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.

Court of Appel No:
CA/HCC/0215/23
High Court of Chilaw
No: HC/29/2014

Mapatunage Dhammika

Accused-Appellant

Vs.

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

Complainant-Respondent

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

COUNSEL : **Isuru Somadasa for the Appellant.**
Tharaka, SC for the Respondent.

ARGUED ON : **25/06/2025**

DECIDED ON : **31/07/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General before the High Court of Chillaw under Sections 54(A)(b) and 54(A)(d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984 for the trafficking and being in possession (respectively) of 16.52 grams of Heroin on 16th August 2013.

After the trial, the Appellant was found guilty on both counts and the learned High Court Judge of Chilaw has imposed life imprisonment on him for both counts on 13th of September, 2023.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Counsel for the Appellant informed this Court that the Appellant has given his consent to argue this matter in his absence. Hence, argument was taken up in his absence but he was connected via Zoom platform from prison.

The Appellant had raised the following grounds of appeal.

1. The prosecution has failed to prove the chain of inward journey beyond reasonable doubt, as there is a discrepancy in the total weight of the powder contained in the production sent by the Police Narcotics

Bureau which was weighed by PW1 and the weight indicated by the Government Analyst's Department.

2. The learned High Court Judge has failed to consider the material *inter se* contradictions of the main prosecution witnesses who had conducted the inquiry.

PW1, IP/Antony attached to the Special Task Force Camp, Kelaniya had arrested the Appellant on 16.08.2013 at Thoppuwa Junction, Kochchikade. Upon receiving an information from his personal informant at 2.00 p.m., PW1 along with some other officers had gone to Thoppuwa Junction and stationed their vehicle facing the direction of Negombo from the Thoppuwa Junction. While on observation, PW1 had received a phone call from the informant about the movement of the Appellant. Acting on that information, PW1 and PW2 Kekulandara had walked up to a bus stop situated along Dankotuwa Road and identified the Appellant with the description given by the informant. Having introduced themselves to the Appellant, PW2 had checked the Appellant and uncovered a cellophane bag with 09 packets from his trouser pocket with some substance suspected to be Heroin. Thereafter, the Appellant was brought to the Police Narcotics Bureau and the substance was weighed using an electronic scale. The gross quantity of the substance had weighed about 48 grams. All productions had been properly sealed, finger print of the Appellant was obtained, and entered in the Production Register and was then handed over to the reserve police officer.

PW2 SI/Kekulandara was called by the prosecution to corroborate the evidence of PW1.

In his dock statement, the Appellant took up the position that he was never in possession of any dangerous drugs as claimed by the prosecution.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond a reasonable doubt. There is no burden on the Appellant to prove his innocence. This is the "Golden Thread" which was discussed in

Woolmington v. DPP [1935] A.C.462. In this case Viscount Sankey J held that:

> *"Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt…… If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner…..the prosecution has not made out the case and the prisoner is entitled to an acquittal.*

In trials of this nature, the prosecution does not only need to prove the case beyond a reasonable doubt but should also ensure, with cogent evidence that the inward journey of the production has not been disturbed at the all-material points.

In the case of **Mohamed Nimnaz V. Attorney General** CA/95/94 held:

> *"A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences relation to drugs, we are of the view that the prosecutor should not be given a second chance to fill the gaps of badly handled prosecutions where the identity of the good analysis for examination has to be proved beyond reasonable doubt. A prosecutor should take pains to ensure that the chain of events pertaining to the productions that had been taken charge from the Appellant from the time it was taken into custody to the time it reaches the Government Analyst and comes back to the court should be established".*

The Appellant takes up the position that there is a significant discrepancy in the weight of the Heroin said to have been recovered from him and the weight of the same as recorded in the Government Analyst Report. The Counsel for the Appellant contend that the learned Trial Judge misdirected himself by failing to analyse the discrepancy of the weight of the substance allegedly recovered from the Appellant, which disturbs the production chain. He

further submits that this is a substantial fact, which the prosecution has to prove beyond a reasonable doubt.

The grounds of appeal raised in this appeal directly relates to the evidence given by PW1 and PW4. According to PW1, the recovered substance was weighed at the Police Narcotics Bureau in front of the Appellant. According to both PW1 and PW4 the substance was weighed using a scale obtained from the police. The gross aggregate weight of the substance was 16.100 grams.

When the productions were taken to the Government Analyst Department, a notable difference had been noted in the parcel. According to the Government Analyst Report the weight of the parcel was mentioned as 8.64 grams. This is 8.46 grams less than the original weight recorded by the police. Hence the Appellant argues that the weight difference creates a serious doubt in the prosecution case as the weight difference is quite significant.

When this Court invited the Respondent to explain the discrepancy regarding the weight of the productions that which transpired from the evidence, the learned Deputy Solicitor General following the best traditions and highest standard of the Attorney General's Department admitted the weight discrepancy in the production and further added that she is unable to explain the reason.

In **Perera V. Attorney General** [1998] 1 Sri.L.R it was held:

> *"the most important journey is the inward journey because the final analyst report will depend on that".*

In the case of **Koushappis v. The State of WA** [2007] WASCA 26; (2007) 168 A Crim R 51 at para 85 the court held:

> "*Whilst the safe custody of critical exhibits such as these ought to be readily proved by clear and specific evidence rather than being left to inference, having regard to the way the case was conducted on both*

sides, the evidence here was such in my view, as to allow the jury to be satisfied beyond reasonable doubt that the drugs that were analysed… were in fact those seized by police from the appellant's house";

The afore-mentioned judgments clearly highlight the crucial importance of the evidence with regards to the chain of custody in drug-related offences. They provide clear guidance on how this evidence should be presented to satisfy the trial court. Each piece of evidence requires thorough analysis to ascertain its origin and who had access to it, ensuring no deviations from standard practice.

In cases regarding drug related offences, chain of custody issues is of critical importance. The prosecution must present undisputable evidence to establish the chain of custody of the exhibits. Additionally, they must prove that the item presented at trial is the same item originally in the possession of or taken from the accused. Relying on tainted, unreliable, or tampered evidence would undermine the integrity of the judicial system.

In this regard, the learned High Court Judge had not made any comment about the weight discrepancy in his judgment. This has caused great prejudice to the Appellant and has effectively refused him a fair trial.

Further, although PW1 and PW2 had said that the finger prints of the Appellants were taken to seal the production after weighing, at the trial it was revealed that one of the Appellant's signatures was absent on the sealed envelope, regardless of which the learned High Court Judge had arrived at the conclusion that the production had been properly sealed in the presence of the Appellant. This is a clear misdirection which had also deprived the Appellants a fair trial.

The evidence presented by the prosecution with regard to the inward journey of the productions creates a serious doubt on the conviction against the Appellant. Further, the evidence given by the prosecution witnesses consists of contradictions and improbabilities.

Considering the ground of appeal discussed above, it clearly supports the stance taken by the Appellant in defence as well as in the dock statement and certainly affects the root of the case.

Therefore, I set aside the conviction and sentence imposed on the Appellant by the learned High Court Judge of Chilaw dated 06.08.2021. Therefore, he is acquitted from all charges.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL