

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

In the matter of an Appeal in terms of
Article 331 (1) of the 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

CA HCC 415/2017

High Court of Colombo
Case No. HC7583/2014

Vs.

Wijesiri Gunawardenage Nishantha
Accused

AND NOW BETWEEN

Wijesiri Gunawardenage Nishantha

Accused-Appellant

Vs.

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

Respondent-Respondent

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

Counsel: Neranja Jayasinghe with Randunu Heellage and Imangsi
 Senarath for the Accused-Appellant.

Dishna Warnakula, D.S.G. for the State.

Argued on: 29.05.2025

Decided on: 30.06.2025

JUDGMENT

AMAL RANARAJA, J.

01. The Accused-Appellant (hereinafter referred to as the “appellant”) has been indicted in the *High Court of Colombo* in High Court case number HC 7583/2014.

02. The charges in the indictment are as follows;

- i. That on or about May 08, 2013, within the jurisdiction of this Court, you did traffic 03.35 grams of Diacetyl Morphine (in other words “heroin”), an offence punishable in terms of section 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

- ii. During the course of the same transaction, you did possess 03.35 grams of Diacetyl Morphine, an offence punishable in terms of section 54A(d) of the Poisons, Opium and Dangerous Drugs Ordinance (as amended by Act No. 13 of 1984).

03. At the conclusion of the trial, the Learned High Court Judge has acquitted the appellant of the first charge and convicted him of the second charge. Thereafter, has sentenced the appellant as follows;

Charge 02

Life imprisonment.

Case of the prosecution

04. On May 08, 2013, PW01, *S.I. Handunhetti*, had been assigned to the *Police Narcotics Bureau*. That day he has received a tip from an informant regarding an individual who was expected to peddle narcotics near the *Odel Shopping Mall* in *Colombo 07*. In response, PW01 has decided to conduct a raid and has left the Bureau with a team of officers including PW03, *PC 60485, Matharaarachchi*.
05. Initially, PW01 and his team have travelled to the *Ibbamwala Junction*, where PW01 has met his informant. After a brief discussion, PW01, PW03 and the informant have proceeded on foot to a location near the *Odel Shopping Mall* in *Colombo 07*.

06. Thereafter, the informant has proceeded to identify an individual as the person mentioned in the information and then receded to the background. The identified individual has walked past the officers and stationed himself next to the gate of the particular shopping mall. Subsequently, the witnesses PW01 and PW03 have approached the particular individual. Upon PW03 handcuffing him, PW01 has conducted a search. During the search, PW01 has recovered a pink coloured cellophane bag from the individual's possession. The cellophane bag has contained a powdered substance which PW01 has identified as a heroin mixed powder based on its colour, smell and texture, after verifying the individual's identity to be that of the appellant, PW01 has arrested him. Although the officers have thereafter searched the appellant's house, nothing illegal has been found on the premises. The officer's along with the appellant have then proceeded to the bureau.

07. At the bureau, the heroin mixed powdered substance has been weighed and subsequently sealed as described by the witnesses PW01 and PW03. The sealed powdered substance thereafter placed in an envelope, which has also been securely sealed. The sealed envelope has then been registered in the Police Property Receipt Book bearing property receipt no.150/2013 and handed over to the officer in charge of the productions i.e. PW02, *IP Rajakaruna*. Meanwhile the appellant has been handed over to the officer-in-charge of the reserve at the bureau.

08. PW02 has subsequently handed over the sealed envelope containing the cellophane bag with the heroin mixed powdered substance, to the *Government Analyst* for analysis. The Government Analysts has done the necessary tests and determined that the pure quantity of the heroin mixed with the powdered substance was 03.35 grams. The Analyst's Report has been submitted and is marked as '3-9'.

Case of the appellant

09. The appellant contends that he was arrested without just cause and has been falsely implicated in the charges against him.

Grounds of appeal

10. When the matter was taken up for argument, the Learned Counsel for the appellant urged the following grounds of appeal;

- i. The Learned High Court Judge has failed to take into consideration, serious contradictory position taken up by the prosecution witnesses.
- ii. The prosecution has failed to prove the chain of production beyond a reasonable doubt.
- iii. The Learned High Court Judge has rejected the evidence of the defence on unreasonable grounds.

11. The Learned Counsel has raised concerns regarding a discrepancy between the location of the alleged arrest and the site where the appellant was to purportedly arrive at, to peddle a narcotic substance as indicated by PW01 based on the information from his informant.
12. At approximately, 13.15 hours, on May 08,2013, PW01 has received the pertinent information regarding the forthcoming event. The informant has also indicated that he was located at the *Ibbanwela Junction*.
13. Following this information, PW01 accompanied by a team of officers have travelled to the *Ibbanwela Junction* to meet the informant. Upon arrival, PW01 has engaged with the informant who has provided a briefing that reiterated the details shared in the previous communication. The informant has said that the individual informed of was expected to arrive at the vicinity of the *Town Hall*, near the *Odel Shopping Mall*.
14. Subsequently, PW01 along with PW03 and the informant have proceeded on foot towards a designated location close to the *Odel Shopping Mall*. It was at this site that the arrest has been ultimately executed.
15. The narrative above is consistent regarding both the location where PW01 met the informant and the site of the arrest. Notably, at no point has it been indicated that the appellant was anticipated to arrive at the *Ibbanwella Junction* with the intention of

peddling the narcotic substance. Therefore, any concerns regarding this matter lack merit and should be disregarded.

16. The appellant has been searched and subsequently arrested on the pavement adjacent to the 120/138 Bus Routes which services destinations such as *Kesbawa, Horana, Maharagama, Homagama* and extends further to *Avissawella*. On one side of the road close to the *Odel Shopping Mall* stands the *National Hospital of Sri Lanka*, including the eye hospital while on the other side, features of side entrances to the *Town Hall* accessible when one crosses the road. This area experiences heavy foot traffic particularly during the day time. It can be inferred that similar crowded conditions existed on the date of the appellant's arrest.

17. Given those circumstances, the officers could have approached the appellant while manoeuvring through the individuals standing nearby, either in front or behind the appellant. Such an approach could potentially lead to confusion for witnesses PW01 and PW03 regarding the direction from which each officer approach the appellant. This Court acknowledges this aspect especially in the light of the appellant's claim of discrepancies regarding the manner in which the officers approached the appellant prior to his arrest.

18. In his narrative PW01 has stated that he handed over the sealed envelope containing the cellophane bag in which the heroin mixed powdered substance was in to PW02, i.e *IP Rajakaruna* who was the officer in charge of the productions at the bureau on May 09, 2013; until that time PW01 has kept the sealed envelope securely

stored in his locker. PW02 has confirmed receiving this envelope on May 09,2013. Meanwhile, PW03 has corroborated the fact that PW01 handed over the sealed envelope to PW02. However, he has not specified the exact date of this transfer.

19. The appellant's Counsel argued that the nature of questioning PW03 creates an inference suggesting that PW03 implied the handing over occurred on May 08,2013. This assertion raises a potential discrepancy regarding the timeline of the envelope's journey as a piece of evidence.

- C හඳුන්වෙන්නී මහතා විසින් මුද්‍රා කිරීමේ කටයුතු සිදු කළා.
- ප්‍ර ඊට පස්සේ, බාර දුන්නද ඒවා?
- C එහෙමයි. හඳුන්වෙන්නී මහතා විසින් නවු බඩු බාරගන්න නිලදාරියාට බාර දුන්නා. සැකකරු උප සේවයට බාර දුන්නා.
- ප්‍ර දන් සාක්ෂිකරු ඒ අවස්ථාවේදී අත්අඩංගුවට ගත්ත එම නිශාන්ත කිසින පුද්ගලයාගේ සම්පූර්ණ නම තමුන් දන්නවද?
- C එහෙමයි. විජේසිරි ගුණවර්ධනගේ නිශාන්ත.
- ප්‍ර ඒ තැනැත්තාට නැවත දුටුවනොත් හඳුනා ගන්න පුළුවන්ද?

[*vide* page 107 of the Brief]

20. The pertinent portion of testimony relevant to this matter being as reproduced above reveal the following:

Although PW03 affirmed that PW01 handed the sealed envelope to PW02, he has failed to provide a specific time or date for this event.

PW03 maintain that the envelope was handed over to PW02 upon it being sealed.

Given these circumstances, this Court concludes that no discrepancies exist in the timeline of the envelope's inward journey, despite the assertions made by the Counsel for the appellant.

21. The appellant has provided a dock statement. In his brief narrative, he has described an incident in which a team of police officers raided his home. During the raid the officers have confronted the appellant and demanded that he surrender the narcotic substance which they claimed was in his possession. When the appellant denied the allegations, he has been taken into custody and falsely implicated in the matter. The appellant has not revealed a fact about being assaulted by the officers who purportedly raided his home.

22. Thereafter, the appellant's wife has recounted the events in her narrative stating that the officers who conducted the raid mercilessly assaulted the appellant in the upstairs area of their home. As a result of this brutal treatment, the appellant became

disoriented, he thereafter vomited in the seating area, and the witness has reported that she forced the appellant to drink hot water.

23. During the cross examination of PW03 a significant question has been posed regarding the arrest of an individual named *Gamini* (vide page 11 in the proceedings dated June 05,2017, beginning at 11.50 am at page 124 of the Brief).

It has been asserted that *Gamini* was taken into custody at the appellant's home. The cross-examination highlights a crucial point; despite the arrest of the individual named *Gamini*, no narcotic substance was recovered in the search. Furthermore, it has been alleged that subsequently the appellant was assaulted by the officers who conducted the search.

24. This line of questioning unveils substantial discrepancies presented on behalf of the appellant. The contradictions that arise from this testimony had not been adequately clarified, highlighting a lack of consistency that undermines the credibility of the appellant's case. Such discrepancies are not merely peripheral issues; they strike at the very core of the appellant's arguments. Without a satisfactory explanation for these discrepancies, the appellant's claims are significantly weakened, raising serious questions about the reliability of the evidence provided in his defence.

25. Due to the aforesaid reasons I am not inclined to interfere with the disputed judgment together with the sentencing order.

26. I proceed to dismiss the appeal and make no order regarding costs.

Appeal dismissed.

27. I direct the Registrar of this Court to send the judgment to the *High Court of Colombo* for compliance

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal