

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

In the matter of an Appeal made under
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.

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

COMPLAINANT

CA/HCC/0074/2024

High Court Mannar

Case No.HC/MN/01/2023

Vs.

Balanthar Hanifa Rafaidheen alias Naleen
Periyakaraisal, Pesalai,
Mannar.

AND NOW BETWEEN

Balanthar Hanifa Rafaidheen alias Naleen
Periyakaraisal, Pesalai,
Mannar.

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Ershan Ariaratnam for the Accused-Appellant.

Malik Azeez, SC for the Respondent.

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

Written Submissions: By the Accused-Appellant filed on 21/10/2024.
By the Respondent filed on 07/01/2025.

Argument On : 23/06/2026.

Judgement On : 07/08/2026.

Dr. Sumudu Premachandra J.

1] The accused Appellant was charged with;

- **Count 01:-** That on or about the 18/03/2021 in Periyakaraisal, within the Jurisdiction of this Court, the Accused was in possession of a dangerous drug, that is Diacetylmorphine also known as Heroin as set out in Section 54 A (d) of Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 and as set out in Column II of Part III of the Third

Schedule of the said Ordinance, weighing 1.288 grams being an amount which is in excess of the amount mentioned in the said Column II, thereby acting in contravention of the Provisions of Chapter V of the said Ordinance, without due permission, in a manner not provided for therein and without the license issued by the Director, you have committed an offence against the said Ordinance, and is liable to be punished as provided for in the corresponding entry in Column II of the said Part III in the Third Schedule of the said Ordinance.

- **Count 02:-** That on the same day, at the same place and during the same transaction, by trafficking of a dangerous drug, that is Diacetylmorphine also known as Heroin as set out in Section 54 A (b) of Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 and as set out in Column II of Part III of the Third Schedule of the said Ordinance, weighing 1.288 grams being an amount which is in excess of the amount mentioned in the said Column II, thereby acting in Contravention of the provisions of Chapter V of the said Ordinance, without due permission, in a manner not provided for therein and without the license issued by the Director, you have committed an offence against the said Ordinance, and is liable to be punished as provided for in the corresponding entry to Column II of the said Part III in the Third Schedule of the said Ordinance.

2] After the pretrial conference was held, indictment was read over and the Accused was pleaded not guilty to the above charges. The Prosecution relied primarily on the testimony of P.W. 01, Chief Inspector Somasiri and P.W. 02, Sub Inspector Vevekanantharaja who claimed that police officers acted on information from a private informant, conducted an ambush outside the Accused's residence, arrested him upon his arrival on a motorcycle, recovered heroin concealed in the knot of his sarong, and subsequently weighed and forwarded the substance for Government Analyst examination. To prove charges, the Prosecution marked P1 to P8(b) and "X-1" the Government Analyst's report.

3] The Accused made a Dock statement. The Defense contended that the Accused was innocent and had been falsely implicated through a fabricated police narrative. On evidence the learned trial judge convicted him for both counts sentenced 7 years' rigorous imprisonments and imposed Rs 100,000/- fine, in default 6 months' simple imprisonments, to be run concurrently.

4] Being aggrieved to the said judgement and sentence, the Appellant prefers this Appeal on the following grounds;

- The learned trial judge in the circumstance surrounding this case in taking into account the serious infirmity omissions, and contradictions of the prosecution witness on material matters should have more than out of an abundance of caution looked for independent corroboration of the evidence of the witnesses before finding the Accused-Appellants guilty.
- This principle of law had not been correctly applied by the learned trial judge, the evidence of the witnesses should have without any hesitation been rejected too.
- The failure on the part of the learned trial judge to address his mind to the aforementioned matters of fact and law resulted in himself non-section and misdirection thereby causing irreparable prejudice to the Accused-Appellants.
- The charges have not been proved beyond reasonable doubt.
- The learned trial judge erred in failing to consider the provisions of Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984 and No. 41 of 2022.

5] Since, the grounds are interwoven, I do not consider them separately. The learned counsel for the Appellant pointed out numerous material contradictions between the evidence of P.W. 01 and P.W. 02 concerning the timing of the raid, the location of the police officers, the circumstances of the arrest, the

information received from the informant, and the description of the electronic weighing scale.

6] With regard to time P.W. 01 says it was 6.45 (18.54 hrs) pm. (page 26 of the translated brief) while P.W. 02 says they arrived between 6.15 to 6.45pm. It is seen that the 7 officers participated for the raid. In the judgement, the learned trial judge concluded with regard to the discrepancy of the time *“the observation of this court is, on an occasion where several officers set out to go for a raid and arrive at the specific spot, it is not practical for all the officers to check the time of such arrival and make note of it”*. This court notes this is totally an acceptable conclusion and this cannot be taken as a material contradiction.

7] In relation to the contradiction that digits appearing in which colour, P.W. 01 said it was Bluish Green. The P. W. 02 said it was in Black, but he gives evidence on memory. It is a standard acceptance error of memory cannot be taken as deliberate falsehood.

8] In the case of The **Queen V. V.P.Julis** 65 NLR 505, His Lordship Basnayake CJ discussed the applicability of the maxim '*falsus in uno, falsus in omnibus*'. It was also followed in case of **Samaraweera V. AG** [1990]1 Sri L.R. 256. Court held in 'Julis ' that, in applying the maxim, it must be remembered 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 conflict of testimony on the same point between different witnesses. Thus, said contradiction cannot be taken as material contradiction, which fell into falsehood.

9] With regard to the proximity, the inconsistencies regarding the location of the scene, including P.W. 01's inaccurate description of the surrounding geography, however, on evidence, there is no contradiction, P.W. 02 says that the Accused's house was placed in a residential area close to the sea, P.W. 01 says the house was towards the sea distance away from sea along with 5 houses. Thus, the learned trial judge has correctly analyzed the evidence.

10] The Defense also challenged the integrity of the Prosecution's evidence by arguing that the chain of custody was incomplete. It pointed to the absence of the Accused's signature or thumb impression on the sealed production, the failure to call the police officer responsible for handling the productions, and contradictions between the Police Information Report and the oral testimony regarding the handling of the exhibits. These deficiencies, it argued, prevented the Prosecution from establishing an uninterrupted "inward journey" of the narcotics before laboratory analysis.

11] However, these objections were not taken when the preliminary evidence was led to get the Government analyst report. In our criminal law, the "inward journey" refers to the unbroken chain of custody of a production (such as illicit drugs or seized items) from the place of recovery to the Government Analyst. Proving that seals were kept intact throughout this transit is vital to establish that the evidence was not swapped or contaminated. The only place for verification where the signature and thumb impression were placed by the Accused at the stage of preliminary evidence. If the Accused fails to elicit such contradiction in relation to such contradiction, later, he cannot contradict the position. Once he admits or kept silence, proper sealing of the production is admitted.

12] It is seen that the learned trial judge evaluated the dock statement against the Prosecution witnesses. The Accused came to the vicinity after having called by his wife. The learned trial judge rightly held that this was a mere unsworn statement and it did not create any suspicion on the Prosecution evidence. To prove this factor, the Accused did not call his wife to prove this stance. Hence, compelling evidence of guilt is led by the Prosecution; the fair explanation must be given.

13] In the above circumstances, this court of the view that the conviction is safe, the Prosecution proved the offences beyond reasonable doubt.

14] Thus, the appeal is dismissed with no costs and impugned judgement and the sentence are affirmed.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL