

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

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

Complainant

Vs.

Mohammed Ikram Imran Sharif
No. 66/11/1, Ebrahim Marrikar Mw,
Kalagedihena,
Thihariya.

Accused

AND NOW BETWEEN

Mohammed Ikram Imran Sharif
No. 66/11/1, Ebrahim Marrikar Mw,
Kalagedihena, Thihariya.
(Currently at Welikada Prison)

Accused-Appellant

Vs.

Court of Appeal Case No:
CA/HCC/0257/23

High Court of Colombo Case No:
HC-843-19

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

Complainant-Respondent

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

Counsel : Udara Zoysa for the Accused-Appellant.
Disna Warnakula, D.S.G. for the Respondent.

Argued on : 23.02.2026

Decided on : 12.05.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court Judge of Colombo in Case No. HC-843-2019 on the following counts:
 - a. That on or about 26.03.2018 in Crow Island, the Appellant by trafficking 78.570 g of Heroin committed an offence punishable under Section 54A (d) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended).

- b. At the same time, during the same transaction for possession of 78.570 g of Heroin without the authority or a license as permitted by the director in terms of Chapter 5 of the Poisons, Opium and Dangerous Drugs Ordinance, an offence punishable under Section 54A(b) of the said Ordinance.
2. At the trial, five witnesses testified for the prosecution. The Appellant subsequently made a dock statement. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty of both charges. The Appellant was accordingly convicted and sentenced to life imprisonment.
3. Being aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal on the following grounds:
 - a. Improbability of the prosecution's version.
 - b. Failure of prosecution in proving the inward journey.
4. PW1, Dhanushka Karunaratne, was the officer who led the police team that effected the arrest of the Appellant. According to his evidence, the raiding party comprised ten police officers. While proceeding in jeep No. 64-1065, equipped with the necessary instruments for measurement and sealing, to investigate and apprehend suspects in the Pettah and Modara areas, PW1 stated that, on 26.03.2018 at about 11.40 a.m., Police Sergeant 27328 Prasanna received information that a person named Imran, wearing a blue denim trousers and a white and grey coloured t-shirt was standing on the 5th Lane on the road leading to the Crow Island, allegedly waiting for a customer while in possession of heroin, which led to the arrest of the Appellant.
5. Acting on the said information, PW1 instructed the driver to park the vehicle at a car park near the Modara Kovil. Thereafter, PW1, together with Police Sergeant 27328 Prasanna, Police Constable 76229 Balasooriya, and Police Constable 77945 Sampath, proceeded to the relevant location by a three-wheeler.

6. Upon alighting from the three-wheel near 5th Lane, the officers proceeded on foot along the said road for a distance of approximately 250 meters, where they observed a person matching the description provided. The said individual was thereafter subjected to a search by the police officers. In the course of the search, a pink-coloured cellophane bag was recovered from the right pocket of the Appellant's trousers, which contained a brown-coloured substance subsequently identified as heroin.
7. Thereafter, the Appellant was arrested at about 12.30 hours, together with his two mobile phones and a purse which were found in his possession. Subsequently, the police party proceeded to the Modara Police Station, notwithstanding that the arrest had been effected within the jurisdiction of the Mattakkuliya Police area. This course of action was explained by PW1 on the basis that a registered electronic weighing scale was available at the said Police Station.
8. At the Modara Police Station, the recovered substance was weighed and sealed. Thereafter, the Appellant, together with the said Heroin, was handed over to PC 62025 Dayananda of the Police Reserve attached to the Mattakkuliya Police Station.
9. The next witness to testify for the prosecution was Prasanna Priyadharshana Perera, a Sub Inspector of Police, who stated that he had received information regarding the Appellant. Without further elaborating on his testimony, I shall now proceed to consider the first ground of appeal as the alleged improbability of the prosecution's version.
10. According to PW1, at the time they departed from the Wellawatte Police Station, they had in possession the necessary equipment to measure and seal any substance recovered. However, it is apparent that, notwithstanding the fact that the arrest was effected within the jurisdiction of the Mattakkuliya Police Station, PW1 proceeded to the Modara Police Station for the purpose of weighing the substance recovered from the Appellant. This course of action was sought to be justified by PW1 on the

basis of the availability of a registered electronic weighing scale at the Modara Police Station.

“ප්‍ර: ඔබ පිටත් වෙලා යනකොට යම් යම් අවි ආයුධ, උපකරණ ආදිය රැගෙන යමක් සිදු කලාද?”

උ: එහෙමයි ස්වාමිනි.

ප්‍ර: මොනවද අරගෙන ගිය අවි ආයුධ?

ප්‍ර: මා අංක ඒ/12832 දරන පිස්තෝල අවිය සහ එම උණ්ඩ 10 ක්, කිරුම් මිනුම් උපකරණ, මුද්‍රා තැබීමේ උපකරණ මුදල් රුපියල් 1500/- සහ සියලු නිලධාරීන් නිල හා ජාතික හැඳුනුම්පත්, අපරාධ සටහන් පොත් රැගෙන ගිය ස්වාමිනි.” (vide page 62 of the Appeal Brief)

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“ප්‍ර: මට්ටක්කුලිය පොලිස් ස්ථානයට යන්නේ නැතුව මෝදර පොලිස් ස්ථානයට ආවේ ඇයි නඩු භාණ්ඩ කිරා බලන්න?”

උ: ස්වාමිනි මෝදර පොලිස් ස්ථානයට අනියුක්තව වලංගු විද්‍යුත් තරාදියක් ලබා දී තිබුණා ස්වාමිනි. වෙනත් පොලිස් ස්ථානවලට අනුයුක්තව විද්‍යුත් තරාදියක් තිබුණේ නැ ස්වාමිනි. එම නිසා නඩු භාණ්ඩ කිරා බැලීම සඳහා මෝදර පොලිස් ස්ථානයට ගමන් කලා ස්වාමිනි.” (vide pages 75-76 of the Appeal Brief)

11. It is significant to note that the said police team was already in possession of a weighing scale; however, instead of utilizing the same, they proceeded to Modara Police Station, which is situated 3 1/2 km away from the place of arrest. This circumstance casts serious doubt on the veracity of the prosecution’s case.

12. It is also evident that the testimony of PW9 that the necessary weighing equipment for the drug substance was also available at the Mattakkuliya Police Station. Accordingly, the failure to take the said substance directly to the Mattakkuliya Police Station for immediate weighing casts serious doubt on the integrity and reliability of the prosecution’s case. This fact clearly undermines the credibility of the prosecution’s version and raises serious questions as to the true sequence and circumstances of the alleged events.

“ප්‍ර: ඔබ ඒ පොලිස් ස්ථානයේ මත්ද්‍රව්‍ය සම්බන්දයෙන් කිරා මැන බලන තරුදී නිබන්ධනවා නේද?”

උ: කියනවා ස්වාමීනි.” (vide page 220 of the Appeal Brief)

13. Moreover, according to the evidence of PW1, the relevant information regarding the Appellant was received at about 11.40 hours, and the arrest was effected at about 12.30 hours. It is inherently improbable that a person in possession of a substantial quantity of Heroin would remain on a roadway for such a prolonged period. This improbability materially diminishes the probative value of the prosecution’s version.

14. It is further significant to note that PW2 has contradicted his own evidence. At page 174 of the Appeal Brief, he stated that there was no one inside the house at the time they observed the Appellant, which is inconsistent with his earlier testimony and thereby adversely affects his credibility.

“ප්‍ර: ඒ වෙලාවේ ගේ ඇතුළේ හිටියේ නෑ ස්වාමීනි මගේ මතකයේ හැටියට.

