

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

In the matter of an Appeal 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.

CA Case No: HCC/309/19

HC of Colombo Case No:

HC 7219/14

The Democratic Socialist Republic of Sri
Lanka

Complainant

Rathnayaka Mudiyansele
Niranjaya Kumara Alias Oliver
Accused

AND NOW BETWEEN

Rathnayaka Mudiyansele
Niranjaya Kumara Alias Oliver
Accused-Appellant

Vs.

Attorney General
Attorney General's Department
Colombo 12
Complainant-Respondent

Before: B. Sasi Mahendran, J.

Amal Ranaraja, J.

Counsels: I.B.S. Harshana for the Accused-Appellant

Anoopa de Silva, DSG for the State

Written 18.10.2021 (by the Accused Appellant)

Submissions : 28.10.2021 (by the Respondent)

On

Argued On: 19.05.2025

Judgment On: 30.06.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as "the Accused") was indicted before the High Court of Colombo for the possession and trafficking of 3.44 grams of Heroin (Diacetylmorphine) under Section 54 (a)(b) and 54A(d) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 13 of 1984.

Prosecution led evidence from six witnesses, and marked its productions P1 to P11. After the conclusion of the case for the prosecution, the accused made a statement from the dock. After the trial, the Learned High Court Judge found the Accused guilty on both counts, convicted, and the death sentence was imposed.

Being aggrieved by said judgment and sentence this appeal was preferred by the Accused.

The following are the grounds of appeal led by the Learned Counsel for the Accused.

- i. That the Learned Trial Judge had failed to consider the improbability and suspiciousness of the version of the prosecution pertaining to the alleged incident.
- ii. That the Learned Trial Judge had not properly considered the issues relating to the credibility of the evidence by PW5.
- iii. That the Learned Trial Judge had failed to consider the contradictory positions relating to this alleged incident between PW5 and PW6 and alternatively
- iv. The learned Trial Judge had erred in law by convicting the Accused Appellant for the 1 count namely the trafficking of heroin count in the absence of contributory activity to by the Accused appellant to the same effect.

The facts of the case are briefly summarised as follows:

PW5, who served as the officer in charge of the Kitchen Department at Welikada Prison in 2012, received information from an informant on 2nd of March 2012, around 6:30 PM, indicating that a prisoner from Aluthkade Prison was in possession of heroin. Acting on this information, PW5 proceeded the following day, March 3, to the section where newly admitted prisoners were housed in order to give breakfast to the prisoners, all new prisoners were required to line up. Although ten prisoners had reportedly arrived from Aluthkade Prison, only nine were present when the count was conducted.

The missing prisoner was located in the P2 ward, he has been seated on the floor without a shirt. Witness PW5 instructed the prisoner to stand and proceeded with a search, during which a blue coloured grocery bag was found concealed inside the prisoner's underwear. The parcel was retrieved by PW5 in the presence of PW6, who observed that it contained a brown coloured powder, suspected to be heroin. Following this discovery, the Accused-Appellant was taken into custody on 3rd March 2012, at 6:30 AM. Subsequently, steps were taken to refer the Accused-

Appellant to the Chief Jailor. Acting on the Chief Jailor's instructions, the Accused-Appellant and the recovered parcel were then referred to the Discipline Unit of the prison for further action.

Following the discovery of the suspected heroin, the substance was placed inside a blue grocery bag, which was then enclosed in a long envelope. The envelope was sealed using two official prison seals, four left thumb impressions of the Accused-Appellant, one right thumb impression, and the signature of PW5.

Subsequently, the Discipline Unit of the prison notified the PNB regarding the incident. PNB officials arrived at the prison on 5th March 2021, to proceed with further investigations.

According to PW4 Nishantha who received the production from the witness no.05 later handed to the PNB. According to witness no 01 stated that he has received the production which was sealed and handed over to the p3 and p3 has stated that he has handed to the government analyst. Government analyst ,witness no 7 has confirmed production is heroine and the weight of production is 21.94 and the pure quantity is 3.44.

The main defence argument is that after receiving the information, he did not notify any other officers. However, the fact remains that before conducting the search on the accused, he informed PW6 about information and both have gone to Ward and searched the accused.

Additionally, the defence questioned the delay in executing the search, specifically why it was not carried out on the same day the information was received. In response, the officer clarified that by the time he was briefed, it was already late in the day, and all inmates had been secured in a single cell—making it impractical to identify and isolate the accused for an immediate search. We accept this version of the witness regarding the delay.

One of the defences raised by the accused was that he had requested to move to another room, during which time the contested production was allegedly introduced. Notably, the defence did not suggest any prior animosity between the parties, nor was there any indication that they had been acquainted previously.

During cross-examination, it was suggested to the witness no PW5 that he himself had been implicated in a prior case involving heroin possession. However, after carefully reviewing the evidence, it was evident that the PW5 remained consistent and unwavering in his testimony concerning the arrest and the production, despite facing a potentially damaging allegation.

It is important to acknowledge that Appellate Courts do not have benefited from observing the witnesses who give evidence at the trial . On the other hand ,the trial court, had the benefit of listening to and observing the witnesses who testified at the trial. Therefore, they had the benefit of observing that demeanour and deportment of the witnesses. Therefore, they are in a better place to take decision on the witnesses credibility.

In this instance, the trial judge found the testimony of PW5 to be credible, identifying no contradictions or significant omissions. Therefore, we find no grounds to disturb that finding.

This version of events was corroborated PW6, who was present with PW5 at the time of arrest of the accused. He testified that PW5 asked him to accompany him to Ward 2, where the accused was seated. There, he observed PW5 conduct a search and retrieve the production item from underneath the accused's underwear. Following the arrest, the production was handed over to Chaminda. The substance—concealed in a blue grocery bag—was sealed in the presence of both the witnesses and the accused. The witness confirmed he witnessed the sealing process and had indeed accompanied PW5 to the T2 Ward.

In cross-examination, the witness PW6 was confronted with his prior statement to the PNB, in which he claimed PW5 was already at T2 Ward upon his arrival. Nevertheless, he stood by his testimony that he observed the search and the

recovery of the contraband, providing a comprehensive account of how the search unfolded.

Counsel for the accused-appellant sought to challenge the credibility of the testimony by contending that the witness PW6 did not, in fact, accompany PW5—arguing instead that PW5 was already with the accused at the T2 Ward when the witness arrived.

One of the grounds advanced by the appellant was that the learned High Court Judge had failed to adequately consider the alleged inconsistencies between the testimonies of PW5 and PW6 regarding the circumstances of the arrest and detection.

However, upon a careful examination of the evidence presented by PW6, we find his testimony to be in alignment with that of PW5, particularly with respect to whether both officers approached the accused together. Their accounts are consistent and reliable, especially in relation to the key aspects of the arrest and the recovery of the illicit substance. Notably, PW6's evidence serves to corroborate PW5's version concerning the recovery.

The learned High Court Judge has thoroughly analysed the testimonies of PW5 and PW6 and found no material discrepancies that would undermine their credibility or affect the core of the prosecution's case. We see no justifiable reason to disturb the trial judge's conclusion that both witnesses were credible and trustworthy.

Accordingly, we find no merit in the contention that the trial judge erred in evaluating the credibility of PW5 and PW6.

A further ground raised by the appellant is that the learned High Court Judge erred in convicting the accused for trafficking heroin in the absence of direct evidence proving that the recovered drugs were intended for commercial distribution.

It is important to note that, at the time of arrest, the accused was found in possession of 3.44 grams of pure heroin out of 21.94. This weight of substance whether it is a personal or commercial use was considered by His Lordship Aluwihare PC J in *Mohamed Iqbal Mohamed Sadath v. Attorney General*, SC Appeal 110/15 (SC Minutes, 14.12.2020).

“Since possession and trafficking can look the same at first glance, Prosecution for drug trafficking typically requires producing additional circumstantial evidence to indicate that the Accused was in possession of drugs not for personal use but for commercial purposes. The quantity of the drug detected would be a good indicator to

decide whether the perpetrator is a user [an addict] or is trading in drugs.”

We are conscious of the fact that the recovery of the narcotics took place within the confines of the prison. The quantity seized clearly indicates that it may have been intended to distribute among the inmates. We are satisfied that the prosecution has proven the drugs discovered inside the prison were meant for such distribution. Accordingly, we find that the substance in question was intended for trafficking.

For the above-mentioned reasons, the Appeal is dismissed accordingly.

The Judgment dated 28th August 2019 was upheld, and the conviction, along with the sentence, remains in effect.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL