

**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  
as amended.**

The Democratic Socialist Republic of  
Sri Lanka

**Complainant**

**CA HCC 186/23**

High Court of Colombo  
Case No. HC 7844/15

Vs.

Mohamed Rafaideen Mahomed Irfan

**Accused**

**AND NOW BETWEEN**

Mohamed Rafaideen Mahomed Irfan

**Accused-Appellant**

Vs.

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

**Complainant-Respondent**

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

**Counsel:**   Kasun Liyanage for the Accused-Appellant.

Sudharshana De Silva, S.D.S.G. for the Respondent.

**Argued on:**   12.03.2025

**Decided on:** 04.04.2025

### **JUDGMENT**

#### **AMAL RANARAJA, J**

1. The Accused-Appellant (hereinafter referred to as the “appellant”) has been indicted in the *High Court of Colombo* in High Court case no. HC 7844/2015.
2. The charges in the indictment are as follows;
  - i.     That on or about 23.08.2013, at *Mattakkuliya*, within the jurisdiction of this Court, you did traffic 480.92 grams of Diacetyl

Morphine (in other words “heroin”), an offence punishable in terms of section 54 A (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 480.92 grams of Diacetyl Morphine, an offence punishable in terms of section 54 A (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984.

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the charges in the indictment and sentenced him to life imprisonment for the first and second charges respectively. The appellant being aggrieved by the conviction and the sentencing order has forwarded the instant appeal to this Court.

**Case of the prosecution;**

4. On August 23.08.2013, PW1 (Sub-inspector *Amarasinghe*) has received a tip from an informant regarding a person involved in narcotics trafficking. Determined to take action, PW1 has decided to conduct a raid. He has assembled a team of officers and together they have travelled to the *Mattakkuliya* area. Upon arriving PW1 has met the

informant, who identified and pointed out the appellant near a childrens' park adjacent to *Eliyas* road close to the main *Mattakkuliya* road. PW1 with PW4 have thereafter, approached the appellant, identified himself and conducted a search. During the search, PW1 has discovered the plastic bag labeled "*Sale House*" which the appellant was holding in his left hand. Inside the bag there had been a parcel wrapped in brown paper. Upon inspection of that parcel, PW1 has found that it contained 13 smaller parcels. These smaller parcels have been made from green plastic bags and contained a powdered substance that PW1 has identified as a heroin mixed powdered substance. The appellant has been arrested and brought to the *Narcotics Bureau* for further investigation. The powdered substance has been subsequently sent to the Government Analyst for examination. Upon conducting tests, the Government Analyst has found that the gross weight of the powdered substance to be 1293.56 grams and it to contain 480.92 grams of pure heroin mixed in it. The Government Analyst report has been marked "37-14".

**Case of the appellant;**

5. The Learned High Court Judge has conducted the case in absentia. Subsequently has found the appellant guilty of the charges. Following

the verdict, the Learned High Court Judge has sentenced the appellant accordingly.

6. The Learned Counsel for the appellant has contended that the narratives of PW1 and PW4 are inconsistent and therefore not credible. The Learned Counsel in those circumstances has drawn the attention of this Court to the following discrepancies;

- i. As to the place where the vehicle in which the team of officers travelled in was brought to a halt when it reached its destination.
- ii. As to the time, the informant of PW1 arrived at the location; the team of officers was temporarily stationed to provide further information regarding the appellant.
- iii. As to the side of the road the appellant had walked on with the powdered substance in his possession.
- iv. As to the initial reaction of the appellant when he was accosted by PW1 and PW4.
- v. As to the manner in which the powdered substance purportedly recovered from the possession of the appellant was examined prior to the arrest of the appellant.

- vi. As to the manner in which the appellant was handcuffed upon his arrest.

**Grounds of appeal;**

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

- i. The Learned Trial Judge has failed to consider the inconsistencies per se and inter se in and between PW1 and PW4.
- ii. The Learned Trial Judge has failed to consider improbabilities in the prosecution's case.

8. Witness testimony plays a crucial role in the judicial process serving as a fundamental source of evidence in legal cases. The reliability of such testimony can be significantly undermined when contradictions arise. A contradiction occurs when a witness statement is inconsistent with the testimony which may manifest as discrepancies in the details of an event, variations with timelines, or conflicting accounts of actions.

9. The location where the vehicle carrying a team of officers came to a halt upon reaching their destination is not contradictory. However, the presence of a security guard in the car park is a point of divergence in the witness account. This discrepancy nonetheless does not undermine the core of the prosecutions' case.
10. PW1 has observed the informant, prior to the vehicle in which the team of officers travelled came to a halt. On the other hand, PW4 has witnessed the informants attempt to enter the vehicle in which the officers were travelling. The informant's prior acquaintance with PW1 combined with PW4's lack of familiarity with the informant, accounts for the difference in their narratives.
11. Further, though PW1 had opened a packet containing the powdered substance at the scene, PW4 has not seen this incident as he had been assigned to guard the appellant and was focused on that responsibility.
12. Both PW1 and PW4 have confirmed that the appellant had approached the location where he was arrested from the opposite side of the road from where the officers were originally situated.

13. Further, PW1 has summoned the remaining officers to the scene where the appellant was arrested and has instructed PC 717139 Wickramasekara to handcuff the appellant. Both PW1 and PW4 have attested to this fact.
14. In legal proceedings, contradictions in the evidence presented must be material, otherwise they can be disregarded.
15. The discrepancies in this case as referred to above do not primarily pertain to the identity of the appellant, his arrest, the recovery of the powdered substance or the safe custody of the production. Therefore, the inconsistencies found in the testimonies of PW1 and PW4 are not materially significant to the prosecution's case.
16. In ***The Attorney General vs. Sandanam Pitchi Mary Theresa* [2011] 2 SLR 292 at pages 300-304**, Shiranee Tilakawardane, J, has stated that,

*“...Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness’ statement, it is well established that the Court must exercise its judgment on the nature tenor of the inconsistency or contradiction and*



*whether they are material to the facts in issue. Discrepancies which do not go to the root of the matter and assail the basic version of the witness cannot be given too much importance (vide, Boghi Bhai Hirji Bhai v. State of Gujarat. AIR (1983) SC 753.”*

17. The primary concern of PW1 as the officer in charge of the raid had been the safety of the other officers and the appellant. Before sealing the parcel that contained the other parcels with the powdered substance, at the scene of arrest, PW1 has conducted a risk assessment. Such assessment has been aimed to determine whether there was a risk of conflict with the members of the public. Upon concluding that it was not safe to proceed, PW1 has decided against sealing the production at the scene of arrest. Therefore, PW1 has acted within his authority in making such a decision.

18. Furthermore, while the appellant has questioned the time taken to seal the productions once it was brought to the *Bureau*, he has not raised this issue during the trial. Consequently, no explanation regarding this matter has been provided by PW1.

19. Due to the matters discussed above, I am not inclined to interfere with the disputed judgment together with the sentencing order and dismiss the instant appeal.

*Appeal dismissed.*

20. The Registrar of this Court is directed to communicate 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**