

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.

The Democratic Socialist Republic of Sri
Lanka

Complainant

Vs

Case No: **CA/HCC/0043/2024**

HC Chilaw

HC-32-14

Kasankatha Rajanadan

Accused

AND NOW BETWEEN

Kasankatha Rajanadan

Accused – Appellant

Vs

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

Respondent

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

Counsel : Neranjan Jayasinghe with Randunu Heellage and
Imangsi Senarath for Accused-Appellant.

Ms. Suharshi Herath, DSG for Respondent.

Argued on : 30.07.2025

Decided on : 24.10.2025

Pradeep Hettiarachchi, J

Judgment

1. The accused–appellant (hereinafter referred to as “the appellant”) was indicted for the possession and trafficking of 2.24 grams of heroin, offences punishable under Section 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 13 of 1984.
2. The trial commenced in the High Court of Chilaw, and at the conclusion of the proceedings, the learned High Court Judge found the appellant guilty of the charges. Consequently, the appellant was convicted and sentenced to life imprisonment. It is against this conviction and sentence that the appellant has lodged the present appeal. The following are the grounds of appeal advanced by the appellant:
 - a. The prosecution has not proved the chain of productions;
 - b. The evidence of PW1 and PW2 lacks credibility;
 - c. The learned High Court Judge has not given adequate reasons for rejecting the dock statement; and,
 - d. The sentence imposed on the appellant is excessive.

3. On behalf of the prosecution, three witnesses testified, namely, Lal Amaratunga (PW1), Shirley Wijesingha (PW2), and the Assistant Government Analyst, K. Ratnapala (PW12). After the close of the prosecution case, the appellant made a dock statement.
4. PW2, Shirley Wijesingha, was the first to testify. According to PW2, the raid was conducted based on information received from Excise Officer No. 698, Indika. In his testimony, PW2 stated that fourteen officers participated in the raid, all of whom were in civilian attire. They proceeded to the Chilaw area in two vehicles, and later, a third vehicle belonging to one of the officers in the raiding party joined them.
5. At approximately 5:30 p.m., near the Cargills supermarket in Chilaw, they arrested three suspects: Sinnasamy Velu Ambalagan, Perayamage Pradeep Kumara, and the driver of the three-wheeler in which they arrived. Heroin was recovered from the possession of Velu Ambalagan.
6. Upon questioning the suspects, it was revealed that the heroin recovered from Velu Ambalagan had been supplied by one Hasanthan Rajanathan, who is the appellant in the present case. It was further disclosed that the appellant was scheduled to meet the suspects at 6:30 p.m. in Chilaw to collect the proceeds from the sale of the heroin he had supplied.
7. Accordingly, one of the suspects, Pradeep, who had been arrested near the Cargills building, was instructed to call the appellant. Following this telephone call, the appellant arrived at the location and was apprehended by the officers. Upon conducting a search of the appellant, a small parcel of heroin concealed under the hem of his undergarment was recovered by the witness.
8. Thereafter, the parcel was sealed, and the officers returned to Colombo with the three suspects. Upon arrival at the Anti-Narcotic Section of their office, the contents of the parcel were weighed and re-sealed, bearing the appellant's fingerprints. Subsequently, the appellant, along with the productions, was produced before the Magistrate's Court of Chilaw.

9. In drug-related cases, contradictions within the prosecution's evidence, or between the prosecution and the defense, can seriously undermine the prosecution's case and may even lead to an acquittal. While minor inconsistencies are generally immaterial, major discrepancies can impair the credibility of witnesses and create reasonable doubt as to the guilt of the accused, particularly when they relate to material facts in issue.
10. Since it was argued on behalf of the appellant that the prosecution had failed to establish the chain of custody, I shall first consider the evidence adduced by the prosecution in that regard. In a case of this nature, one of the most essential elements that the prosecution must prove beyond reasonable doubt is the chain of custody. This refers to the chronological documentation of the custody, transfer, and disposition of the substance recovered from the appellant. It traces the movement of the seized drugs from the time of recovery until their production in court as evidence. The chain of custody operates as a safeguard against contamination, substitution, tampering, or loss of evidence, thereby ensuring its reliability and authenticity.
11. According to the evidence of PW2, the parcel of heroin allegedly recovered from the possession of the appellant was sealed temporarily before being brought to Colombo. However, it is not clear whether PW2 or any member of his team had taken any item for the purpose of sealing. When questioned by the defense counsel, PW2 admitted that he had not made any notes regarding the taking of any item used for sealing. This raid was conducted in 2012, and PW2 testified in 2018, nearly six years after the incident. It was also not the only raid conducted by PW2 and PW1.
12. Therefore, it cannot reasonably be expected of them to recall every significant step taken during the raid without referring to their contemporaneous notes. That is precisely why they are required to make notes pertaining to every important step and event that occurred during the operation. The absence of such notes relating to material events inevitably casts doubt on the credibility of their testimony.

13. PW 12 is the Assistant Government Analyst testified on behalf of the prosecution. Disputing the chain of custody, the appellant laid great stress on the failure of PW12 to mention the name of the Sectional Head of the Government Analyst Department to whom the production was handed over by one Chamali who accepted the production from PW1 at the Government Analyst Department. According to PW12, Police had handed over the production to an Assistant Government Analyst named Chamali at 2.30pm. Chamali had handed over it to the Sectional Head of the Department but the name of the said sectional head is not found in P13.
14. It is also pertinent to note that when the appellant was produced before the Magistrate's Court of Chilaw on 14.09.2012, PW2 did not hand over the productions to court on the same day. Instead, he brought them back to their station and kept them in his personal locker until 17.09.2012, when they were produced before the Magistrate's Court through PW1. According to PW2, when they arrived at the Magistrate's Court, Chilaw, on 14.09.2012, it was around 3.00 p.m., and by that time the production room had been closed. Therefore, he could not hand over the productions on the same day.
15. It is noteworthy that the learned High Court Judge, in her judgment, concluded that the defense had admitted the chain of custody, despite the fact that it was expressly challenged by the defense. In my view, this amounts to a clear misdirection on the part of the learned High Court Judge. Having made such an erroneous finding, the learned Judge has failed to analyze and evaluate the evidence relating to the chain of custody. This omission has, in my opinion, had a prejudicial impact on the sustainability of the judgment.
16. It is also worthy of mention that PW2 failed to make any entry regarding the odometer reading of the vehicle at the time of leaving for Chilaw. Although PW1 stated in his evidence that 14 officers took part in the raid, PW2 contradicted this and stated that only 11 officers participated. According to PW2's testimony, they travelled from Colombo in two vehicles, and later another private vehicle belonging to an officer joined them.

17. Nevertheless, no entry was made concerning the description of the other vehicles, nor was sufficient information about them led in evidence. This omission further casts doubt on the prosecution's version of events. Moreover, PW1 made no mention whatsoever of the third vehicle in his testimony.

18. Thus, the evidence of PW1 and PW2 contradicts each other regarding the commencement of the raid, thereby weakening the very foundation of the prosecution's case.

19. The most significant discrepancy in the evidence of the present case concerns the location from which the packet of heroin was allegedly recovered. According to the evidence-in-chief of PW2, it was found beneath the hem of the appellant's undergarment. PW2 testified as follows:

ප්‍ර : දැන් සාක්ෂිකරු ඔය මේ වූදින තැනැත්තාගේ කොහෙ
නිබ්ලාද මේ හෙරොයින් ප්‍රමාණය හොයාගත්තේ ?

උ : සරමට යටින් අදින යට ඇඳුමේ ඉදිරිපස වාටියට පහලින්
සෙලෝපේන් බෑගයක තිබී සොයාගන්නා.

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20. However, PW1, in his evidence, stated that the packet of heroin was in the hem of the appellant's undergarment. PW1 testified as follows:

ප්‍ර : කවුරුන් විසින්ද පරීක්ෂා කලේ ?

උ : ෂරී මහතා විසින්.

ප්‍ර : ඒ පරීක්ෂා කරන අවස්ථාවේදී තමා ඒ ස්ථානයේ සිටියාද?

උ : එහෙමයි.

ප්‍ර : පරීක්ෂා කිරීමේදී මොනාහරි අනාවරණය වුනාද?

උ : එහෙමයි. ඔහුගේ යට ඇඳුමේ වාටියේ තිබී පාසර්ලයක් අත්
අඩංගුවට ගන්නා.

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21. However, neither PW2 nor PW1 was able to provide a description of the undergarment, not even its colour. Needless to say, when an accused is alleged to have concealed an illegal substance in his undergarment, a clear and specific description must be provided by the officers who detected it. The credibility of their evidence depends not only on the accuracy of their notes but also on the manner in which the raid was conducted, particularly the believability and probability of their actions.
22. Therefore, in a case of this nature, it is incumbent upon the prosecution to prove the most vital events beyond reasonable doubt. Furthermore, it is pertinent to emphasize that witnesses in such cases enjoy the additional advantage of giving evidence by referring to notes made during the raid, a facility not available to ordinary lay witnesses in a typical criminal trial. Hence, it is their duty to record such notes accurately, particularly in relation to the important events that occurred during the raid. Failure to do so would inevitably affect the credibility of their testimony, especially when they are unable to clearly recount the events that actually took place.
23. According to PW2, the appellant was bodily searched while he remained inside the three-wheeler, and the packet of heroin was allegedly detected in the hem of his undergarment. The plausibility of this account is questionable, given the limited space inside a three-wheeler. It is in evidence that three other persons had already been arrested and taken to an isolated location, where they were bodily searched prior to the appellant's arrest. If that was the procedure, it is unclear why PW2 could not have conducted a similar search of the appellant in an isolated location rather than inside the vehicle. The assertion that the appellant was searched inside the three-wheeler and that a small parcel of heroin was discovered in the hem of his undergarment is inherently difficult to accept, given the confined space available.
24. Although PW1 stated in his evidence that the appellant was seen near St. Jude Church as they proceeded towards it, he did not make any notes to that effect. Furthermore, PW1 did not record any notes regarding the seizure of mobile phones from the appellant. In his testimony, PW1 maintained that he had never

recorded in his notes the duties performed by the other officers. However, during cross-examination, he contradicted himself by admitting that he had, in fact, made notes concerning the questioning of other suspects by different officers. PW1 testified as follows:

- ප්‍ර : වෙන අයගේ දේවල්ද මේකේ ලියන්නේ?
- උ : වෙන අයගේ දේවල් ලියන් නැහැ ස්වාමිණි.
- ප්‍ර : ඒ කියන්නේ මම කරපු රාජකාරිය නෙමේද මේ වෙන අය කරපු රාජකාරි ද ඔබතුමා ලියලා තියෙන්නේ?
- උ : මම කරපු රාජකාරිය තමයි මම ලියලා තියෙන්නේ.
- ප්‍ර : තමුන් කරපු රාජකාරිය ලියනකොට සිංහල භාෂාවෙන් උත්තම පුරුෂයෙක් නේද ලියන්නේ?
- උ : එහෙමයි.
- ප්‍ර : ඔබතුමා කියන්නේ අනෙක් අය ප්‍රශ්න කරපුවත් මේකේ ලියලා කියලද?
- උ : මම ලියලා නැහැ ස්වාමිණි.
- ප්‍ර : එහෙනම් මොනවද මේ තියෙන්නේ ? මේ බලන්න. ඉහත සැකකරුවන් තුන්දෙනාගෙන් වෙන වෙනම ගෙන ප්‍රශ්න කලා.
- උ : නිලධාරීන් කීප පොලක් ප්‍රශ්න කලා.
- ප්‍ර : කවුද ඒ අනිත් නිලධාරීන් ? නම් කියන්න බලන්න.
- උ : මම ඒ සම්බන්ධයෙන් දන් නැ.

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25. The aforementioned discrepancies in the evidence of PW1 and PW2, which go to the very root of the prosecution's case, appear to have escaped the attention of the learned High Court Judge.

26. As stated earlier, official witnesses in a case of this nature are required to maintain notes relevant to the performance of their duties and are entitled to refer to them when giving evidence in order to refresh their memory. Accordingly, where vital contradictions exist among their testimonies, the

court cannot treat them lightly, nor can it apply the same standard as would be applied to the testimony of a lay witness relying solely on memory.

27. In the present case, the discrepancies and inconsistencies apparent in the evidence of PW1 and PW2 do not warrant a conviction of the appellant. To elaborate, both PW1 and PW2 had the advantage of making notes in the course of their duties and were entitled to refer to those notes when giving evidence. Therefore, the presence of contradictions and discrepancies, irrespective of their degree, when considered in totality, casts doubt on the prosecution's case.

28. As stated elsewhere in this judgment, minor contradictions in the testimony of a lay witness in a criminal trial may be disregarded when assessing credibility, as such witnesses testify from memory. However, this principle cannot be extended to a case of the present nature, where the witnesses had the opportunity to refer to their contemporaneous notes while testifying.

29. As admitted by this witness, the other two suspects—namely Pradeep and Velu—who were arrested prior to the appellant, were subsequently acquitted by the High Court. This was further confirmed by PW2 during cross-examination. Thus, it appears that the evidence of the officers who conducted the raid was disbelieved by the courts, which would certainly affect the credibility of the evidence in the present case.

30. In the *Attorney General v. Sandanam Pitchi Mary Theresa [2011] 2 SLR 292* the court held that: “Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are material to the fact in issue”

31. In *Iswari Prasad v. Mohamed Isa 1963 AIR (SC) 1728 at 1734* it was held that;

- a. “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.”

32. Hence, it is not safe to allow the conviction to stand, given the abovementioned discrepancies in the prosecution’s evidence. On this basis, I set aside the conviction and sentence, and accordingly acquit the appellant of all charges.

33. The appeal is allowed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal