

**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 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.

CA Case No: CA-HCC 87/2022

HC of Colombo Case No: HC 8276/16

The Democratic Socialist Republic of Sri Lanka.

Complainant

Vs

Maithri Waduge Gayan Prabath

Accused

And Now Between

Maithri Waduge Gayan Prabath

Accused -Appellant

Vs

The Attorney General

Attorney General's Department

Colombo 12.

Complainant- Respondent

Before: B. Sasi Mahendran, J.
Amal Ranaraja, J

Counsel : Kapila Waidyaratne, PC, with Asela Muthumudalige and Akkila
Jayasundara for the Accused- Appellant
Anoopa de Silva, DSG, for the Respondent

Written

Submissions: 11.11.2022 (by the Accused-Appellant)

On 02.08.2023 (by the Respondent)

Argued On : 06.02.2026

Judgment On: 31.03.2026

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 10.82 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 31.03.2022, found the Appellant guilty of Possession and Trafficking 10.82 g of Heroin and imposed life imprisonment.

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 their challenge.

1. Learned Trial Judge had misdirected himself with regard to the evaluation of evidence of the PW 01 Rajakaruna and PW 03 PC Jayaweera.

2. Learned Trial Judge had misdirected himself with regard to lapses and the discrepancies in the notes made by the Police officers.
3. Learned Trial Judge had misdirected himself with regard to the sanctity of the production chain, specially with regard to the detection, sealing at the " SEW Gunaekara pawn shop" , chain of the custody of the productions at the CCD and the handing over the same to the Govt Analyst.
4. Learned Trial Judge had misdirected himself with regard to the failure of the prosecution to explain the discrepancies in the pure quantity of the Govt analyst report and the evidence of the PW 12, the Govt Analyst.
5. Learned Trial Judge had misdirected himself with regard to evaluation of the defense evidence and the rejection of the same.

I am mindful that the prosecution must establish that the substance recovered from the accused was transmitted to the Government Analyst without tampering or mixing. This requirement is crucial because the court relies on the Government Analyst's report to determine whether the recovered production falls within the scope of the Dangerous Drugs Ordinance and to verify its pure weight. Furthermore, the weight of production is a decisive factor in determining the punishment to be imposed.

The principal grievance raised by the defence was that there exists a significant discrepancy regarding the recorded weight of the recovered production. It is pertinent to focus on whether the Learned High Court Judge has considered such a discrepancy.

The facts and circumstances of this case are as follows,

PW 01, SI Rajakaruna, OIC of the Anti-Corruption Unit at Colombo crime divisions, stated that on 14.07.2015, a private informant of the witness had come to the CCD and informed him that a person named "Surathal" was trafficking heroin at that time at "Sirisara Uyana, Wanathamulla," main entrance. After instructing PC61301 Udayanga to inspect the officers of the team, the witness departed the location at 19:10 hours along with five other officers. The witness stated that he was the only officer dressed in an official uniform, while the other members of the team were in civilian attire. I note that the witness did not mention that he had left the scene together with the private informant.

The informant described the appellant's clothing as a yellow T-shirt and denim shorts. However, it was noted that this detail had not been mentioned at the earlier stage. The witness has described how he reached the place. When they had reached "Sirisara

Uyana", instantly, PW 01 noticed a person who was standing near the main gate, which was similar to the description of the informant. The witness testified that after alighting from the van, he began to chase the appellant. Following the pursuit, the witness and other officers arrested the appellant. According to the witness, the appellant admitted that his name was Surathal.

At that moment, the witness observed the appellant attempting to place his hand into the left side pocket of his trousers. Immediately, PW01 restrained the appellant's right hand and, upon searching, PW01 discovered a parcel in the appellant's left trouser pocket. During testimony, PW01 further stated that, in his opinion, the appellant was attempting to throw "something" concealed in that pocket. Upon searching the parcel, the witness identified that it contained heroin and arrested the Appellant at 19.30 p.m.. PW01 testified that, immediately following the arrest of the appellant, he made a brief note at 19:40 hours, and he did not prepare a detailed note at Sirisara Uyana because the environment was not conducive to writing at that time. PW 01 had stated that the parcel, which was recovered from the Appellant, was put into an envelope and was kept in the custody of PW 01.

Thereafter, they proceeded to the pawn shop "SEW Gunasekara" for the purpose of weighing and sealing the recovered parcel. After checking the scale and being satisfied with its accuracy, the witness measured the parcel and determined that the production weighed 58.635 grams.

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ප්‍ර : සේවි ගුණසේකර මධ්‍යස්ථානයේදී ඔබ මෙම භාණ්ඩ කිරා බැලීම සඳහා කුමන සහයක් ද ලබා ගත්තේ?

උ : උගස් මධ්‍යස්ථානය වෙත ගොස් එහි රැඳී සිටි කිරුම්කරු හට අප පැමිණි කාරණාව පහදා දී 2015 වර්ෂය සඳහා ලියාපදිංචි විද්‍යුත් තරාදිය ලබා ගත්තා. පසුව එය මනා ක්‍රියාකාරී තත්වයෙන් තිබේදැයි මා පරීක්ෂා කලා. එය මනා ක්‍රියාකාරීත්වයෙන් පැවතියා. පසුව සැකකරු සහ සෙසු නිලධාරීන් ඉදිරිපිටදී හෙරොයින් මුල නිමුන ආකාරයට මා කිරා බැලුවා. එහි ග්‍රෑම් 58 යි මිලිග්‍රෑම් 635 ක් අංකනය වුනා.

He further stated that another officer assisted in weighing and further explained why he had not used his personal scaler. At that location, in the presence of the appellant, the production was weighed and then sealed. They had returned to CCD at 20.50, and after entering it under PR No. 47/15, he had handed over to PW 6, PC 58748 Rupasinghe, who was on reserve duty.

Upon perusal of the document entered by this witness, it is noted that the weight was recorded as 51 grams and 635 milligrams. This discrepancy was not corrected by the prosecution when the witness was giving evidence.

PW03, PC No. 70177 Lakmal Jayaweera, who accompanied the previous witness, corroborated PW01's evidence regarding the recovery of the production. However, he contradicted PW01's testimony concerning the recorded weight. When the parcel was weighed, PW03 recorded the production as 51 g and 635 mg.

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ප්‍ර : මේ බර කිරීමෙන් අනතුරුව කොතරම් ප්‍රමාණයක් ඒ තරාදියේ පාඨාංකය වශයෙන් සඳහන්වෙලා තිබුන ද කියලා ඔබ දුටුවද ?

උ : එහෙමයි. අපි හැමෝටම බලන්න කියලා පෙන්නුවා.

ප්‍ර : ඒ සම්බන්ධයෙන් ඔබගේ සටහන්වල බර ප්‍රමාණය ලියා තිබෙනවද?

උ : එහෙමයි

ප්‍ර : කොපමණ ප්‍රමාණයක්ද?

උ : ග්‍රෑම් 51 යි මිලිග්‍රෑම් 635 ක්.

I note that this discrepancy was not corrected by the prosecution.

PW06, Police Constable No. 58748 Wimal Rupasinghe, testified that on July 14, 2015, at 21:10 hours, PW01 handed over the production under PR 47/15. Upon examining this document, it is recorded that the weight of the production was 51 grams and 635 milligrams.

PW12, Government Analyst Umagiliya, testified that upon receiving the production, its weight was recorded as 51 grams and 737.2 milligrams. He further explained the procedure by which the production was weighed, detailing the method used to ensure accuracy.

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ප්‍ර : බර ලබා ගැනීම සිදු කරන්නේ කුමන ආකාරයකින්ද?

උ : මුලින්ම කුඩු සහිත පැකට් එකේ බර ලබා ගන්නවා. ඉන් පසුව හිස් පැකට් එකේ බර ලබා ගන්නවා. ඒ දෙකේ වෙනසින් දුඹුරු පැහැති කුඩුවල බර ගණනය කරනවා.

ප්‍ර : මහත්මිය පැකට්ටුව සමඟ කුඩු වල බර කොපමණ හැටියටද ඔබට සටහන් කර ගන්න හැකියාව ලැබුනේ?

උ : ග්‍රෑම් 51.7372 ක් ලෙස.

ප්‍ර : මහත්මිය ඔබට මෙම කුඩු ප්‍රමාණයේ බර දල බර වශයෙන් අවසාන වශයෙන් අනාවරණය වූනේ කුමක්ද?

උ : කුඩු වල පමණක් බර ග්‍රෑම් 51.1195 යි.

According to PW01, the chief investigating officer sealed and weighed the substance found in the appellant's possession, recording its weight as 58.635 grams. PW03, however, stated that he recorded the weight as 51 grams and 635 milligrams. PW12 further indicated that the weight was 51 grams and 7372 milligrams.

The main argument advanced by the Learned President Counsel for the appellant was that the prosecution witnesses had given differing accounts of the weight of the production recovered from him. I am mindful that our courts have consistently held that the purpose of proving the chain of custody in relation to the inward journey is to establish that the production has not been tampered with. In other words, the item recovered from the appellant must be shown to be the same production that was ultimately handed over to the government analyst without any mixing up. During the argument stage, Learned President Counsel for the appellant specifically highlighted discrepancies regarding the recorded weight of the recovered production. The prosecution, however, failed to clarify or resolve this inconsistency.

I am mindful of the observation made by J.A.N. De Silva.J., as he was then, in *Perera V. Attorney General 1998* (1) SLR page 378 at page 380:

“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 be depend on that. The outward journey does not attract the same importance.”

In the case of *Mohammed Kaldeen Mohammed Nilam v. Attorney General CA* 98/2002 (unreported), it was held that,

“... the prosecution cannot escape from the responsibility of proving the inward journey of the production beyond any reasonable doubt and establish the inward

journey in order to show that the productions were never tampered with at any stage of the inward journey which is much more significant and relevant than the outward journey ... "

It is significant to note that when PW01 gave evidence, the prosecution failed to resolve the doubt concerning the weight of the recovered parcel. In document PR 47/15, prepared by PW01, the weight was recorded as 51 grams and 635 milligrams. However, during his testimony, he stated the weight as 58.635 grams.

Upon perusal of the impugned judgment, it is evident that the learned High Court Judge failed to address the discrepancy concerning the weight of the recovered production. This inconsistency in the recorded weight raises doubt as to whether the learned High Court Judge properly considered the issue.

I am of the view that this discrepancy creates a doubt whether the production recovered from the appellant was sent to the Government Analyst. Since the prosecution failed to establish the chain of custody to prove that the production recovered from the appellant was in fact the same item sent to the Government Analyst, the question of the inward journey becomes material. I am of the view that the prosecution has not proved its case beyond reasonable doubt.

In the light of the foregoing, the conviction and the sentence imposed by the Learned High Court Judge dated 31.03.2022 are hereby set aside. The Appellant is acquitted and discharged.

Appeal Allowed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL