

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

In the matter of an Appeal in terms of Article 138(1) of the Constitution together read with the Section 11(1) of the High Court of the provinces (Special provisions) Act No.19 of 1990 with the Section 331 of the Code of Criminal Procedure Act No. 15 of 1979.

Court of Appeal No:  
CA/HCC/185/2023

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

High Court of Galle  
Case No: 3618/11

**Complainant**

**Vs.**

Suren Maduranga Vidanapathirana

**Accused**

**AND NOW**

Suren Maduranga Vidanapathirana  
No. 168, Pahalawaththa, Wikirawaththe,  
Unawatuna.

**Accused – Appellant**

**Vs.**

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

**Complainant-Respondent**

Before : Menaka Wijesundera J.  
Wickum A. Kaluarachchi J.

Counsel : Accused-Appellant is not represented  
Jayalakshi De Silva S.S.C for the Respondent.

Argued on : 17.07.2024

Decided on : 27.08.2024

**MENAKA WIJESUNDERA J.**

The instant appeal has been filed to set aside the judgement dated 09/06/2023, of the High Court of Galle.

In the instant matter, the accused-appellant (hereinafter referred to as the appellant) has been indicted for being in the possession and trafficking of 2.45 grammes of heroin, under the provisions of Section 54b of the Poisons, Opium and Dangerous Drugs Act.

The appellant had pleaded not guilty and the trial has commenced. The prosecution had led the evidence of the Government Analyst and two official witnesses. During this time, the accused had absconded and the trial had continued in his absence. Upon the conclusion of the trial, the High Court Judge had convicted the appellant on the charge of possession of heroin and had acquitted him on the charge of trafficking. The appellant, being aggrieved by the said judgement and sentence had lodged the instant appeal.

The main grounds of appeal raised by the appellant are,

1. The learned High Court judge has convicted the accused-appellant despite the prosecution not proving its case beyond a reasonable doubt.
2. The facts of the case were not established by the evidence of the witnesses adduced at the trial, therefore the conviction of the accused-appellant is erroneous.
3. The judgement was given without properly assessing the reliability and plausibility of the evidence.
4. The learned High Court judge erred in not following the legal provisions of law, which is, not conducting the trial on correct evidentiary principles based on presumption of innocence.

5. The judgement given by the learned High court judge is not pursuant to Section 283 of the Criminal Procedure Code, Act no. 15 of 1979.
6. The judgement was given without considering the analysis of the prosecution evidence to be flawed.
7. The judgement given by the learned High Court judge, according to law, is illegal and unlawful and should not be able to remain so.

Once the appeal was filed, the accused-appellant and counsel for the accused-appellant failed to appear before the court, despite numerous notice being sent to both. Therefore the state counsel was asked to file written submissions and the case proceeded in their absence.

At the trial, the prosecution had led the evidence of three witnesses, two official witnesses and the Government Analyst.

PW-01, in his evidence stated that the arrest had taken place upon a tip received by a confidential informant of Sub inspector of the Police, Ananda. The tip received was that there was an individual who possessed heroin at the Modara bus halt. PW-01, at 3.35pm on the 21<sup>st</sup> of June, 2010, along with five other officers, including PW-02, dressed as civilians, had gone to the bus halt to apprehend the suspect. Upon information received by PW-02, they were able to identify the suspect and apprehend him, and on inspection had discovered 8 packets in a grocery bag, containing a substance they believed to be heroin, concealed in his right-side pocket of his trouser. The body search of the accused was also carried out by PW-01. Thereinafter, they arrested the suspect and had visited a jewellery shop by the name of “Jeya Pushpa” to weigh the substance alleged to be heroin. The arresting officers had done so accordingly, in the presence of the accused. Once the substance had been weighed, they had produced and recorded the evidence at the Galle Fort Police station. They then produced the accused at the Galle police station at 6.20pm. PW-02 also corroborated the evidence given by PW-01. At the conclusion of the evidence and cross examination endured by the official witnesses, the accused-appellant had absconded, and the trial had proceeded in his absence. Thereafter, the Government analyst had also given evidence.

The lengthy cross examination of the prosecution witnesses by the counsel for the accused, had not created a reasonable doubt in the case of the prosecution. It is a well-established theory in criminal law that an allegation made against an accused person should be proved beyond reasonable doubt. In the instant case, the prosecution had shown by leading the evidence of PW-01 and PW-02, the chain of events which took place on the day of the arrest and thereafter, which the learned counsel for the appellant did not refute in cross-examination. The learned state counsel put forth the notion that, since evidence given by the official witnesses was not challenged by the counsel for

the appellant during cross examination, such evidence has been accepted by the defence to be truthful. The court is also in agreement. The learned counsel has cited the case of **B.R.R.A Jagath Premawansa v Attorney General C.A Appeal 173/2005**, which states that, *“whenever the evidence given by the witness on a material point is not challenged in cross examination it has to be concluded that such evidence is not disputed and is accepted by the opponent subject however to the qualification that he is a reliable witness”*.

Furthermore, the counsel for the appellant had suggested to the two official witnesses, PW-01 and PW-02, that the accused-appellant had been mistakenly arrested as the real intention of the police was to apprehend the accused-appellant’s brother, who was on open warrant.

In the case of **Wijesekera (Excise Inspector) v Arnolis, (1940) [17 CLW 138]**, Justice Wijeyewardene has held that *“... it is not every kind of doubt the benefit of which an accused person is entitled. An accused person could claim only the benefit of a reasonable doubt. It is always possible to conjure up a doubt of a very flimsy nature. But an accused person cannot be acquitted on the ground of such doubt...The guilt or innocence of an accused person must be determined on evidence and not on some suggestion made in the course of an argument...”*

The cross-examination of these two witnesses did not give rise to an inference that the witnesses had gone to arrest the brother of the accused, as they vehemently denied the suggestion put forth by the counsel for the appellant. Furthermore, the defence was not able to elicit during cross-examination any admission favourable to the position of the defence. The defence had also failed to provide reasons as to why the accused-appellant was arrested for committing the offences of trafficking and possession of Heroin, if it is indeed a mistaken arrest. The prosecution witnesses have been subjected to lengthy cross examination and this court is convinced that they had stood the test of cross-examination very well. And at this point, the prosecution had given evidence that the accused-appellant had absconded using forged documents.

The Government Analyst, PW-07, in evidence gave an explanation as to the small discrepancy of a matter of milligrammes in the weight of the substance, prior to and after government analysis.

The trial judge, in his judgement, has correctly analysed all the evidence presented by the prosecution and defence and according to law, found the accused guilty of the second charge of the indictment, which is possession of heroin and had acquitted him of the first charge, which was the trafficking of heroin. The learned State Counsel cited the case of **Premathilake v Republic of Sri Lanka 75 NLR 506**, which states that a conviction could be based upon the telling evidence of a mass of eloquent circumstances remain unexplained

by the accused, no reasonable judge could have any verdict other than that of guilt.

Since the evidence of the official witnesses has not been refuted by the defence and the fact that evidence given is more than sufficient to find the accused guilty of the crime of possession of heroin, this court rejects all seven grounds of appeal put forth by the counsel for the accused and affirms the judgement and sentence given by the learned trial judge to the accused.

**Judge of the Court of Appeal**

**Hon. Justice Wickum A. Kaluarachchi**

**I agree.**

**Judge of the Court of Appeal**