

**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 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri
Lanka.

COMPLAINANT

**Court of Appeal Case
No.CA/HCC/0248/2025**

Vs.

**High Court of Negombo
Case No. HC/1189/2019**

Yugeeth Ibrahim
(Maldivian National)

**Magistrate's Court of Negombo
Case No. B/67571/2018**

ACCUSED

AND NOW BETWEEN

Yugeeth Ibrahim
(Maldivian National)
(Presently at Mahara Prison)

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT- RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Amila Palliyage with Sandeepani Wijesooriya, Savani Udugampola, Lakitha Wakishta Arachchi, Subaj De Silva and Gayathrika De Silva for the Accused-Appellant.

Hiranjan Peiris, A.S.G. P.C. for the State.

Accused-Appellant is produced via zoom platform by the Prison Authorities.

Written Submissions: By the Accused-Appellant filed on 09/12/2025.
By the Respondent not filed.

Argument On : 09/07/2026.

Jugement On : 31/08/2026.

Dr. Sumudu Premachandra J.

1]The accused, a Maldivian national, was charged with the following counts;

- **Count 01:-**That on or about 22/05/2018 at Katunayake, within the Jurisdiction of this Court, the Accused did commit an offence by possessing a dangerous drug as set out in Section 54A(d) of the Poisons, Opium and Dangerous Drugs Ordinance amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984, a dangerous drug that is Diacetyl Morphine alias Heroin set out in Column II of Part III of

the Third Schedule of the said Ordinance in excess amount as set out in Column II, that is 1kg 296g except as permitted by or otherwise than in accordance with Chapter V of the said Ordinance or a license of the Director and the Accused shall be guilty of an offence against the said Ordinance and thereby the Accused did commit an offence liable to the penalty set out in the corresponding entry column of the said Part.

- **Count 02:-**That at the same time, the same place and within the said course of action, the Accused did commit an offence by trafficking a dangerous drug as set out in Section 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984, a dangerous drug that is Diacetyl Morphine alias Heroin set out in Column II of Part III of the Third Schedule of the said Ordinance in excess amount as set out in Column II, that is 1kg 296g except as permitted by or otherwise than in accordance with Chapter V of the said Ordinance or a license of the Director and the Accused shall be guilty of an offence against the said Ordinance and thereby the Accused did commit an offence liable to the penalty set out in the corresponding entry in Column III of the said Part.
- **Count 03:-**That at the same time, the same place and within the said course of action, the Accused did commit an offence by exporting a dangerous drug as set out in Section 54A(c) of the Poisons, Opium and Dangerous Drugs Ordinance amended by the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984, a dangerous drug that is Diacetyl Morphine alias Heroin set out in Column II of Part III of the Third Schedule of the said Ordinance in excess amount as set out in Column II, that is 1kg 296g except as permitted by or otherwise than in accordance with Chapter V of the said Ordinance or a license of the Director and the Accused shall be guilty of an offence against the said Ordinance and thereby the Accused did commit an offence liable to the penalty set out in the corresponding entry in Column III of the said Part.

2] After a contested trial, on 09/06/2025, the Learned High Court Judge of Negombo convicted the Accused for Count 01 of the indictment and acquitted the Accused from Count 2 and 3. For the Count 1, he was sentenced to life imprisonment.

3] Being aggrieved to the said judgement and the sentence, the Accused Appellant now appeals to this court on the following grounds;

- The Learned Trial Judge erred in law by failing to consider/evaluate the significance of the discrepancy as regards to the weight of the substance purportedly recovered by PW1 and of that sent to the Government Analyst for analysis.
- The Learned Trial Judge has erred in law by failing to consider the grave doubt created in the inward journey of the productions and the material discrepancies, omissions and missing links in the chain of custody.
 - a. Especially in light of some items sent to the Government Analyst by PW1 which were found in the sealed parcel examined by the Government Analyst (₹ 28 (pair of socks). According to PR 218/18, the pair of socks was never sent to the Government Analyst Department. The socks were only marked in the evidence of PW11 the Government Analyst.
- The Learned Trial Judge has erred in law by failing to consider the material discrepancies/omissions/contradictions in the evidence of PW1 and PW3.
 - a. PW3 in his evidence has stated that he had no knowledge that the travelling bag, which was carried by the Appellant, was put through the scanner a second time.
- The probability and credibility of the Prosecution witnesses were evaluated in light of the dock statement given by the Appellant which amounts to reversal of presumption of innocence.
- The judgement of the learned High Court Judge is void of any reasoning and lacks basic principle of law.

- The Learned Trial Judge failed to correctly evaluate whether the dock statement was sufficient to create a reasonable doubt in the case of the Prosecution.

4] The Accused, a Maldivian national, was charged with possession, trafficking, and exporting 1.296 kg of Diacetylmorphine (Heroin), allegedly committed on 22/05/2018 at Bandaranaike International Airport, under Section 54A of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984. The Prosecution alleged that PW1, a Woman Police Inspector of the Police Narcotic Bureau, received information through WhatsApp together with a photograph and passport details of the Accused, who was allegedly travelling on Emirates Flight EK 653 with heroin. A PNB team intercepted the Accused near Emirates Counter 50 at approximately 17:50 hours and escorted him to the PNB airport office, where his rolling trolley bag was searched and 12 parcels wrapped in “Universal Copy” carbon paper were allegedly discovered, one of which field-tested positive for heroin. After PW1 arrested the Accused, the production was handed over to PW10. PW3, who was attached to Police Narcotics Bureau (PNB) of Katunayake Airport has got the information and he has seen the WhatsApp photo of the Accused from one Dinesh. From the evidence of PW1, she has straight away proceeded to counter No. 50 and arrested the Accused. Thereafter production was handed over to PW10, the Accused was detained for 7 days. The production was sealed by the PW1. Later, it was sent for Government Analyst for testing.

5] However, the Accused, in his dock statement, completely denied possession of the drugs and asserted that his luggage contained only personal belongings and that the drug evidence and bag P-25 were not his.

6] The learned Counsel for the Appellant has stressed that the Prosecution case was substantially weakened by serious contradictions, omissions and defects in the search, seizure and chain of custody.

7] The evidence show that PW1 admitted that the alleged WhatsApp photograph of the Accused was not preserved or produced, that no entries relating to the informant's information or the raid were made in the relevant Information Books, and that her investigation notes were prepared only at approximately 03:15 hours on 23/05/2018, several hours after the alleged arrest. She further admitted that the seized parcels were not weighed, marked, sealed or initialed at the place of arrest or at the airport, but only later at PNB Headquarters.

8] PW3 similarly admitted making no contemporaneous entries in his official notebook or airport narcotics logbooks and contradicted PW1 regarding the method of transmitting the photograph, the sequence of events and whether the Accused's luggage was re-scanned after arrest. There were also material discrepancies concerning the production of P-25, the cardboard box, the Accused's boarding documents and the manner in which the seized property came into police custody.

9] PW10, who received the productions under PR 217/18 and PR 218/18, could not identify the persons whose signatures appeared on the receipts, while PW12's evidence concerning the custody of the Accused's personal belongings further demonstrated deficiencies in the documentation of the seized property.

10] When I consider the evidence of Government Analyst PW11, she analyzed parcels Y-1 to Y-12 and reported the presence of heroin traces in Report P-27, she admitted omissions concerning the carbon wrappings and bag P-25, while the table cloth P-28 appeared in court without being properly recorded in the relevant property receipts and a pair of socks listed in PR 218/18 was absent from her intake records.

11] Significantly, PW11 stated that the Y-1 to Y-12 markings were made by herself upon receipt, contradicting PW1's evidence that she had personally marked the parcels at the PNB before sealing them. This is a serious contradiction which goes to the root of the case.

12] Under Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance, as amended, the trafficking or possession of more than 2 grams of pure heroin attracts a mandatory sentence of either death or life imprisonment. Thus, it is a grave and serious offence which attracts capital punishment.

13] In **Woolmington v DPP** [1935] AC 462 VISCOUNT SANKEY L.C. it was ruled that in criminal cases, the burden of proof is always on the Prosecution to prove the Defendant's guilt beyond a reasonable doubt. The Defendant is presumed innocent until proven guilty, and it is not for the Defendant to prove his innocence.

14] In the case of **Mohamed Nimnaz V. Attorney General** CA/95/94, division of this court held;

“A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences in 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....”

15] In **Attorney-General v. Rawther** 25 NLR 385, Ennis, J. it was held thus;

“The evidence must establish the guilt of the accused, not his innocence. His innocence is presumed in law, from the start of the case, and his guilt must be established beyond a reasonable doubt”.

16] In **JAMES SILVA V. THE REPUBLIC OF SRI LANKA**, [1980]2 SLR 167, His Lordship RODRIGO, J., explained the burden of Prosecution clearly as;

“It is a grave error of law for a trial Judge to direct himself that he must examine the tenability and truthfulness of the evidence of the defence in the light of the evidence led by the prosecution. Our criminal law postulates a fundamental presumption of legal innocence of every accused till the contrary is proved. This is rooted in the concept of legal inviolability of every individual in our society; now enshrined in our Constitution. There is not

even a surface presumption of truth in the charge with which an accused is indicted. Therefore to examine the evidence of the accused in the light of the prosecution witnesses is to reverse the presumption of innocence.

*A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty - see the Privy Council Judgment in *Jayasena v The Queen* (72 NLR 313 (PC)).”*

17] Further in **Mohamed Iqbal Mohamed Sadath vs. Attorney General** SC Appeal No. 110/15, 14/12/2020 our Supreme Court held that *mens rea* (knowledge or intent) is a necessary component for conviction under Section 54A of the Ordinance. The court reasoned that *mens rea* can be established inferentially from the circumstances surrounding the possession of drugs. While Statute does not explicitly define the mental element, the Prosecution must prove beyond reasonable doubt that the Accused knowingly possessed a prohibited substance. In this case the Accused totally denies the knowledge.

18] His Lordship Yasantha Kodagoda PC, J, in the case of **Jayakodi Arachchige Anura Chaminda Appuhamy and others v. AG**, SC/TAB 05/2023, decided on 09/06/2025 held what needs to be proved by the Prosecution which is related to the drug-related offences as follows;

, “It is necessary for this Court to observe that, in a case of this nature, where it is alleged that heroin was found in the possession of the Accused, as regards the said substance (commonly referred to as the ‘productions’), what is necessary for the prosecution to establish are the following:

- a) That the productions referred to in the prosecution’s case were in fact recovered from the possession of the Accused.*
- b) That without unnecessary delay, the productions recovered from the suspects were properly sealed and given unique markings. That without unnecessary delay, such sealed and marked productions were forwarded to the Government Analyst in the manner provided by law.*

- c) *That what the Government Analyst received were the sealed and marked productions recovered from the suspects.*
- d) *That what the Government Analyst analyzed and reported on were the productions that were recovered from the suspects.*
- e) *That the Government Analysts Report arises out of the quantitative and qualitative scientific analysis of the productions recovered from the possession of the Accused.”*

19] His Lordship Justice W.L.R. Silva held in **Senaka Priyantha v. Attorney General** (CA 91/2008, decided on 30/09/2011) that courts must not rely on a non-existent "presumption of truthfulness and regularity" when assessing the evidence of trained police or excise officers;

“The need for corroboration in cases of this nature where it is almost impossible to get contradictions per se the evidence of a trained Police officer was adverted to by this court in Devundarage Nihal vs Hon Attorney General reported in CA 725/2008 decided on 04-05-2008. This is a practice that has hardened into a rule and almost from times immemorial the courts have been very careful in assessing and evaluating the evidence of trained police officers especially when they give evidence in cases where the police are entitled to a reward.”

20] From the above guideline cases it is shown that there is no automatic presumption, and trial judges cannot assume that trained law police, enforcement or narcotic officers always speak the absolute truth. Thus, there must be rigorous evaluation of evidence of police or enforcement officers. Evidence must be evaluated with the same critical scrutiny applied to any other witness, ensuring an Accused person receives a fair trial.

21] His Lordship Wijeyewardene J in **Don Edwin et al. v. Inspector of Police**, 46 NLR 281, held that if an Appellate court gets the overall impression that a conviction is unsafe based on the quality of evidence, it is a sufficient ground to interfere with or set aside the order.

22] Recently, in **Kekulandara Mudiyansele Don Anura Weerasinghe vs Hon. A.G.** CA/HCC/0314/2018, Decided on 05/07/2024, His Lordship P. Kumararatnam, J., held the importance of scrutinising the chain of custody as;

“In drug cases, chain of custody issues is crucial. 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 judicial system's integrity. Moreover, it is not the court's role to rectify mistakes made by investigating officers”

23] With regard to chain of custody, in **Perera vs. The Attorney General** [1998] 1 SLR 378, His lordship J. A. N. De Silva, J, (as he was then) has stated;

“It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore, it is correct to state that the most important journey is the inwards journey because the final Analyst report will depend on that. The outward journey does not attract the same importance.”

24] In **Muramudali Gedera Malaka Mihira Bandara vs A.G.**, CA/HCC/0144/23, decided on: 21/11/2024, His Lordship P. Kumararatnam, J. noted the disparity of evidence with regard to quantity as;

“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 parcel was mentioned as 12.84 grams. This is 1.84 grams in excess to the original weight. Hence the Appellant argues that the weight difference creates a serious doubt in the prosecution case as the weight difference is very significant.”

25] This year, in **Don Nuwan Priyantha Nanayakkara vs Hon. Attorney General**, CA HCC 0077/2018, decided on 04/04/2025, His Lordship AMAL RANARAJA, J, noted the disparity of the quantity of weight and held;

“16. The gross weight of the powdered substance allegedly recovered from the possession of the appellant has been 09.09 grams, while the weight determined by the Government Analyst is only 07.12 grams. The prosecution has failed to explain such discrepancy in this case. The discrepancy is not only significant but it runs through the prosecution’s case. Such omission also raises critical concerns regarding the prosecution’s arguments and overall credibility.

17. An unexplained discrepancy that goes unexplained would undermine the credibility of a party involved in a case as it would not tend to produce clear and consistent evidence. A Judge could draw adverse inferences from the unexplained discrepancy potentially leading to a decision that favour’s the opposing party. Further, a Judge may disregard the evidence associated with the discrepancy entirely deeming it unreliable or untrustworthy for making a legal determination. Overall, it is critical to address discrepancies thoroughly to maintain clarity, uphold credibility and ensure just outcomes in legal proceedings. Further, when a Judge bases his decision on presumptions or assumptions that could misrepresent facts leading to an unfair judgment. Assumptions are often based on incomplete information or stereotypes which can lead to misconceptions. Making judgment without a full understanding or evidence can result in misinterpretation of facts. It is important to seek clarity and context before forming conclusion. This allows for fairer and more accurate evaluation of situations.”

26] According to PW1, the detection stems from a WhatsApp message and photo of the Accused with his passport number. In her evidence PW1 adduced;

- “ප්‍ර. දැන් ඔය වැටලීමට අනුව මොනවද මහත්මියට ලැබුණේ සැකකරු හඳුනා ගැනීමට අදාළ වන තොරතුරු ?
- උ. ගුවන් ගමන් බලපත්‍ර අංකය.
- ප්‍ර. ඊට අමතරව ?
- උ. ඊට අමතරව ඡායාරූපය වටිසැප් මගින් ලැබුණා.” (Vide Pg No 117 of the Judges’ briefs)

27] However, the WhatsApp messages was not tendered at the trial. The reason being that her WhatsApp being deactivated before two weeks. PW1 explained;

- “ප්‍ර. මහත්මිය මුල් අවස්ථාවේදී ප්‍රකාශ කලා මහත්මියට ඡායාරූපයක් ආවා කියලා මෙවැනි පුද්ගලයකු ගුවන් ගත වෙන්න ඉන්නවා කියලා ?
- උ. එහෙමයි ස්වාමිනි.
- ප්‍ර. ඡායාරූපය ආවේ කුමකටද ?
- උ. ස්වාමිනි මා විසින් පාවිච්චි කරන ලද 071-5601067 දරණ ජංගම දුරකථනයට වටිසැප් මාර්ගයෙන් ස්වාමිනි.
- ප්‍ර. ඒ ඡායාරූපය මහත්මිය ලඟ තියෙනවාද ?
- උ. මේ අවස්ථාවේ නැහැ ස්වාමිනි. මාගේ ජංගම දුරකථනයේ වටිසැප් ක්‍රියාකාරීත්වය සති දෙකකට විතර කලින් ඉඳලා නැති වෙලා.”
- (Vide: Pg No 204 of the Judges’ briefs)

28] The Accused faced a life or death (condemn) situation. It is unfortunate that PW1 has said that she could not produce the WhatsApp message which is a vital piece of evidence. The time period from the detection and giving evidence spans over years. If WhatsApp was deactivated two weeks before giving evidence, it is dubious, it was deliberately done. If not, after the detection, PW1 could have got a printout and strengthened her version by producing it in the evidence.

29] In **Gamini Sugathasena and Another v. The State** [1988] 1 SLR 405, His Lordship Justice Asoka De Zoysa Gunawardana, held in a criminal case, the Prosecution should establish the identity of the Accused beyond a reasonable doubt. The offence may have patently been committed, but it is the duty of the Prosecution to prove beyond reasonable doubt that the offence which has been committed is the direct result of the Accused's action or inaction. Including other ingredients of the offence, this component, the identity of the Accused, must be proved by the Prosecution. If any doubt is occurred with regard to the identity, the benefit of doubt should be given to the Accused. When I consider the probative value of the WhatsApp photograph which is not produced in court, it violates the best evidence rule spirit and prevents the court or defense from testing the accuracy, clarity, and source of the image.

30] On the other hand, if the witness claims she identified the Accused via a WhatsApp photo which was never marked or tendered in the evidence, the defense can successfully argue the identification is a fabrication. It is to be noted PW1 is not a lay witness, she is a trained official witness and should act with due diligence to preserve her concrete evidence.

31] It is my considered view since the narcotics laws carry draconian penalties, include the death penalty or life imprisonment for certain quantities, the Prosecution must establish every single element including clear identity of the Accused and mens rea beyond a reasonable doubt. Shortcuts in identification should therefore be penalized.

32] Thus, an identification of the Accused Appellant, based on an unproduced WhatsApp photograph weakens the Prosecution's case significantly, rendering the identification highly vulnerable and I therefore hold that conviction is unsafe.

33] Further, PW1 stated about the detection, that she checks up the production (baggage) through the airport scanner. She asserted;

“උ. ගරීර පරීක්ෂාවක් සිද්ධ වෙනවා ස්වාමිනි ඊට අමතරව යන්ත්‍රයක් මගින් පාර්සල් පරීක්ෂා කිරීමක් සිද්ධ වෙනවා. පුද්ගලයාව ද යන්ත්‍රයක් මගින් පරීක්ෂා වීමක් සිද්ධ වෙනවා.

- ප්‍ර. පුද්ගලයාට යන්ත්‍රයක් මගින් පරීක්ෂා කරනවා ඊළඟට ඒ අදාළ මැෂින් එක්ක මාර්ගයෙන් පාර්සල් පරීක්ෂා කිරීමක් සිද්ධ වෙනවා ඒ පාර්සල් සියල්ලම පරීක්ෂාවට ලක් වෙනවා ?
- උ. එහෙමයි ස්වාමිනි.
- ප්‍ර. දැන් එවැනි අවස්ථාවක ගුවන්තොටුපලේ තියෙන නවීන උපකරණ අනුව යමක් තිබුණා නම් මේක පරීක්ෂාවට ලක්වීමට පුළුවන් නේද මහත්මිය ?
- උ. පුළුවන්.
- ප්‍ර. හැබැයි ඒ නවීන උපකරණ සියල්ලමත් ඒ අනුව ක්‍රියාත්මක වෙලා නැහැ කියලයි මහත්මිය කියන්නේ ?
- උ. ක්‍රියාත්මක වෙලා නැහැ නොවේ ස්වාමිනි. ඇත්තටම කියනවා නම් ස්වාමිනි අත්අඩංගුවට ගැනීමෙන් පස්සේ සැකකරු ඉදිරිපිට දී මමත් මේ පාර්සලය නැවත මේ යන්ත්‍රය තුළින් යවා බැලුවා.
- ප්‍ර. ඒක දාලා තියෙනවාද සටහනක ?
- උ. සටහන් දාලා නැහැ. ස්වාමිනි සාමාන්‍යයෙන් යම් දෙයක් සහවාගෙන ඒම සඳහා කාබන් කොපියක් දැක්ක ගමන් පෙන්වන්නේ අවියක් තියෙනවා නම් එහෙමත් නැත්නම් යම්කිසි බෝතලයක් වගේ දෙයක් තියෙනවා නම් ඒ වගේ දෙයක් පෙන්වනවා හැර ඊට එහා දෙයක් පෙන්වීමක් කරන්නේ නැහැ ස්වාමිනි. මේක වුනත් කාබන් කොපියක් ඒ පාර්සලය ආවරණය කලාට පස්සේ තිබෙන්නේ කොහේ තිබුනත් පෙන්වන්නේ නැහැ ස්වාමිනි.
- ප්‍ර. ඒ කියන්නේ මහත්මිය කියන්නේ ගුවන්තොටුපලේ තියෙන ද්‍රව්‍ය හඳුනා ගැනීමට තියෙන උපකරණ වලටත් මේ කියන දෙවල් අනාවරණය වුනේ නැහැ කියලා කියන්නේ ?” (Vide Pg No 208 of the judges’ brief)

34] This evidence shows that the Accused and his belongings were double checked through the airport scanner, however, no narcotic substances were detected. The witness has said because that the narcotics were wrapped in carbon papers; it cannot be detected by scanners. This is an unproved opinion expressed by PW1. If this position were to be believed, it should be proved by an expert. At least, the Prosecution failed to call a witness who operated the scanner at the material time. This situation also creates a doubt.

35] At the cross examination, PW1 admitted that there were shortcomings of the evidence as follows;

- “ප්‍ර. දැන් මහත්මිය එක්ක ගිය වෙනත් නිලධාරියෙකුට මෙහි රෝද ගාන වරදින් විදිහක් නැහැ නේද ?
- උ. සමහරවිට සටහන් ඇතුළත් කිරීමේදී වෙනසක් වෙන් පුළුවන් ස්වාමීනි.
- ප්‍ර. දැන් මහත්මියට මේ වැටලීම පුරාවට බලපුරාම වැරදීම් රාශියක් වෙලා තියෙනවා නේද ?
- උ. අපි දැඩි මහත්සියෙන් හිටියේ ස්වාමීනි වැටලීම කරලා වැරදීම් වෙන් පුළුවන්.
- ප්‍ර. වැරදීම් සිදුවන එක මනුෂ්‍ය ගතියෙන් නේද ?
- උ. ඔව්.” (Vide Pg No 218 of the Judges’ brief)
- ...
- “ප්‍ර. මහත්මිය පසු ගිය දිනක සාක්ෂි ලබා දෙමින් කියා සිටියා සාමාන්‍ය මනුෂ්‍ය ස්වභාවය අනුව වැටලීම් කරන කොට වැරදි සිදු වෙන් පුළුවන් කියලා ?
- උ. එහෙමයි ස්වාමීනි.
- ප්‍ර. ඒ වැරදීම් සිද්ධ වෙන් පුළුවන් කියන එක මෙම නඩුවටත් අදාළ වෙනවා ?
- උ. එහෙමයි ස්වාමීනි.
- ප්‍ර. ඒ මහත්මිය විඩාව නිසා මහත්මියට සටහන් දාන කොටත් පොඩි පොඩි වැරදීම් අතපසුවීම් සිද්ධ වුනා ?
- උ. එහෙමයි ස්වාමීනි.” (Pg No 241 of the Judges’ brief)

36] Further, she admitted;

- “ප්‍ර. දැන් මහත්මිය අදහස් කරන ඒවා කරන්න බැහැනේ අධිකරණයේ. දැන් මම අදහස් කරන ඒවා කරන්න බැහැනේ මට අධිකරණයේ, විනිශ්චකාර තුමාගේ අවසරය ඕනෙන්. ඒ වගේ මහත්මිය දැන් මේ අදාළ වැටලීම කරලා මහත්මිය සටහන් යොදන කොට එකක් දාලා, බී.වාර්තාව හදන කොට තව එකක් දාන්න බැහැනේ ?
- උ. වැරදීමක් වෙලා තියෙනවා ස්වාමීනි.” (Vide: Pg No 223 of the Judges’ brief)

37] The reliability of the PW1 is diminished by her very own evidence as;

“ප්‍ර. දැන් මහත්මිය පැහැදිලිව කියනවනේ බී වාර්තාව හැඳුවේ සටහන් දාන්නේ නැතුව කියලා ?

උ. එහෙමයි ස්වාමිනි.

ප්‍ර. එතකොට ඒ සටහන් බලාගෙන මහත්මිය වාර්තාවක් පිළියෙල කරලා නැහැ ? (Pg No 235 of the Judges’ Brief)

....

ප්‍ර. එතකොට මහත්මිය අධිකරණයට ඉදිරිපත් කරපු බී වාර්තාව සත්‍යය වාර්තාවක් නෙවෙයි ඉදිරිපත් කරලා තියෙන්නේ ?

උ. ස්වාමිනි පොඩි වැරදීමක් සිදු වෙලා තිබෙනවා.” (Pg No 237 of the Judges’ brief)

38] PW1 said that notes were prepared after preparing the “B” report. She says;

“ප්‍ර. එහෙම රඳවා ගන්නත් බැරුව කොහොමහරි මහත්මිය සටහන් දැමීමා ඇවිල්ලා ?

උ. ස්වාමිනි සැකකරු ඉදිරිපත් කරලා, බී වාර්තා සකස් කරලා සියල්ල අවසන් කරලා සටහන් ඇතුලත් කලා.” (Pg No 220 of the Judges’ brief)

39] There was a major contradiction between the evidence and IB notes. It was elicited as;

“ප්‍ර. දැන් මහත්මිය කිව්වානේ මේ අදාළ පාර්සල් එකක් සිදුරු කරලා බලලා අරගෙන ගියා කියලා මේ මන්ද්‍රව්‍ය ඒකකයට ?

උ. පොලිස් මන්ද්‍රව්‍ය කාර්යාංශයට අරගෙන ගියා.

ප්‍ර. දැන් මහත්මිය මේ දෙවන පිටුවේ තියෙන්නේ එක් එක් පාර්සලය සිදුරු කර බැලුවා කියලා නේද, තියෙනවා නේද එහෙම ?

උ. තියෙනවා.” (Pg No 222 of the Judges’ brief)

40] It is further revealed that the Accused’s statement was recorded after preparing the “B” report and it proved;

“ප්‍ර. ප්‍රකාශ සටහන් කළේ ?

උ. ස්වාමිනි මා ප්‍රකාශ සටහන් කළේ 2018.05.25 වන දින පැය 13 ට ස්වාමිනි.

ප්‍ර. ඒක කියන්නේ දවස් 03 කට පස්සේ ?

උ. එහෙමයි ස්වාමිනි.” (Pg No 246 o of the Judges’ brief)

41] PW1 said that she twice scanned the baggage of the Accused. However, PW3 said he did not see the baggage was scanned again;

“ප්‍ර. උප පොලිස් පරීක්ෂක මධුශංක මහත්මයාට මම ඉතාමත් ඕනෑකමින් කියනවා ඔබගේ සටහන් වල තියෙනවාද ගුවන්තොටපල ආරක්ෂක අංශයේ ඔය සැක කටයුතු යුගින් ඊටුහිමි කියන පුද්ගලයාගේ සන්නකයේ තිබුණු භාණ්ඩ පරීක්ෂා කලා කියලා සටහනක්වත් තියෙනවාද ?

උ. ආරක්ෂක නිලධාරීන්ගේ කටුන්ටරය හරහා එයා යනවා දැක්කා කියලා තියෙනවා.

ප්‍ර. ඒකේ ආරක්ෂිත ස්ටෝර් එකක්වත් අලවලා තිබ්බයි කියලා ඔබ නිරීක්ෂනය කලෙන් නැහැ. ඒවා බැග් එකේ තිබ්බයි කියලා සටහනකුත් නැහැ.

උ. ඒ කටුන්ටරය හරහා යනවා නම් වෙක් කරලා තමයි ස්වාමිණි යවන්නේ.

ප්‍ර. දැන් ඔබගේ මතකය සහ සටහන් සම්පූර්ණයෙන් පාවිච්චි කරලා කියන්න ඔබ බලන්න ආරක්ෂක අංශය විසින් ඔය අත් අඩංගුවට ගත්තයි කියන භාණ්ඩ පරීක්ෂා කරලා ස්කෑන් කලාට අමතරව නැවත වරක් ඔබ කණ්ඩායම විසින් හෝ කාන්තා ප්‍රධාන පොලිස් පරීක්ෂක නිලධාරී මහත්මිය විසින් ස්කෑන් කරනවා දැක්කාද ?

උ. මැෂින් එකට දැම්මාම ස්කෑන් වෙනවා ස්වාමිනි. එතකොට ඒක බලාගෙන ඉඳලා ස්වාමිනි කස්ටම් එකේ ඇතුලෙන්.

ප්‍ර. මම අහන්නේ නිලධාරී නැවත වරක් ස්කෑන් කරනවා දැක්කාද කියලා ?

උ. මම දැක්කේ නැහැ ස්වාමිණි”. (Pg No 306 of the Judges’ brief)

...

- ප්‍ර. එහෙම කියලා තියෙනවා නම් ඒක වැරදි වෙන්න ඕනෑ නේද . තමුන් දැක්කේ නැහැනේ. තමුන් නිලුකත් එක්කනේ සිටියේ ? කවුරු හරි කියලා තියෙනවා නම් තමුන් දැක්කේ නැහැනේ ?
- උ. මම දැක්කේ නැහැ.
- ප්‍ර. එතකොට තමුන් ඉන්න වෙලාවෙන් පිට වෙලාවක වෙන්න ඇති නේද ?
- උ. උත්තරයක් නැත. (Pg No 307 of the Judges' brief)

42] It is further seen that there was a pair of socks which were sent to the Government Analyst which was not taken as production by PW10;

- “ප්‍ර. මොනවද මහත්මයාට නිලුකා විසින් භාර දුන් භාණ්ඩ ?
- උ. දේපළ කුවිතාන්සි අංක 217/2018 ට ඇතුලත් හෙරොයින් කිලෝ 2 ග්‍රෑම් 39 මිලිග්‍රෑම් 340ක් අඩංගු බවට සඳහන් Y-01 සිට Y-12 දක්වා සලකුණු කරන ලද පාර්සල් 12 ක් අඩංගු බවට සඳහන්, ලාකඩ මත මුද්‍රා 07 ක් තබන ලද පාර්සලයක් භාර දුන්නා. ඒ වගේම දේපළ කුවිතාන්සි අංක 218/2018ට ඇතුලත් කළ පැහැති ගමන් බෑගයක්, කළු පැහැති කලිසම් එකක්, කාන්තා කළු පාට ලෙගින් දෙකක්, කාන්තා දම්පාට ලෙගින් එකක්, සුදු වර්ණ නිල් පාට අත්දිග කමිස එකක්, සුදු පාට තුවා එකක්, සපත්තු යුගලයක් අඩංගු බව සඳහන් මුද්‍රා 07 ක් තබන ලද පාර්සලයක් මා විසින් භාර ගැනීම කලා.” (Pg No 319 of Judges' Brief)

43] However, Government Analyst said;

- “ප්‍ර. පැ.17 දරණ සුදු පැහැති කවරය තුළ පැවතියේ කුමක්ද ?
- උ. මාගේ වාර්තාවේ මා සටහන් කරගෙන තිබෙනවා ට්‍රැවලින් බෑග් එකක්, ට්‍රැවලින් බෑගය තුළ ලෙගින් වර්ගයේ කලිසම් තුනක්, තුවායක්, දිග කලිසමක්, කමිසයක්, සපත්තු දෙකක්, මේස් කුට්ටමක් සහ අනන්‍යතා පත්‍රයක් ඇතුලත් වූවා ස්ථාවරී. (Pg No 387 of Judges' Brief)

....

- ප්‍ර. මහත්මිය මං අහන ප්‍රශ්න මහත්මියගේ සටහන නෙමෙයි ? මං අහන්නේ පී.ආර්.218/18 තියෙනවද සොක්ස් නැත්නම් මේස් දෙකක් කියලා ?
- උ. එම දේපළ කුච්ඡාන්තියේ එය සඳහන් වෙලා නැහැ ස්ථාවරයි.” (Pg No 412 of the Judges’ brief)

44] The evidence of the Government Analyst says that the gross weight of the 12 parcels were 2.021.9 Kg when received;

- “ප්‍ර. ඒ අනුව එම පාර්සල් දොලහේ මුළු බර ලෙස සඳහන් කරන්නේ කුමක්ද ?
- උ. එම පාර්සල් දොලහේම පැවති දුඹුරු පැහැති කුඩෙහි බර 2021.9 යි ග්‍රෑම් ලෙස සඳහන් වෙනවා ස්ථාවරයි. (Pg No 371 of Judges’ brief)

45] The evidence shows that when detected the gross weight of the 12 parcels were 2.039.34 Kg and there was less than 17.44 grams when those were analysed by the Government Analyst. It is seen that no fair explanation is tendered by the Prosecution witnesses for this disparity.

46] When I consider the evidence of Prosecution in total, the absence of contemporaneous records, issue of identity relating to WhatsApp message, disparity of weights when detected and time of analyzing and contradictions between the principal police witnesses created serious doubts as to the integrity of the chain of custody and whether the heroin produced in court was connected to the Accused. The Learned ASG said that the inexperience of PW1, principal witness, caused damage to the case which may be the truth, but the court must act on substantive evidence without assumptions. I hold the learned trial judge has misdirected in applying standard principles applicable to narcotics cases.

47] In the above circumstances, I tend to accept the defence contention that the Prosecution had failed to prove possession, control and the necessary connection between the Accused and mens rea for the seized narcotics beyond reasonable doubt, thus the Appellant is entitled for acquittal and discharge of all three charges.

48] I do not think re trial would suffice to meet the justice as there is no WhatsApp message to produce to prove the identity of the Accused and the Appellant for a good reason or for a bad reason is in custody since 22/05/2018, over 8 years. Thus, re trial would not meet out the justice.

49] Article 13 (5) of our Constitution provides as follows;

“13(5) Every person shall be presumed innocent until he is proved guilty.”

50] The Accused whether he is national or a foreigner is presumed to be innocent until he is proved guilty, this is a basic right enshrined in our Constitution. In a criminal case, it is the duty of the Prosecution to prove the case beyond reasonable doubt. Accused is only expected to create a reasonable doubt in the case for the Prosecution and that is also on the standard of balance of probabilities.

51] I hold that the Prosecution had failed its duty to prove this case beyond reasonable doubt, I set aside the conviction and life imprisonment was imposed by the Learned High Court Judge of Negombo dated 09/06/2025 on the Appellant.

52] Therefore, he is acquitted and discharged from this case.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL