

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

**LANKA**

In the matter of an Appeal in terms of section  
331(1) of the Code of Criminal Procedure Act  
No. 15 of 1979 read with Article 138(1) of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka

**Complainant**

**CA/HCC/0060/2024**

HC Kilinochchi Case No:

NP/HC/KN/64/2022

Vijayaraja Vijayakumar,

No. 37/46, 1<sup>st</sup> Lane,

Brown Road, Jaffna

(Presently of Prison, Welikada)

**Accused**

**AND NOW**

Vijayaraja Vijayakumar,

No. 37/46, 1st Lane,

Brown Road, Jaffna.

(Presently of Prison, Welikada)

**Accused-Appellant**

The Hon. Attorney General, Attorney

General's Department,

Colombo 12.

**Respondent**

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

Amal Ranaraja, J.

**Counsels:** Neranjan Jayasinghe with Randunu Heellage and Imansi Senerath for  
the Accused-Appellant

Jayalakshi De Silva for the Respondent

**Argued On:** 21.03.2025

**Judgment On:** 20.05.2025

## **JUDGMENT**

**B. Sasi Mahendran, J.**

The Accused-Appellant (hereinafter referred to as the Appellant) and the 1<sup>st</sup> Accused who was acquitted after the trial, were indicted in the High Court of Kilinochchi for being in possession and trafficking of 143g of Heroin on 12.05.2018, at Peralai under Section 54A (b) and (d) of the Poisons, Opium and Dangerous Drugs Ordinance No. 13 of 1984 as amended.

After the Appellant pleaded not guilty, the Prosecution led evidence of PW1 and PW7 and closed their case. The Appellant gave a dock statement. At the conclusion of the trial, the Learned Judge of the High Court by judgment dated 18.01.2024 found the Appellant guilty and sentenced to life imprisonment, and the 1<sup>st</sup> Accused was acquitted.

Being aggrieved by the said conviction and the sentence, the Appellant has preferred the present appeal to this Court.

The following are the grounds of appeal as urged by the Appellant:

1. Evidence of PW1 and PW7 fails the test of credibility and the test of probability.
2. Prosecution had failed to prove the chain of productions.
3. The Dock Statement had been rejected on unreasonable grounds and the Learned High Court Judge had shifted the burden of proof to Accused- Appellant.

The facts and circumstances of this case are as follows;

According to PW1, Dharmapriya who was the Chief Inspector of Police of STF Rajagiriya, on a piece of information received by P.C. Tharanga, they had proceeded to Kilinochchi and set up a roadblock at the Peralai Road to search a van bearing No. 255-4177. Then the said vehicle was stopped by one I.P. Wijeratne and the P.C. Buddhika had switched off the engine of the vehicle and took the key. According to PW1, when he opened the rear

door of the van, he saw the Appellant seated in the van keeping a parcel on his lap which was wrapped with a yellow colour sellotape. Thereafter, when he opened the parcel, he saw a brown colour powder which he identified to be heroin through his experience. Thereafter, the Appellant and the driver who was the 1<sup>st</sup> Accused were taken into custody and brought to Palai Police at 18 hours.

According to PW1, the parcel was properly sealed and was entered in the production list and later sent to the Government Analyst.

According to the Appellant, who made a dock statement, he had lend some money to one Mohan Dias and had failed to pay the said money. Thereafter, he had an issue with the said Mohan and he had asked the Appellant to come to his residence and on his way only he was stopped and later the parcel was introduced to him by the police. According to him, the van was shown by the said Mohan.

When we analyse the evidence of PW1, on information received, he had gone from Rajagiriya to Kilinochchi. There were number of Police Officers near the check post and the said van was stopped at the check post at around 4 o'clock. When he opened the door, the Appellant was keeping the parcel on his lap and waiting in the van. At a check post when a vehicle is stopped and after seeing the Police Officers in uniform conducting a search, will a prudent person having heroin in possession have it, throw it, or hide it?

It is highly improbable to believe that a person with heroin of 1kg would keep such a parcel on his lap and wait when the van was stopped and searched by the Police officers.

Section 11(b) of the Evidence Ordinance reads as follows;

“Facts not otherwise relevant are relevant –

(b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.”

The primary issue for consideration in this appeal is whether PW1's witness testimony is improbable. If so, the Learned High Court Judge failed to consider the test of probability regarding the prosecution's version.

Probability, in the context of legal matters, is defined as follows:

According to Murray's English Dictionary, probability means "the appearance of truth or likelihood of being realized, which any statement or event bears in the light of present evidence."

Sarkar and Monohara, in their book "SARKAR ON EVIDENCE" (Fifteenth Edition) on page 71, state,

"...probability is meant the likelihood of anything being true, deduced from its conformity to our knowledge, observation, and experience. When a supposed fact is so repugnant to the laws of nature that no amount of evidence could induce us to believe it, such supposed fact is said to be impossible or physically impossible."

According to E.R.S.R. Coomaraswamy, in "The Law of Evidence Volume II Book 02" on Page 1053,

"The test of improbability has been described as essential inconsistency. There may be facts which may show it to be impossible or so highly improbable as to justify the inference that it never occurred."

In Bharwada Bhoginbhai Hirjibhai vs State of Gujarat 1983 AIR HC 753; A.P. Sen and M.P. Thakkar J observed that,

“Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important “probabilities-factor” echoes in favour of the version narrated by the witnesses.”

In Wickremasuriya v Dedoleena and Others [1996] 2 S.L.R. 95, on page 98, His Lordship Jayasuriya J. observed that;

“A Judge, in applying the test of Probability and Improbability, relies heavily on his knowledge of men and matters and the patterns of conduct observed by human beings both ingenious as well as those who are less talented and fortunate.”

A similar situation with regard to high improbability was considered by Her Ladyship Deepali Wijesundera J in Selvanayagam Carmel Jenova Vs. The Attorney General, CA Case No. 107/2011 decided on 13.10.2021 and held that;

“The grounds of appeal urged by the learned counsel for the appellant are as follows. That the version of the prosecution is highly improbable and that the learned High Court Judge had failed to apply the test of probability and improbability in evaluating the evidence. The appellant’s counsel submitted that it is highly improbable to believe that when six police officers were searching a small house for the appellant to take address alleged to have contained heroin in the pocket and put it in to a bucket. If the appellant took the said dress from the clothes line and put it into a bucket as claimed by the prosecution this would have drawn their attention to the dress which is not the conduct of a wrong doer. I find this improbable. There are more than enough places in a house to conceal such articles.”

When we consider the evidence of PW1, it is highly improbable that a person who was in possession of heroin of more than 1kg would keep such a parcel on his lap when the vehicle was stopped and searched by the Police officers.

Upon applying the test of probability and the test of improbability to the aforementioned facts, it becomes evident that the evidence presented through the prosecution narratives cannot be deemed credible.

The other point to consider is the rejection of the evidence of the Appellant by the Learned Trial Judge. The Learned High Court Judge rejected the evidence of the Appellant on the basis that the Appellant has the burden to prove the facts he has stated.

According to the evidence of the Appellant, they were going to the place of one Mohan to collect money he had already lent. According to the Appellant, this parcel was introduced by the Police which was given by the said Mohan. The fact remains that, the information received was that heroin was transported in the said van. The check post was situated close to the Police station. If so, what is the reason for the police to wait for two hours to take them to the Police Station?

Our Courts have given the following guidelines with regard to the evaluation of the evidence by the Trial Judge.

1. If the evidence of the accused is believed, it must succeed.
2. If the evidence of the accused creates a reasonable doubt in the prosecution case, defence of the accused must succeed.

However, in the instant case, our view is that the Learned Trial Judge has failed to consider the guidelines set out above.

As I pointed out earlier, there are reasonable doubts in the prosecution case. But the Learned Trial Judge simply rejected the Appellant's version without giving reasons.

When we consider all these matters in entirety, we are of the view that the Prosecution has not proved its case beyond reasonable doubt.

Thus, we set aside both the conviction and the sentence and acquit the Accused Appellant.

Appeal allowed.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**