possession of his. The parcel recovered from the possession of the appellant has been examined and found to contain a

dangerous drug suspected to be heroin. Before the apprehension, the officers involved have confirmed the appellant's identity. The parcel has remained securely in PW02's custody until the officers and the appellant reached the Police Narcotics Bureau, at which point it has been handed over to PW01. PW01 has weighed the substance contained within the parcel, determining its weight to be 7.15 grams. The parcel containing the substance suspected to be a dangerous drug, i.e., heroin has then been sealed. Details of the sealed parcel have been entered into a police production receipt and PW01 has securely retained it until the following morning.

16. Next morning, *Inspector of Police Rajakaruna* (PW07) has reported for duty. At approximately 07.15 hours, PW07, the production officer of the Bureau, has received the sealed parcel from PW01. PW07 has securely kept the parcel in his possession until it was taken for analysis.
17. Subsequently, on July 07, 2011, PW07 has handed the sealed parcel to the Government Analyst for analysis. *Assistant Government Analyst, Ms. K. A. D. C. Kodithuwakku* (PW08) has performed an analysis on the substance retrieved from the parcel. The analysis has determined the gross weight of the substance to be 6.25 grams. Further analysis has confirmed the presence of the dangerous drug heroin, revealing a pure heroin content of 3.44 grams within the mixture.
18. The narrative of PW01 has been comprehensively corroborated by the accounts of prosecution's witnesses 02, 07, 08 and 09. This multi-sourced corroboration significantly strengthens the credibility and reliability of PW01's narrative regarding the events leading to the appellant's apprehension with a dangerous drug in his possession.

19. Furthermore, a range of material and documentary evidence have been duly produced and admitted as exhibits 3701 to 3710. These include:

- a) The material used to construct the parcel.
- b) The contents of the parcel, specifically the dangerous drug, i.e., heroin.
- c) All relevant official registers pertaining to the seizure and handling of evidence.
- d) Comprehensive expert witness's report which provides critical scientific evidence.

20. Given the substantial nature of the prosecution's evidence, which is corroborated on all material facts and demonstrates a high degree of internal consistency, the prosecution has successfully established the following critical elements.

- a) The unambiguous identification of the appellant.
- b) The appellant had in his possession a dangerous drug, specifically heroin and has adduced circumstances to infer that the appellant possessed knowledge of the nature and illicit character of the substance/dangerous drug.
- c) The definitive chemical identification and the composition of the seized substance, as confirmed through an expert and the report of the Government Analyst marked 3708.
- d) The precise nature and quantity of the dangerous drug, specifically a pure quantity of 3.44 grams of heroin.
- e) The meticulous establishment of an unbroken chain of custody for the seized dangerous drug, thereby ensuring its integrity and verifying that the substance analyzed by the laboratory is

demonstrably the same substance/dangerous drug originally seized from the appellant.

- f) That the appellant's possession of the dangerous drug was for the purpose of trafficking, as inferred from factors such as its quantity, purity and other circumstantial evidence presented.

21. It has been contended by the learned Counsel for the appellant that significant inconsistencies permeate the evidence of the prosecution, particularly with the narratives of PW01 and PW09 and also DW02 and DW03 together. Counsel asserts that these discrepancies cast a doubt upon the reliability of the prosecution's account of events surrounding the appellant's arrest. Specifically, the following points of alleged contradictions have been highlighted.

- a) That a divergence exists regarding the sequence of actions taken following the appellant's arrest, specifically whether the arresting officers proceeded to *Kochchikade* before their return to the Police Narcotics Bureau.
- b) Conflicting narratives are presented concerning the precise geographical spot where the appellant was detained and subsequently searched, with one account placing it directly in front of the kovil and another on the opposite side of the road.
- c) That witnesses offer contradictory explanations for how the officers and the appellant departed the immediate scene of arrest, whether the officers walked back to their parked vehicle with the appellant or if the vehicle itself was driven to the point of arrest for their embarkation.

d) That there are inconsistencies in the recorded time the officers' departure from the police narcotics Bureau prior to the operation.

22. While these alleged contradictions are noted, this Court finds that when taken into consideration within the larger factual matrix of the prosecution's case, they are not material and do not fatally compromise the prosecution's narrative. Such minor inconsistencies are often and inherent features of honest eye witness testimony, particularly when recalling peripheral details rather than deliberate attempt to mislead.

23. The learned Counsel has also contended that the prosecution's version was improbable because of the following:

a) The appellant had been at the location for over one and a half hours despite allegedly engaging in illegal activity.

b) The officers have not made an attempt to arrest the person who was involved in the alleged transaction with the appellant.

c) The delay in making notes. In that regard, it is contended that though the officers together with the appellants have returned to the Bureau at 22.00 hours, no note has been made until early hours of the next day.

24. The improbabilities highlighted by the learned Counsel for the appellant are not absolute but rather context-dependent and explicable. Firstly, the appellant himself may have been eager to conclude the transaction on that day. Furthermore, the other party/parties involved might have been unable to arrive at the scene promptly. Crucially, these potential motivations and external factors have not been adequately explored by the appellant's counsel during the cross examination.

25. Regarding PW01's alleged haste, it is plausible that the officer having effected the arrest, would have prioritized a rapid departure from the scene due to the need for further processing or other unforeseen exigencies. As for the timing of the note-making, the officer would first have been occupied with several time-consuming practicalities, e.g., weighing the parcel, sealing it and subsequently making detailed entries into official registers. These essential procedural steps inherently consume a significant time.
26. Consequently, the supposed 'improbabilities' are not in fact consistent with common sense or practical police procedures. They are readily understandable when viewed in their proper context.
27. Further, these points of divergence do not pertain to the fundamental elements of the charges. They do not for instance challenge the identity of the appellant, the fact that an arrest took place, the identity of the arresting officers or most importantly, the discovery and seizure of the dangerous drug from the appellant's possession. The core narrative of the appellant being arrested while in possession of a dangerous drug, i.e., heroin, remain consistently established by the overall body of evidence.
28. The discrepancies highlighted do not materially affect the credibility of the prosecution witnesses on the substantive issues central to the charges. The testimonies of PW01, PW02 and PW07 have established an unbroken chain of custody for the seized dangerous drug, thereby ensuring that the substance analyzed in the laboratory is demonstrably the same dangerous drug/substance seized from the appellant.

29. In those circumstances, I am not inclined to interfere with the conviction, disputed judgment and the sentencing order and I proceed to affirm the same. I dismiss the appeal and make no order regarding costs.

Appeal dismissed.

30. The Registrar of this Court is directed to send this judgment to the *High Court in Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal