

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

In the matter of an Appeal under and 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 and Section 11 of the Special Provisions Act No 19 of 1990.

CA Case No: CA-HCC 0044/23

HC of Colombo Case NO: HC-7405-14

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Justin Michael Santhiyagu

Accused

And Now in Between

Justin Michael Santhiyagu

Accused -Appellant

Vs

The Attorney General
Attorney General's Department
Colombo 12.

Complainant- Respondent

Before: P. Kumararatnam, J
B. Sasi Mahendran, J.

Counsel : Neranjan Jayasinghe for the Accused- Appellant
Janaka Bandara, DSG, for the Respondent

Written

Submissions: 09.08.2023 and 09.03.2026 (by the Accused-Appellant)

On 02.11.2023 (by the Respondent)

Argued On: 10.02.2026

Judgment On: 13.05.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as 'the Appellant') was indicted before the High Court of Colombo for Possession and Trafficking 4.29 g of Heroin under Section 54 (a) (d) and Section 54 (a) (b) of the Poisons, Opium and Dangerous Drugs Ordinance, No. 13 of 1984, as amended.

At the trial, the prosecution presented evidence through seven witnesses and marking productions P1-P5 and thereafter closed its case. The Appellant, in his defence, made a dock statement.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 31.10.2022, found the Appellant guilty of Possession and Trafficking 4.29 g of Heroin and imposed life imprisonment and a fine of Rs. 25 000/= for each count.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant preferred an appeal before this Court, articulating the following grounds in support of his challenge.

1. The evidence of the prosecution witnesses fails the test of credibility and the test of probability.
2. The dock statement of the Accused-Appellant had been rejected on reasonable grounds.

The facts and circumstances of this case are as follows,

According to the testimony of PW01, IP Tharanga Buddika, on 29.06.2013 at around 8:20 a.m., he received information from a private informant that an individual named Justin, residing in Alwis Town on Kanatta Road, was involved in the heroin trade along with Ranjith. The informant further revealed that Justin would be arriving near the McDonald's at Mahabage on a red motorbike bearing the number SG VO3502 to deliver heroin to another person.

Subsequently, seven officers from the Police Narcotics Bureau (PNB) departed in a cab dressed in civilian attire. The witness has stated that he was asked to come near the Singer Mega Showroom.

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ප්‍ර : පිටත් වෙන අවස්ථාවේදී මහත්මයාට ඔය තොරතුරු ලබාදුන් තොරතුරුකරු මුණ ගැසිය යුතු ස්ථානය මොකක්ද කියා මහත්මයා තීරණය කරල තිබුණාද ?

උ : එහෙමයි. බංගලාවත්ත පාර ලග තිබෙන සිංගර් මෙගා එක ලගට එන්න කීවා.

It should be noted, however, that when the prosecution inquired about how long it took him to arrive there, he was unable to provide a definite answer.

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ප්‍ර : ආසන්න වශයෙන් කොපමණ දුරක් ගමන් කර තිබුණාද ඒ අවස්ථාව වන විට?

උ : දැන්නම් මතක නැහැ. කොහොම නමුත් කිලෝමීටර 12ක් 15ක් පමණ දුරක් ඇති.

Upon reaching the vicinity of Singer Homes, the witness, accompanied by PW 2 and PW 3, alighted from the vehicle and walked a short distance to meet the informant. The informant then conveyed that the Appellant was heading to McDonald's at Mahabage. Following this, the witnesses, together with the informant, departed from the location.

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ප්‍ර : . ඒ අවස්ථාවේදී තොරතුරු කරුගෙන් මොනවා හරි දැනගන්න ලැබුණාද?

උ . එහෙමයි.

ප්‍ර: මොනවාද කීවේ?

උ : සර් ජස්ටින් කුඩු අරන් එන්නේ බයික් එකෙන්. අපි මැක්ඩොනල් එක ලගට යං කියලා, ඒ සමගම කීවා එහු කුඩු දෙන්න යනවා අපි ඉක්මනට යං කියා.

ප්‍ර : ඒ කොහේ තිබුණ මැක්ඩොනල් ආයතනය ලගටද යමු කියා කීවේ?

උ . කිලෝමීටර් 2 ක් පමණ ඉදිරියෙන් තිබුණා.

After proceeding to McDonald's at Mahabage, the vehicle was parked in the car park at 10:05 a.m. The party remained there for approximately 30 to 35 minutes, during which the informant received a message. The informant then informed PW01 that Justin, the appellant, was on his way. Subsequently, PW01, PW02, PW03, and the informant moved towards the entrance gate of the McDonald's premises. After waiting there for about 15 to 20 minutes, the appellant arrived on a red motorbike, which he parked in the car park, passing by the witnesses. At that point, PW01 and PW03 approached the motorbike and identified themselves to the appellant as officers of the Narcotics Bureau. The evidence indicates that the appellant attempted to leave, but PW01 and PW03 restrained the motorbike, causing it to topple. The appellant was then taken into custody and subjected to an external search, which yielded no findings.

The appellant was escorted into the car park where the cab was parked, along with his motorbike. A search was conducted after his clothing was removed, during which a pink parcel containing heroin was found concealed between his thigh and genital area. Upon identifying the substance as heroin, the appellant was arrested at 11:30 a.m. At that time, he revealed the name "Ranjith," alleged to be involved in drug trafficking. The officers proceeded to Wattala in search of Ranjith but were unable to locate him. They then returned to PNB at 1:30 p.m., where the substance was weighed in the presence of the

appellant, recorded as 50 grams, sealed under production reference PR 159/13, and handed over to Reserve Officer, PW 4, IP Rajakaruna.

During cross-examination, the defense questioned the witness as to why the location of the raid had not been included in the leaving notes. They also inquired about the times of departure and arrival at McDonald's, to which the witness responded that they left at 8:55 a.m. and arrived at 10:05 a.m. The witness stated that he was present at the premises entrance as well as later at the entrance of the McDonald's building.

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ප්‍ර : ඔබතුමා කියන්නේ මැක් ඩොනල් එකට ඇතුල් වන දොරටුවද, පාරේ දොරටුවේද?

උ : මීගමු පාරේ දොරටුව ලග මුලින් සිටියා. පසුව දොරටුව අසලත් රැඳී සිටියා.

ප්‍ර : දැන් මහත්තයා ස්ථාන දෙකක ගැන කියනවා. කකු තමයි මීගමු පාරේ මැක් ඩොනල් එකට ඇතුල් වන තැන රැඳී සිටියා?

උ : එසේය.

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ප්‍ර : ඕකේ සඳහන් කර තිබෙනවාද රථගාලේ වාහනය නවත්තලා. මැක්ඩොනල් එකට ඇතුල් වන දොරටුව ලග සිටියා සඳහන් කරල නැහැ නේද?

උ : ඉදිරි දොරටුව කියා සඳහන් කර තිබෙනවා.

ප්‍ර : ඒ කියනනේ මහත්මයා, මැක්ඩොනල් එක ලග ඉදිරි පස දොරටුවද?

උ : මා පෙරත් කීව්වා මැක්ඩොනල් ආයතනයට ඉදිරිපිට පාරෙන් ඇතුල් වන දොරටුව ලගත් රැඳී සිටියා. නැවත මැක්ඩොනල් එසෝ දොරටුව ලගත් රැඳී සිටියා.

The defense suggested that if the bicycle had fallen, there should have been visible damage to both the appellant and the bicycle. They further proposed that the bicycle was recovered near the residence of the appellant's brother-in-law. Additionally, the defense argued that since the appellant did not disclose information regarding Ranjith, he was arrested. The witness denied these suggestions. Also, although the defense has suggested that the defendant was arrested because he did not provide information regarding Ranjith, this witness has also flatly rejected that suggestion.

According to the testimony of PW2, P.S Sanath Kumara, corroborating the evidence of PW1, stated that they departed from PNB at 8:45 a.m. after leaving notes. They then proceeded to the Bangalawatta junction, where they stopped the vehicle near Singar Mega. Following PW1's instructions, the witness and PW3 alighted and met the informant at 9:45 a.m. Acting on the informant's guidance, they proceeded to McDonald's. Upon arrival, they parked their cab in the front car park located near the main entrance. PW1 then informed them that the informant had received a message and instructed them to move towards the front door of McDonald's. Accordingly, PW1, this witness, and PW3 went to the entrance in front of the McDonald's building.

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ප්‍ර : ඉදිරියට යමු කියලා කිව්වම මොකද්ද ඊළඟට ගත්ත ක්‍රියා මාර්ගය?

උ : ගරු ස්වාමීනි උ.පො.ප. හඳුන් නෙත්තියේ මහතාත්, මමත්, මාතර ආරච්චිත්, තොරතුරු කරුන් මෙම මැක්ඩොනල් ආයතනයේ ඉදිරිපිට දොර අසලට ආසන්නයට ගියා. එතන මහජනතාව ගොඩක් ගැවසෙන බඩු ගෙනයාමට යන එන මිනිස්සු ගොඩක් ගැවසෙන ස්ථානයක් ගරු ස්වාමීනි. එම නිසා මිනිස්සුන් වැඩියෙන් ඉන්නවා ගරු ස්වාමීනි. ඒ නිසා සැකයක් ඇති වෙන්නේ නැහැ සාමාන්‍ය පුද්ගලයෝ බඩු ගන්න ආපු පුද්ගලයෝ විදියට අපිට ඉන්න පුළුවන් වුණා.

From the entrance, a motorbike arrived and was parked in the car park near the door. The informant then pointed out that this was the vehicle in which the witnesses had traveled and had left the scene. The vehicle was stopped, and when PW1 and PW3 approached and identified themselves, the appellant became frightened and attempted to escape, causing the bicycle to fall. After apprehending the appellant, PW1 conducted an external search. Nothing was recovered during this search, although the appellant appeared visibly frightened. The witness and PW1 then escorted the appellant to their cab, after handing over the bicycle to PW3. According to the witness, PW1 searched the appellant by removing his clothing and discovered a parcel concealed between his underwear and male organ, which was identified as heroin. They returned to PNB at 1:30 p.m., where the parcel was weighed in the presence of the appellant. The weight was recorded as 50 grams. The production was then sealed under reference number 159/13 and handed over to Officer Rajakaruna, who was on reserve duty.

PW4, IP, Nilantha Perera Rajakaruna, testified that on 29.06.2013, he received a production under PR No. 159/13 from PW1.

Upon the conclusion of the prosecution's evidence, the appellant, in his dock statement, stated that on 28.06.2013, while he was at home, PW1 arrived and questioned him about Ranjith. After he replied that he was at home, he alleged that they assaulted him. He further claimed that after showing them two houses belonging to Ranjith, they took him to Alwis Town and later asserted that they had seen him at McDonald's, Mahabage. The appellant also stated that he did not possess a driving licence, did not know how to drive, and did not own a vehicle. He maintained that the bicycle in question belonged to his sister and was found at his house.

The principal contention advanced by the defence was that the prosecution witnesses had been deliberately positioned in order to conduct the raid. The Counsel for the appellant drew our attention to a discrepancy regarding the location at McDonald, Mahabage, where the parties were said to have been placed. PW 1 stated that they were situated at the entrance to the premises, whereas Prosecution Witness 2 stated that they were positioned at the entrance to the McDonald building itself. Learned Counsel submits that this inconsistency amounts to a material discrepancy.

In considering the learned counsel's submission regarding the discrepancy, I am guided by the following judgments.

State of Uttar Pradesh v. M.K. Anthony, reported in Supreme Court Journal 1984 (2) page 498,

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of

evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and a refined lawyer.”

Samaraweera V. The Attorney General 1990 (1) SLR, 256 at page 260, P.R.D. Perera, J, held that

“Where however the maxim set out above is applicable it must be borne in mind that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood. Nor does it apply to cases of testimony on the same point between different witnesses. (Vide The Queen v. Julis (1) C. C. A.)”

I am mindful that the learned High Court Judge who presided over the trial carefully considered all the discrepancies highlighted in the course of proceedings. The Learned Judge had the distinct advantage of observing firsthand the deportment and demeanor of the witnesses, thereby being in a position to assess their credibility. The Learned High Court Judge found both witnesses to be truthful and reliable and accordingly accepted their evidence.

In evaluating the submissions made before me, I have also taken into account the judicial literature on the treatment of discrepancies in witness testimony. It is well established that minor inconsistencies, which do not affect the core of the prosecution’s case, cannot be regarded as fatal to the credibility of the witnesses. The discrepancies brought to the notice of this Court by learned counsel, though duly considered, are not of such gravity as to undermine the substance of the evidence. Therefore, I hold that the discrepancies relied upon by counsel are not material, do not go to the root of the case, and cannot displace the findings of fact reached by the learned High Court Judge, who had the benefit of observing the witnesses directly.

The appellant, in his dock statement, asserted that he had been arrested by the police at his residence on the previous day, rather than on the day in question. The learned Counsel has consequently raised a plea of *alibi*. It is my understanding that, notwithstanding his arrest on the previous day, the appellant remained in custody on the day in question. The issue before us, therefore, is whether this amounts to a plea of *alibi*. In my view, the appellant's position is intended to cast doubt upon the prosecution's account concerning both the timing of his arrest and the recovery of the production. Accordingly, I am of the opinion that the plea of *alibi* does not arise in this matter, but either he should prove he was arrested on the previous day or create a doubt that he was not arrested on the day in question.

Section 103 of the Evidence Ordinance reads as follows,

“The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

PW1 and PW2 have categorically stated that the appellant was arrested on the date in question at McDonald's Mahbaga together with the motorbike. In order to discredit this evidence, the appellant would be required to create doubt that he was elsewhere on that day, thereby invoking the defence of *alibi*. However, in the instant case, his position was that he had been arrested on the previous day and remained in police custody thereafter. In effect, he himself admitted that on the day in question, he was in custody.

The issue, therefore, is whether the appellant has adduced any evidence sufficient to displace the prosecution's version that he was arrested on the date in question. I am mindful that the prosecution's account is that the appellant was apprehended together with the motorbike. On a balance of probabilities, I find this version to be more credible and consistent than the appellant's claim of arrest on the previous day.

If the appellant had been arrested at his house, there would have been no necessity for the officers to take custody of the motorbike. On the other hand, the prosecution's version is that on the day in question, the appellant arrived at McDonald's on the motorbike while in possession of heroin. It should be noted that during cross-examination, the defense raised the issue concerning the damage to the motorbike.

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ප්‍ර : දෙන්නා දෙපැත්තෙන් පැත්තද මැදින් පැත්තද?

උ : දෙන්නා දෙපැත්තෙන් තමයි ඇල්ලුවේ

ප්‍ර : ඇල්ලුවහම බයිසිකලයන් එක්ක ඒ මනුස්සයා බිම ඇදගෙන වැටුනා ?

උ : එසේය ගරු ස්වාමීනි.

ප්‍ර : හැබැයි ඔය බයිසිකලයේ පැති කන්නාඩියකටවත් බයිසිකලයේ කිසිම තැනකට අලාභයක් වෙලා නැහැ නේද?

උ : ධාවනය වෙමින් තිබුන එකක් නෙවෙයි. එය ස්ටාර්ට් කරලා තිබුනේ. යන්ත හදනකොට තමයි අපි නතර කරන්න හැදුවේ.

The Court is therefore tasked with assessing which account is more probable. Importantly, there is no dispute regarding the custody of the motorbike itself; the only issue raised by the appellant concerns the location and timing of his arrest.

In the case of ***Pantis vs The Attorney General*** 1998 (2) SLR, 148 at page 151, Wijeyaratne, J, held that

*“The burden of proof is always on the prosecution to prove all ingredients of the charge beyond reasonable doubt, and there is no burden in our law for the accused to give any explanation (unless in certain cases where specific provision is made by law). In my view it is sufficient if the accused gives an explanation which satisfies the court or at least is sufficient **to create a reasonable doubt** as to his guilt.”*

According to the above judicial literature, the prosecution bears the burden of proving each ingredient of the offence beyond reasonable doubt. When weighed against the consistent and corroborated evidence of the prosecution witnesses, the appellant’s version does not create any reasonable doubt. Thus, the prosecution’s narrative remains intact and credible, satisfying the requirement that the ingredients of the offence be proven beyond reasonable doubt.

In view of all the foregoing reasons, I find no grounds to interfere with the judgment of the Learned High Court Judge dated 31.10.2022. Accordingly, the conviction and sentence are affirmed.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

P. Kumararatnam, J

I AGREE

JUDGE OF THE COURT OF APPEAL