

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

In the matter of an Appeal in terms of Section 331 (3) of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 139 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

**Complainant**

**Vs**

Court of Appeal Case No:

**CA/HCC/0051/25**

High Court of Anuradhapura

Case No: **HC/03/2016**

Kasturi Pitipanage Hashan Lakmal Karunaratne

**Accused**

**AND NOW BETWEEN**

Kasturi Pitipanage Hashan Lakmal Karunaratne.

**Accused-Appellant**

**Vs**

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

**Complainant-Respondent**

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

Counsel : Neranjan Jayasinghe for the Accused-Appellant.  
Akila Dalpatadu SC and Tharaka Kodagoda SC for the Respondent.

Argued on : 03.03.2026

Decided on : 29.05.2026

**Pradeep Hettiarachchi, J**

### **Judgment**

1. This appeal arises from the judgment dated 30-01-2024, delivered by the Learned High Court Judge of Anuradhapura. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Anuradhapura in Case No. HC/03/2016 on the following counts:
  - a. That on or about 25.07.2013 in Anuradhapura, the Appellant by trafficking 5.40 g of Heroin committed an offence punishable under Section 54 A(b) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended).
  - b. At the same time, during the same transaction for possession of 5.40 g of Heroin without the authority or a license as permitted by the director in terms of Chapter 5 of the Poisons, Opium and Dangerous Drugs Ordinance, an offence punishable under Section 54A (d) of the said Ordinance.
2. At the trial, three witnesses testified for the prosecution. Since both parties admitted the Government Analyst's Report under Section 420 of the Code of Criminal Procedure Act,

it was marked in evidence through the High Court Interpreter. The Appellant subsequently made a dock statement.

3. At the conclusion of the trial, the Learned Trial Judge acquitted the Appellant of the first count but found him guilty of the second count. The Appellant was accordingly convicted and sentenced to life imprisonment. Aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal on the following grounds;
  - a. The Learned Trial Judge has not considered the material contradictions between the testimonies of PW1 and PW3 in the correct perspective;
  - b. Chain of custody of productions was not proved; and,
  - c. The Appellant's dock statement was rejected on unreasonable grounds.
4. PW1, Daya Deegahawathura, was the officer who led the police team that arrested the Appellant. According to his evidence, the raiding party comprised seven officers. While they were proceeding to investigate and arrest a suspect, PW1 received information from an informant at about 1.30 p.m. that a youth was waiting near a bridge along Senvirathne Mawatha, Saliyapura.
5. Acting on this information, the police party proceeded to the location and arrived at about 13.50 hours, where they observed a youth seated on the bridge. According to PW1, upon noticing the police, the said youth attempted to move along a gravel road adjacent to the bridge. He was then stopped by PW1, questioned, and searched. During the search, PW1 recovered a pink-coloured cellophane bag from the left side pocket of the Appellant's trousers.
6. They found five packets inside the cellophane bag, which, upon examination, were identified as heroin. Thereafter, the Appellant was arrested. Subsequently, the police party proceeded to a shop named "Smart" at Anuradhapura town, where they borrowed an electronic scale, and thereafter returned to the Police Station. At the Police Station,

the substance was weighed and sealed. The Appellant, together with the recovered heroin, was subsequently handed over to PS 22944 Wijerathne of the Police Reserve.

7. According to PW1, after the arrest of the Appellant, several other suspects were also apprehended, and illegal drugs were recovered from them as well. The drugs recovered from the Appellant were kept in his custody until their return to the Police Station, whereas the substances recovered from the other suspects were handed over to IP Chandrasiri.
8. The next witness to testify for the prosecution was PS 37292 Douglas Appuhamy (PW3), who was also a member of the police party that arrested the Appellant. Without further elaborating on his testimony, I shall proceed to consider whether the evidence of PW3 materially contradicts that of PW1, thereby undermining the credibility of the prosecution's case. According to PW3's evidence in chief, when the vehicle in which they were travelling approached the bridge where the Appellant was waiting, PW1 alighted from the vehicle, approached the Appellant, and conducted a search. During the search, PW1 recovered a parcel from the front left pocket of the Appellant's trousers. Upon suspecting it to be heroin, the parcel was taken into the custody of PW1.
9. PW3 further stated that, thereafter, the officers conducted three additional raids and arrested other suspects. Subsequently, they proceeded to the Smart Shop located on Hospital Street, where the substance was weighed. Thereafter, they returned to the Headquarters Office, Anuradhapura, together with the Appellant and the other suspects.
10. The aforementioned portion of PW3's testimony, when compared with that of PW1, reveals glaring inconsistencies that go to the root of the prosecution's case. In particular, PW3's evidence regarding the weighing of the contraband directly contradicts that of PW1. According to PW1, he borrowed an electronic scale from Smart Shop, returned to the Police Station, and thereafter weighed and sealed the substance. In contrast, PW3 categorically stated that the substance was weighed at Smart Shop itself.

11. This contradiction concerning a material aspect of the detection, namely the weighing of the contraband, substantially undermines the credibility of the prosecution's evidence. According to the evidence of PW1 and PW3, three further raids were conducted, during which three additional suspects were arrested in possession of illegal drugs. PW1 testified that the drugs allegedly recovered from the Appellant were kept in his custody, while the drugs recovered from the other suspects were in the custody of I.P. Chandrasiri until they returned to the Police Station. However, this version is in direct contradiction to the evidence of PW3, who stated that all contraband recovered during the raids was kept in the custody of PW1.
  
12. In such circumstances, a serious doubt arises as to how PW1 was able to distinguish between the drugs allegedly recovered from each suspect at the subsequent stage when they were weighed and sealed. The prosecution has failed to provide any plausible explanation in this regard. This inconsistency goes to the very root of the prosecution's case, as it raises serious doubt about the probability and integrity of the possession of the seized items.
  
13. In cases of this nature, it is incumbent upon the prosecution to establish, through clear and cogent evidence, an unbroken chain of custody from the point of seizure to the Government Analyst's Department. The prosecution must demonstrate that the articles allegedly recovered from each accused were properly identified, separately handled, and securely preserved so as to eliminate any possibility of substitution, contamination, or misidentification.
  
14. In the present case, no satisfactory explanation has been forthcoming as to how PW1 was able to differentiate between the drugs allegedly recovered from each suspect at the stage when they were weighed, packed, and sealed, particularly in light of the conflicting versions regarding custody. The absence of clear evidence regarding labelling, marking, or separate sealing of the exhibits further aggravates this deficiency.
  
15. This lacuna is not a mere irregularity but a substantive defect which casts serious doubt on whether the substances produced in Court are in fact the same as those allegedly

recovered from the Appellant. Where the chain of custody is broken or rendered doubtful, the benefit of the doubt must necessarily be held in favor of the Accused.

16. The importance of proving the inward journey of the chain of productions was considered in *Witharana Doli Nona vs. Republic of Sri Lanka (CA 19/19)*, Sisira De Abrew J., observed that:

*“It is a recognized principle that in drug-related cases, the prosecution must prove the chain relating to the inward journey. The purpose of this principle is to establish that the productions have not been tampered with. The prosecution must prove that the productions taken from the accused appellant were examined by the government analyst. To prove this, the prosecution must prove all the links of the chain from the time it was taken from the accused-appellant to the Government Analyst's department.”*

17. J.A.N de Silva J., (as he then was) in *Perera vs. AG [1998] 1 SLR 378* opined that;

*“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 inward journey because the final analyst report will depend on that. The outward journey does not attract the same importance.”*

18. PW8, Wijerathne, was the officer who accepted the productions from PW1. Although PW1 handed over four envelopes to him, PW8 was uncertain as to the contents of those envelopes or from whom they were recovered.

*“ප්‍ර: නමුත් භාර ගත ලියුම් කවර හතර තුළ තිබෙන්නේ කාගෙන් භාර ගත් හෙරොයින් ද කියලා ඒ පිළිබඳව සටහනක් තියෙනවද?”*

උ: මා මේ නඩු භාණ්ඩ භාර ගැනීම ප්‍ර.පො.ප. දීගහවතුර මහත්මයාගෙන් නමයි භාර ගත්තේ.

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ප්‍ර: නමුත් සදහන් කර නැහැ ඔය භාර ගත් ලියුම් කවර හතර තුළ නිබන්දනා යැයි කියන හෙරොයින් කගේ භාරයෙන්, නැත්නම් අන්අඩංගුවට ගත් ඒවාද කියලා සටහන් කරලා නැහැ?

උ: එහෙම සටහන් කරලා නැහැ.” (vide pages 142-143 of the Appeal Brief)

19. In light of the foregoing, the cumulative effect of the procedural irregularities, omissions, and contradictions in the prosecution’s evidence creates a serious doubt regarding the credibility of the alleged recovery and the circumstances of the Appellant’s arrest. Specifically, the conflicting accounts between PW1 and PW3 regarding where the productions were weighed, coupled with the failure to record this information in any of the Information Books maintained at the Police Station, collectively diminish the reliability of the prosecution’s case. Under these circumstances, it would be unsafe to base a conviction on such compromised evidence; any lingering doubt must necessarily operate in favor of the Appellant.

20. In view of the foregoing analysis, it is evident that the prosecution has failed to establish an unbroken and reliable chain of custody in respect of the alleged contraband. The material contradictions in the evidence of PW1 and PW3 regarding the custody of the seized items, coupled with the absence of any satisfactory explanation as to the manner in which the substances attributed to each suspect were identified, weighed, and sealed, give rise to a reasonable doubt as to the integrity of the exhibits produced before the Court.

21. In these circumstances, the prosecution has failed to establish beyond a reasonable doubt that the contraband allegedly recovered from the Appellant was properly identified and preserved. The resulting uncertainty strikes at the very foundation of the prosecution’s case, rendering the conviction unsafe.

22. It is also significant to emphasize that officers who participate in raids of this nature are expected to maintain contemporaneous notes of all material events that occur during the operation. Unlike lay witnesses, who ordinarily testify from memory, such officers have the advantage of referring to their field notes to refresh their recollection when giving evidence.
23. In these circumstances, contradictions and inconsistencies in their testimony must be viewed with greater scrutiny and seriousness. Where such inconsistencies relate to material aspects of the prosecution's case, they cannot be lightly disregarded.
24. Accordingly, where the evidence of such officers is riddled with material contradictions and lacks coherence, the Court is constrained to reject such evidence. The inevitable consequence of such a finding is that the prosecution fails to discharge its burden of proof, entitling the Accused to an acquittal.
25. It is also necessary to note certain inherent improbabilities in the prosecution's evidence. According to PW1, the police party travelled in an official vehicle bearing the marking "POLICE" on both sides. The information received by PW1 was that a person was waiting near a bridge at Saliyapura in possession of heroin. PW1 further stated that, at the relevant time, the road was clear and devoid of other vehicles or persons.
26. In such circumstances, it is reasonable to infer that the Appellant would have been able to observe the approaching police vehicle from a considerable distance. It is therefore difficult to accept that the Appellant would have remained at the bridge in possession of heroin until PW1 approached him. This aspect of the prosecution's case appears inherently improbable.
27. Further, PW1's evidence that an electronic scale was borrowed from a shop named "Smart Shop" and taken to the Police Station for the purpose of weighing the substance is also open to serious doubt. Having regard to the nature of such a business, it is unlikely that a shop would part with an essential item such as an electronic scale, which is required for its day-to-day operations.

28. The evidence of PW3 further contradicts that of PW1 with regard to the movements of the Appellant at the time of arrest. According to PW1, the Appellant attempted to move along a gravel road near the bridge when he was approached. In contrast, PW3 testified that, upon seeing the police, the Appellant moved approximately three meters in the opposite direction of the main road. Notably, PW3 makes no reference to the existence of any gravel road. This inconsistency casts doubt on the reliability of the prosecution's narrative concerning the circumstances of the arrest.
29. It is also significant that PW1 failed to record the information he claimed to have received in any official police register. When questioned, he stated that he merely shared the information with the other officers while en route. This position is contradicted by the evidence of PW3, who stated that he was not informed of any details relating to the information allegedly received by PW1.
30. The Learned Trial Judge failed to appreciate the material contradictions discernible between the testimonies of PW1 and PW3, particularly in relation to the custody of the productions after the arrest and the place where the weighing of the substance was carried out. Furthermore, the conclusion reached by the Learned High Court Judge that the evidence of PW1 was corroborated by PW3 and PW8 is difficult to sustain, in view of the contradictions and inconsistencies apparent in their respective testimonies.
31. The Learned Trial Judge, in dealing with the discrepancy relating to the gross weight of the substance recorded at the Government Analyst's Department and that recorded by the police, observed that no attention had been drawn by the Appellant to this issue during the trial stage. In my view, this constitutes a misdirection in law. The burden of proving the case beyond a reasonable doubt always rests on the prosecution and does not shift to the Accused.
32. Accordingly, where a discrepancy arises regarding a material aspect such as the gross weight of the substance, it is incumbent upon the prosecution to lead appropriate evidence and, if necessary, call relevant witnesses to clarify the same. The Appellant bears no obligation to draw the Court's attention to such inconsistencies or to seek their

clarification. Therefore, the view expressed by the Learned Trial Judge in this regard is not in accordance with established legal principles.

33. In *Pantis vs. The Attorney General* (1998) 2 Sri L.R.148, it was held that

*“The burden of proof is always on the prosecution to prove its case beyond reasonable doubt and no such duty is cast on the accused and it is sufficient for the accused to give an explanation which satisfies courts or at least is sufficient to create a reasonable doubt as to the guilt.”*

34. The Appellant further contends that the Learned Trial Judge rejected the dock statement on unreasonable grounds. Specifically, the Learned Trial Judge refused to accept the statement by asserting that the defense's position was never suggested during the prosecution's case. This finding is factually incorrect; the defense explicitly suggested that the raid was not genuine, but rather a fabrication/planting of evidence. This is evidenced by the cross-examination of PW1 at page 104 of the Appeal Brief, where the following was put to the witness:

“ප්‍ර: මම නමුත්ට යෝජනා කරනවා නමන්ලා පොලීසියට සැකකරුවන් ගෙනලලා, නමන්ලා ඕන විදියට එක එක්කෙනාට හෙරොයින් ප්‍රමාණ අවශ්‍ය පරිදි බෙදල, වෙන්කරලා දැමීම, සටහන් දැමීමා කියලා?”

උ: එසේකරන්න මට කිසිම අවශ්‍යතාවයක් නැහැ, එහෙම කරන්න අපිට ඒ පුද්ගලයා එක්ක කුමක් හෝ අමනාපයක් තියෙන්න ඕන. එහෙම නැත්නම් මට එක කරන්න අවශ්‍යතාවයක් නැහැ, එම සැකකරු මා අත්අඩංගුවට ගැනීමට පුළුම මා දන්නා හදුනන අයෙකුත් නෙවෙයි. මෙයත් එක්ක මගේ කිසිම අමනාපයකුත් නැහැ

ප්‍ර: මා කලින් අවස්ථාවේදී යෝජනා කල විදියට මෙම නැතැත්තා අත්අඩංගුවට ගත්තේ එම ස්ථානයේදී නෙවෙයි. සුපීන් කියන පුද්ගලයා සම්බන්දයෙන් පරීක්ෂණ පවත්වලා, මෙම සැකකරුගේ ගෙදරට ගිහිල්ලායි නමත් මෙම සැකකරුව අත්අඩංගුවට ගත්තේ කියලා මම යෝජනා කර සිටිනවා?

උ: පිළිගත්තේ නැහැ ප්‍රතික්ෂේප කරනවා.

ප්‍ර: ඒ වගේම සුපීන්ගේ ව්‍යාපාරයට සම්බන්දව මෙම විත්තිකරුගෙන් ප්‍රශ්න කරද්දී විත්තිකරු ඒ සම්බන්දයෙන් තොරතුරු ලබා දෙමින්, වෙලක් ලගට ගිහිල්ලා සගවා තුඩුණු හෙරොයින් ප්‍රමාණයක් තමුන්ට පෙන්වා දුන්න. ඒ ප්‍රමාණය හා ඔය අත්අඩංගුවට ගන්නා කියලා කිව්ව අනෙක් සැකකරුවන් ලග තිබුණු හෙරොයින් ප්‍රමාණ දාලා තමයි තමුන් මෙම සැකකරුට විරුද්ධව නඩුව ගොනු කලේ කියලා මම යෝජනා කර සිටිනවා?

උ: තරයේ ප්‍රතික්ෂේප කරනවා.” (vide pages 104-105 of the Appeal Brief)

35. 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.”*

36. 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.”*

37. In the present case, the dock statement creates a reasonable doubt in the prosecution’s case, particularly given the material inconsistencies apparent in the prosecution's evidence. Consequently, such doubt must necessarily operate in favor of the Appellant and entitle the defense to succeed.
38. Upon a careful consideration of the totality of the evidence, this Court finds that the prosecution's case is fraught with material contradictions, inherent improbabilities, and serious deficiencies in the handling of the alleged contraband, all of which cumulatively render the conviction unsafe.
39. When these deficiencies are considered cumulatively, it is evident that the prosecution has failed to establish its case beyond a reasonable doubt. The doubts arising are not trivial or peripheral, but go to the root of the prosecution's case and undermine its credibility in material respects.
40. For the reasons set out above, I am of the view that the prosecution has failed to establish the charge against the Appellant beyond a reasonable doubt. The conviction entered, and the sentence imposed by the Learned High Court Judge cannot therefore stand. Accordingly, the Appeal is allowed. The conviction and sentence are hereby set aside, and the Appellant is acquitted of the charge.

**Judge of the Court of Appeal**

**P. Kumararatnam, J.**

I agree,

**Judge of the Court of Appea**