IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

An appeal filed in terms of Section 331 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.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Wijesinghe Arachchilage Niroshani *alias* Aruni

Accused

AND NOW BETWEEN

Wijesinghe Arachchilage Niroshani *alias* Aruni

Accused – Appellant

Vs

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

Complainant – Respondent

Court of Appeal Case No:
CA/HCC/0119/2025

High Court of Colombo Case No:
HC/4962/2024

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

Pradeep Hettiarachchi, J.

Counsel : Kapila Waidyrathne, P.C. with Akkila Jayasundara and Akhila Mathishi for the Accused – Appellant.

Suharshi Herath ,D.S.G. for the Respondent.

Argued on : 07.11.2025

Decided on : 12.12.2025

Pradeep Hettiarachchi, J

Judgment

1. This is an appeal against the judgment dated 03.03.2005 delivered by the learned High Court Judge of Colombo. The Accused–Appellant (hereinafter referred to as "the Appellant") was indicted for offences under the Poisons, Opium and Dangerous Drugs Ordinance. The charges contained in the indictment are as follows:

    a. On or about 27th of September 2021, at Samithipura, Mattakkuliya, the Appellant was in possession of 3.58 grams of heroin without a license or permission from the Director, and offence punishable in terms Section 54 A (d) of the Poisons, Opium and Dangerous Drugs Ordinance ,as amended by Act No. 13 of 1984.

    b. During the course of the same transaction, the Appellant was engaged in trafficking 3.58 grams of heroin without a license or permission from the Director, an offence punishable in terms of Section 54 A (b) of the Poisons, Opium, and Dangerous Drugs Ordinance, as amended by Act No.13 of 1984.

2. At the trial, three witnesses, namely PW7, PW1, and the Registrar of the High Court, testified. The Appellant made a dock statement, and at the conclusion of the trial, the learned trial Judge found the Appellant guilty of both charges and accordingly sentenced him to life imprisonment.

3. Being aggrieved by the said conviction and sentence the Appellant has preferred the instant appeal.

4. The grounds of appeal advanced by the Appellant are as follows:

    1. The learned trial Judge failed to exercise his judicial mind in determining whether the prosecution had proven its case beyond reasonable doubt.

    2. The learned trial Judge failed to properly analyze and give legal consideration to the inherently improbable and contradictory evidence of the prosecution witness.

    3. The learned trial Judge failed to adequately assess the unreliable and improbable evidence pertaining to the seizer and sealing of production and procedural irregularities followed by the prosecution which undermined the integrity of the chain of custody and cast serious doubt on the safety of the conviction.

    4. The learned trial Judge failed to properly and legally consider the totality had the defence put forward by the Accused-Appellant resulting in misdirection that occasioned a miscarriage of the justice and vitiated the conviction.

5. The first three grounds of appeal are interrelated, and therefore I shall consider them together. It is significant to note that, at the trial, instead of the lead officer, it was PW7 (WPC 11117 Sulochana Madhushani) who testified first. According to her evidence, the raid was conducted on the instructions of PW1 Naleen Shriyantha on 27.09.2021. The team of officers left the Colombo North Crime Investigation Unit at around 21.00 hours and proceeded to No. 47/K/14, Sumittpura, Mattakkuliya, where the Appellant resided. The police vehicle was parked right in front of the Appellant's residence.

6. They entered the Appellant's house and found the Appellant seated in the living room. As instructed by PW1, PW7 took the Appellant into a room inside the house and

conducted a physical search, during which she recovered a parcel from the right-side pocket of the frock worn by the Appellant. PW7 thereafter handed the parcel over to PW1, who sealed the production.

7. It is noteworthy that when questioned, PW7 was unable to recollect whether any other persons were present at the Appellant's house at the time of the raid. It is also important to note that in her evidence-in-chief, PW7 stated that the police vehicle had stopped right in front of the Appellant's house. However, during cross-examination, when questioned about the width of the road where the Appellant's house is situated, the witness admitted that it was a narrow lane. It was further suggested to the witness that the width of the road leading to the Appellant's house was only two feet, but the witness failed to answer the question.

8. Thereafter, the witness admitted that the police vehicle had not stopped in front of the Appellant's house, as stated in her evidence-in-chief, but rather at the entrance of the road leading to the Appellant's residence. One of the most improbable aspects of PW7's evidence, as observed by this Court, is her assertion that the Appellant had kept a heroin parcel in the front pocket of her frock until the police party arrived at her residence and searched her. Hence, it is difficult, if not impossible, to accept that a person would have kept a small parcel of heroin in the pocket of her frock while remaining inside, waiting for the police to arrive and arrest her.

9. Furthermore, the witness admitted that she had not paid any attention to the sealing process, despite the production being sealed at the Appellant's house. Another unusual aspect is that this witness certified the lead officer's notes, which is not the standard practice.

10. Furthermore, the witness admitted that she neither observed nor paid much attention to the sealing process and had not made any notes in that regard. If that was the case, it is difficult to understand how she could certify the lead officer's notes as accurate. No plausible explanation was provided by the witness on this issue. These inconsistencies and procedural lapses cast serious doubt on the credibility and reliability of PW7's evidence.

11. In a detection of this nature, it is incumbent upon the officers to maintain accurate notes detailing the important steps taken from the commencement of the raid until the

production is handed over to the police reserve. Such notes should specifically include the manner of detention, the place of detection, the location where the productions were sealed, and the manner in which the productions were weighed and sealed, as well as the procedure followed during the arrest of the Appellant.

12. However, upon perusal of PW7's evidence, it appears to this Court that, although she attended the raid as an officer subordinate to PW1, she did not make proper notes of the proceedings.

13. The next most vital witness is PW1, Naleen Shriyantha, the chief investigating officer. According to his evidence, the raid was conducted pursuant to information received from his personal informant.

14. According to PW1, the vehicle used to reach the location where the Appellant was arrested bore the number WPNE. PW1's evidence, however, contradicted that of PW7 regarding the exact location where the police vehicle stopped upon reaching the Appellant's residence.

15. Furthermore, there was no evidence to suggest that the officers searched the appellant's house after his arrest. It is rather unusual that a team of police officers, having arrested a person at his home for possession of Heroin, would fail to search the house, especially given the nature of the information they had received which led to the arrest.

16. It is to be noted that PW1 also recorded in his notes that the vehicle was stopped in front of house No. 47/K/14, Summit Pura, Mattakkuliya, an assertion that was admitted by both PW7 and PW1 to be incorrect, given the narrowness of the road. These infirmities undoubtedly cast serious doubt on the prosecution's evidence, particularly regarding the probability and reliability of the prosecution's version of events.

17. The weighing and sealing of the substance allegedly recovered from the appellant are vital steps in a raid of this nature. Nevertheless, PW7 had not made any note regarding these procedures. The explanation offered by PW7, that she did not observe the weighing and sealing because she focused her attention primarily on the appellant, is unacceptable, as there were several other officers in the raiding party who could have guarded the appellant.

18. The most critical piece of evidence that has escaped the attention of the learned High Court Judge is the testimony of PW7 at page 72 of the appeal brief, where she stated that she had signed the notes made by PW1 as correct, despite admitting that she had not observed the weighing and sealing process. When questioned by the State Counsel in examination-in-chief, PW7 merely stated that she signed the investigation notes after reading them, but could not recollect their contents. It is also noteworthy that PW7 was the corroborating witness, yet, for reasons best known to the prosecution, she was called to testify before PW1.

19. The rule is that a witness, who is to be corroborated either by other evidence or, where permissible, by his previous statement, should be called first, and the corroborative evidence should be led thereafter. thus, the Indian courts have held that an approver should be examined before the evidence in corroboration is produced. evidence or, where permissible, by his previous statement. ***Ali Muhammad vs. Emperor A.I.R. (1934) Lah.171,*** (*Law of Evidence Vol.2 Book 2 by E.R.S.R.Coomaraswamy).*

20. The contradictory positions taken by PW1 and PW7 regarding the location where the police vehicle was parked, the inherent improbabilities in the events that allegedly led to the appellant's arrest and the subsequent recovery of heroin from her possession, the failure of PW7 to make notes on key steps such as weighing and sealing the substance allegedly recovered, and, more importantly, PW7's certification of the notes made by PW1 without observing those crucial steps, when considered together with the fact that PW7 was called to testify before PW1, collectively cast serious doubt on the credibility of the prosecution case.

21. Moreover, PW1 categorically stated in cross-examination that he had never conducted a raid or arrested anyone at the address 47/L/59. However, when a copy of the B Report No. B/13900/21 was shown to him, PW1 admitted that he had, in fact, arrested one Thuppahi Arachchilage Randev at that very address. Notably, he is the brother of the appellant's husband. It was also established that the appellant's husband resided at 47/L/59, and therefore it can be reasonably inferred that the appellant was also arrested at that same address, rather than at 47/K/14 as alleged by the prosecution. During cross-examination, it was put to PW1 that the appellant was arrested at 47/L/59, but he denied this suggestion.

22. In fact, in her dock statement, the appellant clearly stated that the raiding party had come in search of her husband, but as he was not at home, she was instructed to call him without disclosing the presence of the police. She further stated that when she informed her husband that the police were there, she was immediately arrested. This version, when considered alongside the evidence elicited from PW1 during cross-examination, certainly creates a significant doubt regarding the prosecution's case.

23. In ***Kathubdeen vs Republic of Sri Lanka [1998] (3) Sri L.R.107,*** it was observed:

> *It is settled law that an unsworn statement must be treated as evidence. It has also been laid down that if the unsworn statement creates a reasonable doubt in the prosecution case or if it is believed, then the accused should be given the benefit of that doubt.*

24. In ***Gunasiri and two others vs. Republic of Sri Lanka [2009] 1 SRI.L.R 39*** it was held that:

> *In evaluating a dock statement, the trial Judge must consider the following principles: (1) If the dock statement is believed it must be acted upon. (2) If the dock statement creates a reasonable doubt in the prosecution case the defence must succeed.*

25. In light of the foregoing legal principles and upon a careful analysis of the evidence, I am of the considered view that it is unsafe to allow the conviction to stand. The conviction and sentence are accordingly set aside, and the appellant is acquitted of both counts. The appeal is therefore allowed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal