

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of section 331(1) of the Code of Criminal Procedure Act No. 15 of 1979 read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka and section 11 of the Special Provisions Act No. 19 of 1990.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Galabodage Vipula Manjula
Pathirana

Accused

Court of Appeal Case No:

CA/HCC/0147/25

High Court of Ratnapura Case No:

HC-06/2023

And now between

Galabodage Vipula Manjula
Pathirana

Accused-Appellant

Vs

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

Respondent

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

Counsel : Neranjan Jayasinghe with Randunu Heellage for the Accused-
Appellant
Yohan Abeywikrama D.S.G. for the Respondent

Argued on : 27.11.2025

Decided on : 06.02.2026

Pradeep Hettiarachchi, J

Judgment

1. This appeal arises from the judgment and sentence dated 19.02.2025 of the learned High Court Judge of Ratnapura. The accused –appellant (hereinafter referred to as “the appellant”) was indicted before the High Court of Rathnapura for possessing and trafficking of 76.3 grams of Heroin which are offences punishable under Sections 54A(d) and 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance as amended by the Act No 13 of 1984.
2. At the conclusion of the trial, the learned High Court Judge found the appellant guilty of the charges and convicted him accordingly. The appellant was therefore sentenced to life imprisonment on both counts.

3. It is against that conviction and sentence; the appellant has preferred the present appeal. The appellant basically argued the appeal on two grounds namely;
 - a. The learned High Court Judge has failed to take into account the infirmities of the prosecution case, and,
 - b. The learned High Court Judge had rejected the dock statement and the defence evidence on unreasonable grounds.

4. The two main prosecution witnesses were PW1 and PW3. PW1, is the Chief Investigating Officer, who organized the raid. According to his evidence, the raid, which led to the appellant's arrest and the detection of heroin, was conducted based on an information from another suspect arrested earlier that morning on 23.02.2021. PW1 stated that six officers participated; they left the police station at 19:30 hours on 23.02.2021, and the appellant was arrested the next day near the Silver Ray Hotel along the Pelmadulla-Rathnapura Road while waiting at a bend.

5. Upon seeing the police, the appellant tried to flee but was apprehended with the team's assistance. He was holding a red-and-white bag containing a cup; inside the cup was a white grocery bag with powder later identified as heroin. The parcel was sealed on site. Police also recovered an electronic scale and a mobile phone from the appellant's possession. After sealing the parcel, the team returned to the station.

6. PW3 is another officer who testified in support of the prosecution version of the raid. He explained how the raid was conducted and the manner in which the appellant was arrested. The prosecution also led evidence from the officers who were involved in maintaining the custody of the productions until they were forwarded to the Government Analyst.

7. According to the Government Analyst's Report, 76.3 grams of pure heroin (diacetylmorphine) were detected in the substance subjected to analysis. Upon the conclusion of the prosecution case, after leading the evidence of the aforementioned witnesses, the defence was called. The appellant made a dock statement, and in addition, the appellant's former wife testified in support of the defence.

8. The counsel for the appellant primarily argued that the prosecution evidence is riddled with material infirmities, and consequently, the conviction of the appellant cannot be safely sustained in view of the gravity of these defects. In drug-related cases, infirmities in the prosecution evidence can significantly weaken the prosecution case and, in appropriate circumstances, may even result in an acquittal. While minor discrepancies are not ordinarily fatal, material discrepancies affecting vital aspects of the case can undermine the credibility of witnesses and give rise to a reasonable doubt regarding the guilt of the accused, particularly where such discrepancies relate to matters that are central to the prosecution case.
9. In cases of this nature, the prosecution must not only establish guilt with cogent and credible evidence free of contradictions or omissions, but also ensure that the arrest, detection, weighing, and submission of the substance for analysis strictly comply with due process, and failure to do so undermines the very foundation of the case.
10. In *Iswari Prasad v. Mohamed Isa 1963 AIR (SC) 1728 at 1734* the Supreme Court of India 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.”
11. 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”
12. This being a drug-related case, it is incumbent upon the chief investigating officer to maintain contemporaneous notes of all material procedural steps taken during the raid. At the very outset, prior to departing from the police station, all participating officers are required to be bodily searched to ensure that no illicit substance is in their

possession. In addition, the vehicle used for the operation should also be searched, and in particular, the odometer reading ought to be recorded.

13. In the present case, although PW1 stated that the officers were bodily searched prior to departure, no contemporaneous notes were made to that effect. Furthermore, no odometer reading of the relevant vehicle was recorded. When questioned by the defence regarding these omissions, the witness was unable to offer any satisfactory or plausible explanation.
14. These lapses cannot be brushed aside as mere technical irregularities. In prosecutions of this nature, where severe penalties are prescribed by law, such omissions strike at the very root of the credibility of the prosecution case and materially weaken the evidentiary foundation upon which the conviction is sought to be sustained.
15. Further, PW1 stated in his evidence that the police officers had travelled several times up and down along the Lellopitiya–Pelmadulla road prior to the arrest of the appellant. However, he admitted that no contemporaneous notes or entries were made in respect of these movements. The absence of any record of such repeated travel further aggravates the procedural lapses already noted and raises serious doubts as to the accuracy and reliability of the prosecution version of events.
16. It is also noteworthy that when PW1 was questioned regarding his failure to make notes of certain important procedural steps, he merely replied that they were “not that important.” According to his evidence, the officers were on the road from 19:35 to 15:45 the following day, during which time they would have necessarily taken meals, yet no notes were made in respect of these events. Paradoxically, PW1 had made a note regarding the appellant’s involuntary urination at the time of arrest. If such an incidental observation was recorded, there is no apparent reason why equally, if not more, important procedural steps such as the searching of officers prior to departure, inspection of the vehicle, and recording the odometer reading were omitted. The failure to make notes of these vital steps casts serious doubt on the credibility and reliability of PW1’s evidence.
17. It is evident from the prosecution evidence that heroin was first recovered from a suspect named Dilshan prior to the arrest of the appellant, and that it was this

individual who allegedly furnished information leading to the appellant. However, PW1 failed to maintain any contemporaneous notes as to where or in whose custody the heroin recovered from Dilshan was kept until the officers returned to the police station.

18. Further, no record whatsoever was made regarding the custody of Dilshan while the officers proceeded to arrest the appellant. Equally, no contemporaneous notes were made in respect of the custody of the heroin allegedly recovered from the appellant himself.
19. It is also significant to note that a detention order was obtained by the police in respect of the appellant. In the report submitted in support of the said detention order, it was asserted that the appellant had several previous convictions. However, during his testimony, the witness admitted that no previous convictions had in fact been recorded against the appellant.
20. It is also noteworthy that PW1 testified that, upon recovery, the substance allegedly seized from the appellant was placed into three blue-coloured bags. However, during the trial, when the productions were marked, only two blue-coloured bags were produced before court. This unexplained discrepancy constitutes a further material inconsistency in the prosecution evidence and casts additional doubt on the reliability and integrity of the alleged recovery.
21. In prosecutions under the Poisons, Opium and Dangerous Drugs Ordinance, the prosecution bears a strict duty to establish an unbroken and clearly identifiable chain of custody of the alleged narcotic substance from the moment of recovery until its production in court and inward transmission for analysis. An unexplained variation in the number of bags in which the substance was allegedly kept cannot be dismissed as a trivial or technical irregularity.
22. This inconsistency strikes at the very integrity of the alleged recovery and raises a reasonable possibility of tampering, substitution, or contamination of the substance. In such circumstances, it would be highly unsafe to place reliance on the prosecution version, and the benefit of such doubt must necessarily be given to the appellant.

23. It is evident that the gross quantity allegedly recovered from the appellant was 217.35 grams, which is a relatively large quantity. Notwithstanding this, the police made no attempt whatsoever to search the appellant's residence, which was situated in close proximity to the place of arrest.
24. PW1 himself admitted in evidence that there were allegations to the effect that the appellant had been supplying narcotic drugs to prison inmates and had been engaged in such activities for a considerable period of time. Further, it is alleged that at the time of arrest, the appellant was in possession of an electronic scale and a mobile telephone.
25. In these circumstances, the failure of the investigating officers to conduct a search of the appellant's residence, particularly in the face of such allegations and the recovery of equipment commonly associated with drug trafficking, constitutes a serious investigative omission. This unexplained lapse raises legitimate questions as to the completeness and fairness of the investigation and further undermines the credibility of the prosecution case.
26. It was further indicated that a telephone number of another remand prisoner at Angunakolapelessa was traced from the appellant's mobile phone. If this information was accurate, there was every reason for the police to conduct a further investigation, including a search of the appellant's residence, to ascertain whether he had concealed heroin there. Yet, no such search was undertaken. More importantly, no investigation was conducted concerning the said inmate at Angunakolapelessa, nor was any attempt made to determine whether the appellant had been involved in supplying heroin to prisoners.
27. The infirmities in the evidence relating to the note of identification (අනන්‍යතා පත්‍රය) accompanying the productions also cannot be overlooked. PW1 admitted in his testimony that he had made no contemporaneous notes regarding the affixing of his signature and official seal on the note of identification that formed part of the productions. This omission further weakens the evidentiary value of the productions and raises legitimate concerns regarding the authenticity and integrity of the material relied upon by the prosecution.

28. These infirmities in prosecution evidence, when viewed cumulatively, go beyond mere minor discrepancies and strike at the very foundation of the prosecution case. The Supreme Court has consistently held that where there are serious contradictions regarding recovery, custody, description, and weight of narcotic substances, it is unsafe to sustain a conviction
29. Taken together, these cumulative investigative lapses seriously undermine the credibility of the prosecution's case and raise substantial doubt regarding the reliability of the alleged chain of events leading to the appellant's arrest and the alleged recovery of narcotics.
30. These contradictions are not minor or peripheral; they relate directly to the very act of search and recovery, which constitutes the cornerstone of the prosecution case. When prosecution witnesses give divergent and irreconcilable versions regarding such a vital aspect, the credibility of the alleged recovery becomes seriously questionable. Our courts have consistently held that where there are material inconsistencies among police witnesses relating to the search, seizure, and recovery of narcotic substances, it is unsafe to sustain a conviction.
31. The importance of maintaining accurate and contemporaneous notes by officers conducting raids of this nature, as well as the preservation of an unbroken chain of custody of productions from the moment of recovery until delivery to the Government Analyst for analysis, has been repeatedly emphasized by Sri Lankan courts. These procedural safeguards are not mere formalities; they are essential to ensure the integrity, reliability, and admissibility of the evidence. Regrettably, in practice, these obligations are too often disregarded or treated perfunctorily, thereby undermining the credibility of the prosecution case and compromising the proper administration of justice.

Rejection of the dock statement and defense evidence by the learned Trial Judge

32. It was submitted that the learned Trial Judge rejected the defence evidence on unreasonable grounds. It is important to note that the appellant made a dock statement, and his former wife also testified in support of the defence. In his dock statement, the appellant stated that he was arrested while at Sannasgama Junction to

purchase a packet of noodles. Thereafter, the police took him to his residence and conducted a search, but found nothing illegal. He further stated that he was assaulted by the police, and subsequently both he and his wife were taken to the police station, after which his wife was released. The appellant remained in police detention for four days before being sent to remand, and was examined by two medical doctors during that period.

33. Defence witness B. Deepasriya, the former wife of the appellant, is a significant witness. It is noteworthy that at the time she gave evidence, she had divorced the appellant and remarried, yet she voluntarily came forward to testify in support of the defence. According to her testimony, on the day of the incident, the appellant went to Sannasgama Junction on his motorbike to purchase a packet of noodles. Subsequently, the police arrived with the appellant and assaulted him while he was handcuffed.
34. It is to be noted that the evidence of the defence witness, although subjected to cross-examination, remains intact and credible. The learned Trial Judge rejected her evidence solely on the ground that she had failed to lodge a complaint with the relevant authority regarding the alleged assault by the police. However, the mere fact that the appellant did not make a formal complaint or produce a medical certificate in support of the allegation does not, in my view, vitiate the credibility of the witness's testimony.
35. Significantly, the defence witness had divorced the appellant at the time of giving evidence and thus had no personal interest in supporting him, yet she voluntarily came forward to testify. Her evidence is consistent with the position taken by the appellant in his dock statement and is coherent throughout the trial. Where such evidence creates a reasonable doubt in the prosecution story, it cannot be lightly dismissed, and the appellant is entitled to the benefit of that doubt, which may warrant acquittal.
36. In the present case, the material infirmities discernible in the prosecution evidence, when considered in conjunction with the defence evidence, inevitably give rise to a reasonable doubt regarding the prosecution's case. The learned Trial Judge's evaluation and assessment of the appellant's dock statement, as well as the testimony

of the defence witness, therefore, does not accord with established legal principles and fails to properly apply the standard of proof required in criminal proceedings.

37. It is also significant to note that when the grounds of appeal were raised on behalf of the appellant, the learned DSG in keeping with the highest traditions of the Attorney General's Department conceded most of the grounds and made no further submissions.

38. 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