

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

**REPUBLIC OF SRI LANKA**

In the matter of an Appeal filed in terms of  
Section 331(1) of the Code of Criminal  
Procedure Act No. 15 of 1979, read with  
Article 138 of the Constitution

Democratic Socialist Republic of Sri Lanka

**Complainant**

Court of Appeal Case No:  
**CA/HCC/0390/2018**

High Court of Colombo Case No:  
**HC 7296/2014**

**Vs**

Wennappuli Arachchilage Nilendra  
Geethapriya *alias* Geetha

**Accused**

**AND NOW BETWEEN**

Wennappuli Arachchilage Nilendra  
Geethapriya *alias* Geetha

**Accused – Appellant**

**Vs**

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

**Complainant - Respondent**

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

Counsel : Shehan de Silva with Kalpa Perera, Nuwan Premadasa and Helindu Abeywardena for the Accused-Appellant.  
: Suharshi Herath, D.S.G for the Respondent.

Argued on : 26.02.2026

Decided on : 04.06.2026

**Pradeep Hettiarachchi, J**

### **Judgment**

1. This appeal arises from the judgment dated 09.10.2018, delivered by the Learned High Court Judge of Colombo. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Colombo in case No. HC/7296/14 on the following counts:
  - a. That on or about 08.06.2012 in Walikada Prison, the Appellant, by trafficking 4.43 g of Heroin, committed an offence punishable under Section 54A (b) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended).
  - b. At the same time, during the same transaction, for possession of 4.43 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 (d) of the said Ordinance.
2. At the trial, four witnesses testified for the prosecution. Since both parties admitted the Government Analyst’s Report under Section 420 of the Code of Criminal Procedure

Act, it was marked as P18 in evidence through the High Court Interpreter. The Appellant subsequently gave evidence.

3. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty of both counts. The Appellant was accordingly convicted and sentenced to life imprisonment. Aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal on the following grounds;
  - a. The Learned Trial Judge erred in finding that the Appellant had exclusive possession of the substance and that he had the requisite knowledge or intention to possess such drugs.
  - b. The Learned Trial Judge erred in law applying Section 106 of the Evidence Ordinance and thereby shifting the burden onto the Appellant to prove the facts allegedly within his knowledge.
4. PW3, Wasantha Deshapriya, was the first witness to testify on behalf of the prosecution. He was serving as a Police Constable attached to the Police Narcotics Bureau at the relevant time. According to his evidence, upon receiving instructions from the OIC Dayananda, he, together with another officer, namely Pushpakumara 73684, proceeded to the Welikada Prison to conduct an investigation relating to the possession of Heroin by the Appellant, who had visited the prison and had subsequently been arrested by the prison authority.
5. PW3 further stated that they proceeded to the Welikada Prison in a police jeep bearing number 617457, which was driven by PS Manjula 32618. He also stated that they carried with them the necessary field books and equipment required for the purpose of labelling, marking, and sealing the production.
6. According to the evidence of PW3, before departing for the Welikada Prison, they made left notes at approximately 16.40 hours. Thereafter, they arrived at the Welikada Prison at about 17.00 hours. Upon arrival, PW3 and the accompanying officer entered the prison premises and informed the prison officials of the purpose of their visit. They were then directed to the Chief Jailor, Walisundara, who informed them that the

Appellant, who had come to visit a prisoner, had been arrested by the prison authorities for possessing Heroin concealed inside a pair of shoes.

7. Thereafter, the suspect concerned, together with the two prison officers who had effected the arrest, namely, Prison Guard Waligampala (PW1) and Prison Guard Chinthaka (PW2), were produced before PW3 at the visitors' area of the Welikada Prison. The said officers also handed over to PW3 the pair of shoes from which the suspected contraband had allegedly been recovered.
8. According to the evidence of PW3, the substance in question had been concealed inside the left shoe. He further described the shoes as a pair of black and brown 'Ranpa' branded shoes, size 8, which were brought in a yellow coloured polythene bag.
9. Upon examining the shoes, PW3 observed what appeared to be artificial stitching on the sole of the left shoe. Upon closer inspection of that portion, he identified 15 small white coloured packets concealed therein.
10. Thereafter, PW3, together with the Appellant and two prison officers, returned to the Police Narcotics Bureau in the same vehicle and arrived at approximately 18.10 hours. Upon arrival at the Police Narcotic Bureau, PW3 weighed the recovered substance using an electronic scale. According to his evidence, the substance was then placed in a pink coloured polythene bag and sealed in the presence of the Appellant and the two prison officers. The substance was found to have a gross weight of 8 g and 420 mg. PW3 further stated that he also sealed the pair of shoes and the white coloured bag in which the substance had been concealed.
11. PW3 further testified that he kept the productions in his personal locker under his custody until they were handed over to the production officer, PW5 Rajakaruna. According to his evidence, on 09.06.2012, he handed over three sealed productions to PW5.
12. The next witness to testify for the prosecution was Prison Guard Chinthaka (PW2), who was one of the prison officers involved in the recovery of the said substance from the possession of the Appellant. According to his evidence, on 08.06.2012, he was assigned

to duty at the visitors' area of the Welikada Prison together with PW1 from 2.00 p.m. onwards.

13. According to PW2, at about 3.45 p.m., he and the other officer searched a pair of shoes upon arousing suspicion, which the Appellant brought to hand over to a prisoner named Chandramohan. Upon cutting open the sole of the left shoe, they discovered 15 packets concealed within holes in the sole.
14. PW2 further testified that, after recovering the packets, they obtained the Identity Card of the Appellant and reported the incident to the Chief Jailor. Thereafter, officers attached to the Police Narcotic Bureau arrived at the prison, and both the accused and the productions were handed over to those officers.
15. According to the witness, he and PW1 subsequently accompanied the officers of the Police Narcotic Bureau to the Bureau premises, where the production was weighed and sealed in their presence.
16. The next witness called by the prosecution was Prison Guard Waligampala (PW1), who was the other prison officer involved in the recovery of the said substance from the accused, together with PW2. As his evidence substantially corroborated the testimony already discussed, I do not propose to set out his evidence in detail.
17. PW5, Rajakaruna, testified that he was serving as the production officer responsible for receiving and maintaining custody of productions. According to his evidence, on 09.06.2012, he received the productions relating to the present case from PW3 in three sealed covers. He further stated that, on 13.06.2012, he handed over the said productions to the OIC of productions at the Magistrate's Court and thereafter caused them to be forwarded to the Government Analyst's Department through the Magistrate's Court for analysis.
18. At the conclusion of the case for the prosecution, the accused opted to give evidence on his own behalf. According to his evidence, he denied having any knowledge of the Heroin concealed inside the shoes. He stated that, on 08.06.2012, he visited the prison

with a person named Harsha, who was known to him in order to see a prisoner and to hand over certain items which were always in the possession of the said Harsha.

19. The accused further testified that Harsha had requested him to visit the prison on Harsha's behalf, as Harsha did not have his Identity Card with him at the time. According to the accused, he agreed to take the items to the prison after Harsha promised to pay him a sum of Rs. 1000/-. The accused also stated that Harsha had accompanied him to the visitors' area of the prison. According to his evidence, while the prison officers were inspecting the shoes, he observed Harsha leaving the area and fleeing from the scene. The accused testified that, at that moment, he shouted at the prison officers to apprehend Harsha; however, according to him, the officers did not pay any attention to his cries.
20. I shall now proceed to consider the first ground of appeal advanced by the Appellant, namely that the Learned High Court Judge erred in finding that the Appellant was in exclusive possession of the said substance and possessed the requisite knowledge and intention necessary to establish the offence relating to the possession of such drugs.
21. In support of the first ground of appeal, the Appellant contended that it was the said Harsha who had brought the bag of items, including the pair of shoes, to the Welikada Prison and thereafter put it on the table in the visitors' area for inspection. According to the Appellant, until the handover took place, the bags had remained in the possession of Harsha. It was therefore maintained by the Appellant had no knowledge whatsoever of the contents of the parcel or the existence of the dangerous drugs concealed therein. On that basis, the Appellant argued that he did not have conscious possession of the drugs in question.
22. Accordingly, the Appellant submitted that the Learned High Court Judge had failed to sufficiently evaluate the evidence relating to the requisite mental element necessary to establish the offence charged in counts 1 and 2, particularly the element of knowledge required to prove conscious possession.
23. The respondent, on the other hand, contended that there was ample evidence to establish that the Appellant had knowledge of the nature of the substance in question. It was

further argued that the Appellant was well acquainted with the procedures and environment within the prison, including the manner in which visitors are permitted to deliver items to prisoners, as he had previously been imprisoned for other offences. Accordingly, the respondent maintained that the prosecution had established conscious possession on the part of the Appellant beyond a reasonable doubt.

“ප්‍ර: එතොකොට මම අහන්නේ වැලිකඩ බන්ධනාගාරයේ එහෙම පුළුවන් කියල කොහොමද දන්නේ?

උ: මම ඊට ඉස්සෙල්ල දඩුවමක් විදලා තියෙනවා ස්වාමිනි බන්ධනාගාරයේ.

.....

ප්‍ර: මම අහන්නේ තමුත් කියන විදියට බන්ධනාගාරයට අමුත්තෙක් ආවම එය කොහොමද කොතනටද එන්නේ එතොකොට ඇතුලේ ඉන්න පුද්ගලයා කොතනටද එන්නේ කොහොමද හමු වෙන්නේ කොහොමද ගේන පුද්ගලික බඩු කෑම එහෙම භාර දෙන්නේ, භාර ගන්නේ, කොහොමද අර බන්ධනාගාරයේ ඉන්න නිලධාරීන් පරීක්ෂා කරන්නේ කියලා දන්නවා

උ: ඔව්.” (vide pages 164-165 of the Appeal Brief)

24. PW1 testified that when the items brought by the Appellant were being searched, it was the Appellant who handed over the yellow coloured bag to the prison officers for inspection, and that the pair of shoes was found inside that bag. However, the defence took up the position that the Appellant did not personally hand over the bag for inspection and that it was the person named Harsha who had placed the pair of shoes on the table in the visitors’ area.

“ප්‍ර: දැන් මහත්මයා ඒ අනුව මහත්මයා කිව්වා මේ පුද්ගලයාගේ සෙරෙප්පු දෙකක් සොයා ගන්න කියලා?

උ: සෙරෙප්පු දෙකක් සොයා ගන්නේ නැහැ, ඔහු අපිට ගෙන්නලා දුන්න දේ පරීක්ෂා කල ස්වාමිනි.

ප්‍ර: ඒ සෙරෙප්පු දෙක තිබුණේ කොහොමද?

උ: කහ පාට ෂොපින් බැගයක දා ගේන අවේ.” (vide page 133 of the Appeal Brief)

25. Further, PW2 testified that, when the prison officers were inspecting the bags brought by the Appellant, the Appellant appeared reluctant to hand over the pair of shoes for inspection. According to the respondent, such conduct on the part of the Appellant was indicative of his knowledge regarding the Heroin concealed inside the shoes.

“ප්‍ර: විත්තිකරුගේ විලාසය ගැනවත් මහත්මයා අවධානයක් යොමු කළේ නැහැ?”

උ: නැහැ ස්වාමිනි. මේක අපි කිව්වා කපලා බලන්න ඕන නැත්නම් ඇතුළට යන්න දෙන්න බැහැ කියලා. එතොකොට පොඩ්ඩක් අදිමදි කලා. ඊට පස්සේ තමයි අපි හිතුවේ මොනා හරි තියෙන්න පුළුවන් කියලා.

ප්‍ර: කවුද අදිමදි කළේ?

උ: විත්තිකරු ස්වාමිනි.” (vide page 107 of the Appeal Brief)

26. Furthermore, the Appellant had visited the prison for the purpose of meeting a prisoner named Chandramohan. The evidence of PW1 clearly established that a visitor cannot meet a prisoner without the express consent of the said prisoner. In such circumstance, the conduct of the Appellant is indicative of a deliberate attempt to traffic the substance to the said prisoner, as his visit to the prison and the possession of the relevant items cannot be regarded as inadvertent.

“ප්‍ර: දැන් මේ සැකකරු රැදවියාගේ කැමැත්තකින් තොරව එන අමුත්තන්ට මුණ ගස්සන්න පුළුවන්ද?”

උ: බැහැ ස්වාමිනි.

ප්‍ර: මේ අවස්ථාවේදී ඔය වන්දුමෝහන් අමුත්තා වන මේ විත්තිකරුව මුණ ගැසීමට කලින් කැමති උනාද නැද්ද කියලා මහත්මයාට කියන්න පුළුවන්ද?

උ: කලින් කැමති නිසා තමයි ඔහු එන්නේ. මොකද අපි පිටතින් තුණ්ඩුව ලියලා දුන්නම ඔහු ඒ තුණ්ඩුව ඇතුලෙන් අරන් එන්න ඕන. ඒ කියන්නේ ඔහු කැමති කියන එකනේ ස්වමිති.” (vide pages 140-141 of the Appeal Brief)

27. Moreover, the evidence adduced by the Appellant contained several infirmities and inherent improbabilities which substantially undermined the credibility of the defence version. In this regard, the following contradictions were marked during the cross-examination.
28. The Appellant testified that he had known the said Harsha only for a period of approximately 2-3 weeks prior to the incident. However, this assertion was inconsistent with the statement previously made by him to the police, wherein he had stated that he had known Harsha for nearly 4 months before the incident in question. “නුගේගොඩ හර්ෂ මම හදුනාගෙන දැනට මාස හතරක් විතර ඇති.” (1D1, marked in evidence at page 168 of the Appeal Brief)
29. According to the evidence of the Appellant, Harsha had accompanied him all the way to the prison and remained with him up to the visitors’ area. The Appellant further maintained that Harsha never handed over the parcel containing the pair of shoes in question to him. However, this version was inconsistent with the statement previously made by the Appellant to the police, wherein he had stated that Harsha had handed over a new pair of shoes to him before he arrived at the Welikada Prison. “වැලිකඩ බන්ධනාගාරයට එන්න ඉස්සෙල්ලා හර්ෂ මට අලුත් සෙරෙප්පු කුට්ටමක් දුන්නා.” (2D1, marked in evidence at page 174 of the Appeal Brief)
30. Furthermore, in his statement to the police, the Appellant had stated that Harsha left him near the Welikada Prison. However, during his testimony before the Court, the Appellant asserted that Harsha accompanied him inside the prison premises and remained there until the items they carried were being inspected by the prison officers. “හර්ෂ මව බන්ධනාගාරයට අසලට එක්ක ඇවිත් ඔහු යන්න ගියා.” (3D1, marked in evidence at page 174 of the Appeal Brief)

- 31. Further, according to the evidence of the Appellant, Harsha had accompanied him up to the visitors’ area of the prison. At the same time, the Appellant testified that Harsha had requested him to hand over certain items to a prisoner because Harsha himself did not possess an Identity Card. However, the Appellant also stated in evidence that, despite not having the Identity Card, Harsha accompanied him all the way to the visitors’ area of the prison using the Appellant’s Identity Card.
  
- 32. This version of events appears to be highly improbable, particularly in view of the strict security procedures ordinarily maintained within prison premises. It is difficult to accept that the prison authorities would permit a person to enter the prison visitors’ area without possessing his own Identity Card or permit him to gain access using the Identity Card of another individual.
  
- 33. Moreover, if it were true that Harsha requested the Appellant to deliver the items solely because he himself did not possess an Identity Card, it is difficult to understand the necessity for Harsha personally accompanying the Appellant to the prison. In the circumstances, these inconsistencies and improbabilities substantially weaken the credibility of the version advanced by the Appellant.

“ප්‍ර: දැන් තමුන් කිව්වා මේ හර්ෂට හඳුනුම්පතක් නැහැ කියලා තමුන් එක්ක අවේ කියලා?

උ: ඔව්.

.....

ප්‍ර: එතොකොට හර්ෂ කොහොමද ඇතුලට ගියේ?

උ: එතොකොට ස්වාමිනි එක හඳුනුම්පතට දෙන්නෙක් තුන්දෙනෙක්ට අමුත්තන් බලන්න යන්න දෙනවා ස්වාමිනි.

ප්‍ර: එක හඳුනුම්පතට දෙන්නෙක් තුන්දෙනෙක්ට යන්න දෙනවා?

උ: පුළුවන් ස්වාමිනි කොලේ නම් දෙකම ලිව්වා ස්වාමිනි. ලියලා ඉවර උනාට පස්සේ නමයි ස්වාමිනි එයත් මාත් එක්ක ඇතුලට අවේ.

ප්‍ර: ඒ කියන්නේ හඳුනුම්පත නැති අයටත් යන්න දෙනවද ඇතුලට?

උ: ඒ දවස් වල යන්න දන්නා ස්වාමිනි.” (vide age 171 of the Appeal Brief)

34. Accordingly, the aforesaid circumstances are strongly indicative of the Appellant's knowledge of the contents of the parcel and materially support the prosecution's position that the Appellant was in conscious possession of the heroin in question.
35. On this basis, the Learned Trial Judge arrived at a conclusion that there was no justification for accepting the defence version that the accused had carried the items to the prison merely upon the instructions of Harsha in return for a sum of Rs. 1000/-. Further, it was observed that the accused was well acquainted with the procedures relating to the handing over of items to prisoners. In this regard, it was noted that the accused had prior experience in receiving items from visitors during the period in which he had previously been detained in Welikada and Magazine prisons.
36. Thus, the Learned Trial Judge had decided that there was no basis to believe that the Appellant had carried the meals and the pair of shoes without knowing of their contents. Having regard to the evidence led by the prosecution, it was concluded that the Appellant had acted with the clear intention of trafficking Heroin into the prison and had deliberately concealed the substance within the sole of the shoes. Such conduct further demonstrated his familiarity with the manner in which the prison system functioned.
37. In this regard, the following legal authorities are considerable relevance.
38. In ***Warner vs. Metropolitan Police Commissioner (1968) 52 Criminal Appeal Report 373***, held as follows;

*"The question, to which an answer is required, and in the end a jury must answer it, is whether in the circumstances the accused should be held to have possession of the substance, rather than mere control. In order to decide between these two, the jury should, in my opinion, be invited to consider all the circumstances - to use again the words of Pollock & Wright, Possession in the Common Law, p. 119 - the 'modes or events' by which the custody commences and the legal incident in which it is held. By these I mean, relating them to typical situations, that they must consider the manner and circumstances in which the substance, or something which contains it, had been received, what*

*knowledge or means of knowledge or guilty knowledge as to the presence of the substance, or as to the nature of what has been received, the accused had at the time of receipt or thereafter up to the moment when he is found with it; his legal relation to the substance or package (including his right of access to it). On such matters as these (not exhaustively stated) they must make the decision whether, in addition to physical control, he has, or ought to have imputed to him the intention to possess, or knowledge that he does possess, what is in fact a prohibited substance. If he has this intention or knowledge, it is not additionally necessary that he should know the nature of the substances."*

39. In this regard, the following passage by R.S. Wright [Pollock and Wright] in their admirable book "*An Essay on Possession in Common Law*" [1888 Part III Chapter I page 119] would also be of much relevance.

*"The 'modes or events' by which the custody commences and the legal incident in which it is held. By these I mean, relating them to typical situations, that they [the jury] must consider the manner and circumstances in which the substance or something which contains it, has been received, what knowledge or means of knowledge or guilty knowledge as to the presence of the substance, or as to the nature of what has been received, the accused had at the time of receipt or thereafter up to the moment when he is found with it; his legal relation to the substance or package (including his right of access to it) On such matters as these (not exhaustively stated) they [the jury] must make the decision whether, in addition to physical control, he has, or ought to have imputed to him the intention to possess or knowledge that he does possess what is in fact a prohibited substance. If he has this intention or knowledge, it is not additionally necessary that he should know the nature of the substance."*

40. Further, it is evident from the evidence of PW1 and PW2 that the Appellant was the person who presented the bags for inspection. Further, PW2 had stated that the Appellant was reluctant to hand over the shoes for inspection when the prison officers were examining the bags. Such conduct clearly establishes that the Appellant possesses knowledge of the Heroin concealed inside the shoes.

41. In this backdrop, it is difficult, if not impossible, to accept the inference that the Appellant was unaware of the contents of the parcel handed over to him by Harsha.
42. Accordingly, the prosecution has established the conscious possession of heroin beyond a reasonable doubt. In these circumstances, the first ground of appeal advanced by the Appellant is devoid of merit and is accordingly dismissed.
43. Another ground of appeal advanced by the Appellant is that the Learned Trial Judge erred in law applying Section 106 of the Evidence Ordinance and thereby shifting the burden onto the Appellant to prove the facts allegedly within his knowledge.
44. According to the version of the defence, the accused was not the person who carried the pair of shoes into the prison, and it was the person named Harsha who had placed the bag on the table of the prisoners' visitors' area. Accordingly, it was contended that the Learned Trial Judge had improperly cast the burden upon the accused to prove the facts alleged to be specially within his knowledge.
45. In this regard, Section 106 of the evidence ordinance becomes relevant.

*Section 106 reads;*

*“When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.”*

46. It is a well-established principle that Section 106 of the Evidence Ordinance does not relieve the prosecution of its primary burden of proving the charge beyond a reasonable doubt. Rather, this Section applies in circumstances where certain facts are especially within the knowledge of the accused and cannot reasonably be expected to be proved by the prosecution.
47. In the present case, the conduct of the Appellant, particularly his hesitation to forward the bag for inspection, clearly demonstrated that he possessed knowledge of the contents concealed therein. In such circumstances, the application of Section 106 of the Evidence Ordinance was justified, as the relevant facts concerning the contents of the

bag and the circumstances under which it came into his possession were matters especially within the knowledge of the Appellant.

48. However, the explanation advanced by the Appellant, namely that the parcel remained in the possession of Harsha at all material time, and that he was unaware of its contents, was rightly rejected by the Learned Trial Judge in light of the surrounding circumstances and the conduct of the Appellant at the time of inspection.

49. Therefore, it cannot be said that the Learned Trial Judge had unlawfully shifted the legal burden of proof onto the accused; rather, the Learned Trial Judge had correctly applied Section 106 of the Evidence Ordinance only in relation to the evidentiary burden arising from facts especially within the knowledge of the accused.

50. The Learned Trial Judge has adequately analyzed and evaluated the evidence adduced on behalf of both the prosecution and the defence, and set out sufficient reasons for his findings. More importantly, the Learned Trial Judge has clearly explained why he was not inclined to accept the evidence adduced on behalf of the defence.

51. Upon consideration of the foregoing analysis of law and facts, I find no merit in the arguments advanced on behalf of the Appellant. Accordingly, there is no basis to interfere with the judgment of the Learned High Court Judge, and the conviction and the sentence are affirmed.

52. Accordingly, the appeal is dismissed.

**Judge of the Court of Appeal**

**P. Kumararatnam, J.**

I agree

**Judge of the Court of Appeal**