

**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 Case No.
CA/HCC/ 0191/2023
High Court of Homagama
Case No. HC/213/2018**

Weligama Liyanage Sudhammika
Premadasa

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Neranjana Jayasinghe with Randunu
Heellage and Pravindika Kularathne for
the Appellant.
Shanaka Wijesinghe, PC, ASG for the
Respondent.**

ARGUED ON : **27/02/2026**

DECIDED ON : **10/06/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General under Sections 54(A) (d) and 54(A) (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for Possession and Trafficking of 14.28 grams of Heroin (Diacetylmorphine) on 13th December 2016 in the High Court of Homagama.

Following the trial, the Appellant was found guilty only for the first count and the Learned High Court Judge of Homagama has imposed a sentence of life imprisonment on 28.06.2023. He was acquitted from the second count.

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 the Zoom platform from prison.

The Appellant has raised the following grounds of appeal in this case:

1. The prosecution has failed to prove the charges against the Appellant beyond reasonable doubt.
2. Evidence of the prosecution witnesses fail the test of probability.
3. The prosecution witnesses have acted in disregard to the established procedures; therefore, their credibility is in issue.
4. Evidence of the defence was rejected by the Learned High Court Judge on unreasonable grounds.

Background of the case

According to PW1, SI/Ruwan Kumara, the raid was conducted upon an information received by PW2, PC 12810 Nahinna. According to the information, a person called Premadasa, was expected to traffic heroin near Siri Dhammindha Viharaya between 6.30 - 7.30 pm. The raid had taken place in front of the Siri Dhammindha Viharaya. As per the information, the Appellant had come there and was standing in front of the temple expecting someone. The police had arrested and handcuffed the Appellant and made a search. A pink colour grocery bag with some substance similar to Heroin was recovered from the Appellant's possession. Upon further investigation, the Appellant was taken to a house in Maharagama. However, it was subsequently revealed that the Appellant actually lives in Baththaramulla, and the team had therefore gone to the Baththaramulla house. Although they searched the house, nothing was recovered from there.

After the investigation, the police party had arrived at the Bureau at 3.00pm. At the Bureau, the production was weighed and it recorded 38.46 grams of substances in the parcel. The production was properly sealed and entered under PR No. 149/2016 was handed over to P12/CI Perera.

PW2, PC 12810 Nahinnna, who was a member of the raiding team, was called to corroborate the evidence given by PW1.

The defence had admitted the Government Analyst Report under Section 420 of the Code of Criminal Procedure Act No. 15 of 1979.

After closing the case for the prosecution, as the evidence led by the prosecution warranted the presence of a case to be answered by the Appellant, the Learned High Court Judge called for the defence. The Appellant gave a statement from the dock and closed his case.

In every criminal case, the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person.

“Reasonable doubt” refers to the legal principle which establishes that insufficient evidence would prevent the conviction of a defendant of a crime. The prosecution bears the weight of proving to the judge the defendant’s guilt in respect of the crime with which he has been charged, in order to prove why the defendant should be convicted. Accordingly, in this context, the phrase “beyond a reasonable doubt” indicates that the evidence and arguments brought forward by the prosecution to establish the defendant’s guilt must be done so clearly, in a manner that it is accepted as fact by any rational person.

In the case of **Officer - In - Charge, Police Station Udu Dumbara Vs. U.G. Sunil and Others** (SC/APPEAL/27/2019), decided on 05.06.2024 it was noted:

“It has been firmly established that, in a criminal case, that the charges against the Accused should be proved beyond reasonable doubt. Proof

beyond a reasonable doubt generally means the Court must carefully consider the entirety of admissible evidence to such scrutiny to see whether the ingredients of the charges are proved. If the Court is not satisfied the accused person must be acquitted.”

In the case of **Sivathasan v. Attorney General [2021] 2 Sri LR 290**, Justice Kodagoda emphasized that:

“A reasonable doubt is a real or actual and a substantial doubt, as opposed to an imaginary or flimsy doubt that may arise in the mind of the decider of facts (judge or the jury, as the case may be), following an objective consideration of all the attendant facts and circumstances. It is a doubt founded on logical and substantial reasoning (well-founded) which a normal prudent person with not less than average intelligence and learnedness in men, matters and worldly affairs, would naturally and inevitably develop in his mind following a comprehensive, objective, independent, impartial and neutral consideration of the totality of the evidence and associated attendant circumstances. It is a doubt that makes the case for the prosecution significantly less probable to have occurred than in the manner purported to have occurred.

The principle that the prosecution must prove its case beyond reasonable doubt and the Accused is entitled to an acquittal if there exists a reasonable doubt, has been engraved in the criminal justice system of this country and in the rest of the common law world. That is to ensure that only those actually guilty of having committed crimes are convicted and the innocent are acquitted.”

Further, in the case of **Karunaratna v. OIC, Police Station, Rambukkana** (SC/APPEAL/61/2023) it was noted:

“The prosecution must prove the accused’s guilt beyond a “reasonable doubt”, not beyond “any doubt”. A reasonable doubt refers to a doubt based on logical reasoning through proper evaluation of evidence. This requires the trier of fact to weigh all evidence supporting guilt against evidence suggesting innocence, considering the strengths and weaknesses on both sides. If, after this evaluation, the evidence overwhelmingly favors the prosecution and eliminates any reasonable doubt about the guilt of the accused, the case can be deemed proven beyond a reasonable doubt. This standard applies to the totality of the evidence as a whole, not to each individual piece of evidence the prosecution relies on to prove the guilt of the accused.”

In the case of **Officer-in-Charge Police Station, Wellawatta v. Pieris and Others** (S.C. Appeal No.82/2019), decided on 27.02.2024, it was held:

“The prosecution that must discharge its burden of proof, in establishing a criminal charge by which it alleged the Appellant had committed an offence. In other words, the prosecution must establish that it was the accused, who is present in Court, committed the alleged criminal acts or omission at the crime scene.”

As the 1st and 2nd grounds of appeal are so interconnected, the said grounds will be considered together hereinafter.

The Learned Counsel for the Appellant contended that the prosecution has failed to prove the charges against the Appellant beyond a reasonable doubt and that the evidence of the prosecution witnesses fails the test of probability.

In an appeal, it is the profound duty of the Appellate Court to consider all the evidence presented by both parties in the trial. If the evidence presented by the prosecution is cogent and passes all the tests, the court has no difficulty whatsoever to act on the same and affirm the conviction of the Appellant. However, if the prosecution fails to adduce cogent and consistent evidence, then the court has no option but to award the benefit of the doubt to the Appellant.

In **Lal Mandi v. State of West Bengal** (1995) 3 SCC 603, the Court opined that:

“In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused”.

In the case of **Chandrappa & Ors. v. State of Karnataka**, (2007) 4 SCC 415 it was held:

“The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.”

This principle was reaffirmed in the case of **Kali Ram v. State of Himachal Pradesh** AIR 1973 SC 2773:

“It has accordingly been laid down that unless the evidence adduced in the case is consistent only with, the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused.”

In this case PW1 had received information from PW2 and both gave evidence without any contradictions. The very contention raised by the Counsel for the Appellant is that the two other police officers who had been a part of the raiding team had put different notes in some extent, which thereby created a reasonable doubt about the raid conducted.

Calling witnesses in a criminal trial is entirely on the prerogative of the prosecution. Hence, it is not necessary to call all the witnesses in a criminal case to prove a charge.

In criminal trials such as this, the discretion and responsibility to call witnesses as believed to be necessary in successfully proving the charges against the accused is given to the prosecution. However, it is pertinent to note that while this power is granted to the state, prosecutors are not merely advocates that must seek a conviction, rather, as per the duty of fairness they are bound by, they are bound to present and bring forward all relevant material evidence, even when such evidence might be favourable to the defence.

In **King v Chalo Singho** 1941 NLR 269 the court held that:

“Prosecuting Counsel is not bound to call all the witnesses named on the back of the indictment or tender them for cross-examination. In exceptional circumstances the presiding Judge may ask the prosecuting Counsel to call such a witness or may call him as a witness of the Court”.

The court further held that:

“There is no misdirection by the Judge when he omits to refer to the presumption under section 114 (/) of the Evidence Ordinance in cases in which the Crown does not call or tender for cross-examination on the request of the prisoner’s Counsel a witness, whose name appears on the

back of the indictment and whom the prisoner's Counsel had himself an opportunity of calling”.

In **Kumara De Silva and 2 Others v Attorney General** [2010]2 SLR 169 the Court held that:

“Question of an adverse presumption under Section 114 (f) arises only where a witness whose evidence is necessary to unfold the narrative is wilfully withheld by the prosecution and the failure to call such witness constitutes a vital missing link in the prosecution case”.

In this case, the prosecution had called two witnesses and presented evidence without any contradictions or omissions. The Learned High Court Judge had very correctly analysed their evidence and accepted such as cogent and acted upon. Thereby, not calling other witnesses has not caused any prejudice to the Appellant.

In the 3rd ground of appeal, the Learned Counsel for the Appellant contends that the prosecution witnesses have acted in disregard to the established procedures; therefore, their credibility is in issue.

In the case of **AG v Munasinghe Arachchige Chamila Perera** SC Appeal No. 171/2012 decided on 04.11.2024, the court held that:

There is evidence in support of the police officer's presence on the scene of the arrest and the subsequent recovery of the illegal substance. The veracity of the evidence of the police officers must be tested on its own merit. It cannot be merely disbelieved or consider to affect the credibility of the evidence and rejected, on the ground of failure/ omission to adhere to an administrative control of the police authorities in maintaining departure notes.

As held in the case of **Mahathun and Others vs. The Attorney General** 2015 [1] SLR 74;

“(4) Where evidence is generally reliable, much importance should not be attached to the minor discrepancies and technical errors.

(5) The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of the testimony of a witness unless it is manifestly wrong.”

Further in the case of **AG v Munasinghe Arachchige Chamila Perera** SC Appeal No. 171/2012 decided on 04.11.2024,

[25] Even assuming that they are witnesses of interest who failed to follow up with departmental orders, applying the ‘rule of caution’, their evidence is found to be creditworthy. A procedural irregularity cannot be a ground to discredit the testimony of a witness and certainly should not be a ground for acquittal”.

Considering the above cited Supreme Court cases, the third ground raised has no merit at all.

In the second ground of appeal, the Appellant contends that the evidence of the defence has been rejected on unreasonable grounds.

The Appellant in his dock statement admitted that he was arrested when he went to the temple with his daughter. He further said as PW1 had a dispute with his daughter, he was arrested unreasonably in this case, and that nothing was found in his possession when he was arrested.

The Learned High Court Judge in his judgement had very correctly analysed and considered the defence version and given plausible reasons as to why he

disbelieves his dock statement. Therefore, it is incorrect to say that the Learned High Court had disregarded the defence version in his judgment.

Considering the grounds of appeal advanced by the Appellant, none of the grounds have any merit to be considered in favour of the Appellant. The Learned High Court Judge had very correctly considered all the evidence presented by both parties to come to his conclusion. Therefore, I dismiss this appeal for want of merit.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL