

**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.**

Democratic Socialist Republic of Sri
Lanka.

Complainant

Court of Appeal Case No.:

CA HCC 0258/23

Vs.

High Court of Colombo Case No.:

HC 591/19

Kasthuri Arrachchige Tiyyulin
Wickremarathna.

Accused

AND NOW BETWEEN

Kasthuri Arrachchige Tiyyulin
Wickremarathna.

Accused-Appellant

Vs.

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

Respondent

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

Counsel: Ershan Ariaratnam for the Accused-Appellant.

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

Argued on: 12.06.2025

Decided on: 04.07.2025

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 number 591/19.
2. The charges in the indictment as follows;

Charge 01

That on or about June 22,2017, within the jurisdiction of this Court, you did possess 01.56 grams of heroin, 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).

Charge 02

That during the course of the same transaction, you did traffic 01.56 grams of 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).

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the charges in the indictment, sentenced the appellant as follows;

Charge 01

A term of 7 years rigorous imprisonment and also imposed a fine of Rs.100,000.00 with a term of one-year simple imprisonment, in default.

Charge 02

A term of 7 years rigorous imprisonment and also imposed a fine of Rs.100,000.00 with a term of one year simple imprisonment, in default.

4. Aggrieved by the conviction, the disputed judgment and the sentencing order, the appellant has preferred the instant appeal to this Court.
5. When the matter was taken up for argument, the learned counsel for the appellant informed Court that the appellant did not wish to contest the conviction but only the sentencing order. Accordingly, the following ground of appeal was urged by the Learned Counsel for the appellant;
 - i. Are the sentences imposed on the appellant disproportionate?
6. The law at the time the indictment was forwarded has mandated a specific penalty for the offences for which the appellant was convicted.

The penalty was as follows;

“fine not less than one hundred thousand rupees and not exceeding five hundred thousand rupees and imprisonment of either description for a period not less than seven years and not exceeding twenty years”.

The Learned High Court Judge has thoroughly considered this legal framework, along with the pertinent facts presented in mitigation.

7. While the Learned Counsel for the appellant has submitted a request in the *High Court* for a non-custodial sentence, he has not sufficiently elaborated on the reasons or the circumstances in support of such plea.
8. Nonetheless, the Learned High Court Judge has taken into account several significant factors including the appellant's age i.e. he is a sixty-five-year-old male and his role as the sole breadwinner for his family, which includes two children.

In the light of these considerations, the disputed sentencing order has been made after a comprehensive review of all relevant facts presented to the Learned High Court Judge.

9. This Court remains mindful of the legal obligations imposed by the mandatory sentencing laws, while also weighing the personal circumstances of the appellant considering a balanced approach to justice.
10. In those circumstances, this Court is not inclined to interfere with the disputed sentencing order. Therefore, the *appeal is dismissed*.

I make no order regarding costs.

11. However, the substantial terms of rigorous imprisonment of 7 years each, shall commence from the date of conviction, i.e., September 06, 2023, and run concurrently.
12. The Registrar of this Court is directed to communicate this 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