උ: ඇතුළේ හිටියේ නෑ කියන්නේ?” (vide page 175 of the Appeal Brief)

15. Moreover, PW1, being the chief investigating officer, failed to make any entry notes in the records of the Modara Police Station to the effect that his raid team had come to the Station for the purpose of measuring the substance recovered from the Appellant, which further undermines the credibility of the occurrence of the said event.

“ප්‍ර: ඔබතුමා ඒ මෝදර පොලිසියේ සටහනක් දැම්මද මම මෙහෙම ආවා පොලිසියට, මේ නිලධාරීන් සමඟ මෙවැනි භාණ්ඩයක් කිරාගෙන යනවා කියලා පැමිණීමේ සටහනක් දැම්මාද මෝදර පොලිසියට?”

උ: නෑහැ ස්වාමීනි.” (vide page 100 of the Appeal Brief)

16. It is pertinent to emphasize that the officers conducting a raid of this nature are required to make notes on every important event and are also entitled to peruse their

notes in order to refresh their memory when they testify. Accordingly, where material contradictions are present in their testimony, the Court cannot lightly disregard such inconsistencies and proceed to convict the Accused.

17. Then, the Appellant further contended that the prosecution failed to establish the inward journey. In this regard, the prosecution has failed to prove that the amount that was recovered from the Appellant was correctly and duly transmitted to the Government Analyst's Department.

18. According to PW1's evidence, the weight of the heroin recovered from the Appellant, upon being measured at the Modara Police Station, was recorded as 200 g and 730 mg. Further, PW13, the Government Analyst, testified that the gross weight of the substance received for analysis was 200.087 g. However, PW10, PS 52487 Ajith, testified that upon taking custody of the said production from PC 62025 Dayananda, prior to handing it over to PW1 for transmission to the Government Analyst's Department, he had recorded in his notes that the parcel containing yellow-coloured heroin weighed 100 g and 700 mg.

“ඉ: ඔබ ඔබේ සටහන බලලා කියන්න 558/18 අදාලව මුද්‍රා 9ක් තබන ලද ඔබේ අත් අකුරෙන් ලියල තියෙන ඊලග වාක්‍ය කියන්න සාක්ෂිකරු තොරතුරු සටහන් පොතේ

උ: කහ පැහැති හෙරොයින් ග්‍රෑම් 100 යි මිලිග්‍රෑම් 700 ක් අඩංගු පාර්සලය.” (vide page 240 of the Appeal Brief)

19. The aforesaid discrepancy in the recorded weight of the substance at different stages of the chain of custody gives rise to a serious inconsistency in the prosecution's case.

20. The unexplained and substantial variance in the recorded weights not only undermines the credibility of the prosecution witnesses but also casts a reasonable doubt as to the identity and continuity of the production. In the absence of a satisfactory explanation for this discrepancy, the possibility of tampering,

substitution, or error cannot be ruled out, thereby rendering the chain of custody incomplete and unsafe to sustain a conviction.

21. In cases of this nature, it is incumbent upon the prosecution to establish, through clear and cogent evidence, an unbroken chain of custody from the point of seizure to the Government Analyst's Department.
22. The importance of proving the inward journey of the chain of production was considered 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.”

23. J.A.N de Silva J., (as he then was) in *Perera vs. AG [1998] 1 SLR 378* 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.”

24. Upon a careful consideration of the totality of the evidence, this court finds that the prosecution's case is fraught with material contradictions, inherent improbabilities, all of which cumulatively render the conviction unsafe.

25. When these deficiencies are considered cumulatively, it is evident that the prosecution had failed to establish its case beyond a reasonable doubt. The doubts arising are neither trivial nor peripheral, but go to the root of the prosecution's case and undermine its credibility in material aspects.
26. For the reasons set out above, I am of the view that the prosecution had failed to establish the charges against the Appellant beyond a reasonable doubt. The conviction and sentence imposed on the Appellant, therefore, cannot stand. The conviction and sentence are hereby set aside, and the Appellant is acquitted of both charges.
27. Accordingly, appeal allowed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal