

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

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

CA-HCC-289/18

HC of Colombo Case No:

HC 5433/2010

The Democratic Socialist Republic of Sri Lanka

Complainant

Vs.

Hewadevage Sujith Nishantha

Accused

And Now

Hewadevage Sujith Nishantha

Accused-Appellant

Vs.

The Hon. Attorney General

Attorney General's department

Colombo 12.

Complainant-Respondent

Before : B. Sasi Mahendran, J.

Amal Ranaraja, J

Counsel: Hafeel Farisz with Sanjeewa Kodithuwakku for the Accused-Appellant

Wasantha Perera DSG for the Respondents

Argued On: 26.05.2025

Written

Submissions: 21.08.2019 (by the Accused-Appellant)

On 29.07.2019 (by the Respondent)

Judgment On: 04.07.2025

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 of 4.69 grams of heroin (diacetylmorphine), in violation of Section 54(a) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 13 of 1984.

To support the charge, the prosecution called three witnesses and tendered productions marked P1 to P8 before closing its case. The Accused subsequently made a dock statement. After the trial, the Learned Trial Judge found the Accused guilty and imposed a sentence of life imprisonment.

Dissatisfied with the said judgment and sentence, the Accused has preferred this appeal.

The following are the Grounds of Appeal set out in the written submission:

1. The learned Trial Judge failed to appreciate that there is a discrepancy about the production registry belonging to the productions of this case.
2. The learned Trial Judge failed to consider the version of the appellant.
3. The learned Trial Judge failed to appreciate that the version of the prosecution fails the test of probability.

Prosecution version

On 11th December 2008, Police Constable No. 50151 (PW6), attached to the Panadura-Walana Anti-Corruption Unit, received credible intelligence from his personal informant regarding an individual who had allegedly gone to obtain heroin. The informant further advised that if officers arrived in Peliyagoda before the suspect's return, a successful raid could be carried out. PW6 recorded this information in his pocketbook and promptly conveyed it to PW1.

Accordingly, a team led by PW01, along with PW06 and other officers 12455, 38872, 63454, 40642, and 762266 departed in a vehicle bearing registration number 257-3073 to execute the raid. One officer was in uniform and armed, while the others were dressed in civilian attire. The team carried two pistols. Upon arriving at Thorana Junction, PW1 and PW6 left the van and proceeded to the location where the informant was stationed. After waiting for a short period, a bus arrived. The informant then pointed out the accused to the officers before departing the scene.

The accused was walking toward Wanawasala Road when the officers initially allowed him to proceed. They then followed him from behind, grabbed his hand ,

and brought him and stopped him. Upon identifying themselves as officers from the Walana Anti-Corruption Unit, the Accused appeared visibly fearful and began to tremble. A subsequent search of his left trouser pocket revealed a Nokia mobile phone and his national identity card. In his right trouser pocket, officers discovered a grocery bag containing a light brown powdery substance, which they suspected to be heroin. He was taken into custody at approximately 13:55 hours, and the team departed the scene around 14:10 hours. The team proceeded to the Peliyagoda Police Station, arriving there at 14:20 hours.

At the Peliyagoda Police Station, the substance was weighed using an electronic scale, recording a total weight of 31g 400mg, including the cellophane wrapping. The parcel was sealed with the personal seal of PW6 and handed over to Police Sergeant, Indrathissa No. 53368 on the same day.

During the cross-examination, the Defence counsel argued that the Accused typically does not wear T-shirts. It was further suggested that the accused had been apprehended around 10:45 hours and handed over to the Peliyagoda Police Station by 12:45 hours an assertion denied by the witness. The Defence also contested the location of the arrest; however, Witness 1 (PW1) remained resolute in his testimony.

The Counsel alleged that an individual named Jayathissa was the person actually arrested. They additionally claimed that the Accused was taken into custody while en route to visit his grandmother on a motorbike. Witness No.1 was repeatedly questioned about the sealing process and acknowledged that it was carried out by Witness No.06, Lal Kumara, as he did not have his seal at the time. He further confirmed the chain of custody by affirming that he kept possession of the production until it was handed over at the Peliyagoda Police Station.

PW1 further stated that after the raid concluded, the production items and the Accused were officially handed over at 15:05 hours at the Peliyagoda Police Station. However, there was a delay of approximately three hours before their

arrival at the station. When asked about this delay, PW1 attributed it to heavy traffic on the Colombo–Kandy road and a short tea break taken en route.

The testimony of Prosecution Witness No.01 is considered both credible and trustworthy. This assessment is supported by a thorough examination of the sequence of events—ranging from the initial receipt of information and the execution of the raid to the timing and location of the arrest, the subsequent transport to the Peliyagoda Police Station, and the proper sealing of the production. As such, there exists no justifiable reason to dispute the conclusion reached by the Learned High Court Judge.

The testimony of PW6, Lal Kumara, lends further support to PW1's testimony. PW6 stated that upon receiving intelligence from his informant, he relayed this information to his superior officer, PW1, and subsequently joined the team led by PW1 to conduct the raid. He described the arrest of the Accused by PW1 and the recovery of the incriminating substance with assurance and precision. According to PW6, a Nokia mobile phone and an identity card were recovered from the accused's left trouser pocket, while a grocery bag containing a powdery substance was retrieved from the right trouser pocket.

He also detailed the packaging of the seized item and later identified the parcel during the trial as the parcel that contained production.

After the arrest, the accused was handed over to the Police station. Since PW1 lacked his own seal, the parcel was sealed using PW6's seal and subsequently entrusted to Police Sergeant No. 53368 at the Peliyagoda Police Station by entering the production registry. He has explained the discrepancy with regard to the production registry. The learned trial judge has accepted the reason given by this witness.

Upon perusing the evidence of PW06, his testimony corroborates the evidence of PW01. Furthermore, we note no material contradictions between the testimonies of PW1 and PW6 that would cast doubt on their credibility.

We are mindful that our Courts as affirmed by the Court of Appeal, uphold the presumption that the Learned Trial Judge—having observed the witnesses during examination-in-chief and cross-examination—was well placed to assess their credibility, benefiting from firsthand impressions of their demeanor and deportment throughout the Trial."

The function of an appellate court in dealing with a judgment mainly on the facts from the court, which saw and heard witnesses has been specified as follows by Macdonnell CJ in the King v. Gunaratne and Another, CLR V.14 page 144, Macdonnell CJ:

"This is an appeal mainly on facts from a Court which saw and heard the witnesses to a Court which has not seen or heard them, and in dealing with this judgment I have to apply the three tests, as they seem to be, which a Court of Appeal must apply to an appeal coming to it on questions of fact. Can we say that the verdict of the learned District Judge, namely, that these people are guilty, was unreasonably against the weight of the evidence adduced on both sides? Clearly it is not possible to say that. Can we say that there has been any misdirection either on the law or on the evidence? Again I do not think it would be possible to say so. There was a point of law argued here that accused had no intention to cause loss in the end. I have dealt with that, and properly understood, I do not think it is a misdirection in law at all. I do not remember any other point that was seriously raised to this Court as a misdirection, Then there is the third ground of interference, that the Court of trial has drawn the wrong inferences from matter in evidence which is as much before this Court as it was before the Court of trial, for instance, documents. Again, I do not think it can be said that there has been any wrong inferences drawn by the Court of trial. On the contrary, the documents put in seem, rightly apprehended, to support the findings of fact arrived at by the learned District Judge."

He held further: The principles laid down by the authorities, referred to above, make it clear: that, although the findings of a Magistrate on questions of fact are entitled to great weight, yet, it is the duty of the Appellate Court to test, both intrinsically and extrinsically the evidence led at the trial: that, if after a close and careful examination of such evidence, the Appellate Court entertains a strong doubt as to the guilt of the accused, the Appellate Court must give the accused the benefit of such doubt.”

Applying the above legal principle, and having already analyzed the testimonies of PW1 and PW6, we are satisfied that the Learned Trial Judge has correctly evaluated the evidence of both witnesses and reached a justifiable conclusion that their accounts are truthful and consistent. There is no basis to disregard or disbelieve this finding. Furthermore, it is observed that Counsel for the Accused-Appellant failed to establish any contradictions or inconsistencies between the testimonies of these two witnesses.

In light of this, there is no justification to reject the evidence on such grounds. Nothing has been presented that would undermine the credibility or trustworthiness of the said witnesses. We are, therefore, of the view that the Learned High Court Judge rightly found both witnesses to be reliable. Their evidence concerning the arrest of the Accused and the recovery of the productions was coherent and dependable.

One of the objections raised by the Accused is that the Learned Trial Judge failed to give proper consideration to the dock statement made by the Accused. According to the Accused, he was arrested at around 10:30 hours. However, both PW1 and PW6 stated they received relevant information only around 12:30 hours. and proceeded thereafter to apprehend the Accused. The out-entry of PW1 confirms that the officers left the police station after 13:00 hours, and the timing reflected in the production register further corroborates this sequence of events. Thus, the version provided by the Accused cannot be accepted.

While we acknowledge that under certain circumstances a dock statement may raise a reasonable doubt in the prosecution's case entitling the Accused to an acquittal we find, in this instance, that the dock statement made by the Appellant does not give rise to any such doubt. Consequently, we find no merit in the grounds advanced by the Learned Counsel for the Appellant.

Taking all the aforementioned matters into account, we find no reason to interfere with the judgment of the Learned Trial Judge.

Accordingly, the appeal is dismissed, and the conviction and sentence imposed on the Appellant are affirmed.

The appeal is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J

I AGREE

JUDGE OF THE COURT OF APPEAL