

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

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

Democratic Socialist Republic of Sri
Lanka.

Complainant

Court of Appeal No.

CA HCC 55/2018

Vs.

High Court of Colombo No.

HC 7593/14

Rajendra Dhanendran

Accused

AND NOW BETWEEN

Rajendra Dhanendran

Accused-Appellant

Vs.

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

Respondent-Respondent

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

Counsel: Amila Palliyage with Sandeepani Wijesooriya, Savani
 Udugampola, Lakitha Wakista Arachchi and Subaj De
 Silva for the Accused-Appellant.

Anoopa De Silva, D.S.G. for the State.

Argued on: 19.05.2025

Judgment on: 26.06.2025

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. 7593/2014.

2. The charges in the indictment are as follows;
 - i. That on or about November 02, 2013, within the jurisdiction of this Court, you did traffic 03.19 grams of Diacetyl Morphine (in other words “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.

- ii. During the course of the same transaction, you did possess 03.19 grams of Diacetyl Morphine, 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).
3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant in respect of both charges and sentenced the appellant as follows;

Charge 01

Life imprisonment.

Charge 02

Life imprisonment.

4. The appellant being aggrieved by the disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

5. On November 02, 2013, PW01 *Inspector of Police, Chandana* along with the officers mentioned in his testimony have left the *Colombo Crimes Division* to conduct routine surveillance activities. PW01 has been dressed in his uniform while the other officers have worn civilian clothing.

6. The team has travelled by van to *Nawagampura* and then proceeded on foot beyond the *Nawagampura Kovil* to carry out their surveillance. The objective of the team of officers have been to apprehend individuals involved in illegal drug trafficking activities.
7. While the team of officers were proceeding on foot, PW01 has spotted an individual dressed in a white shirt and black trousers turning towards the gate of the *Nawagampura* ground. Upon noticing the officers and since the gate was locked the individual has turned back and headed in the direction from which he came.
8. This behaviour has raised suspicion in PW01. Following PW01's instructions, the officers have pursued the individual. Upon apprehending the suspicious person *PS 10757 Fonseka* has detained him while PW01 began to search the individual.
9. During the search, PW01 has discovered a pink cellophane bag tied in a knot from the possession of the particular individual. PW01 has untied the bag and identified its contents as a powdered substance mixed with heroin.
10. PW01 has re-knotted the pink cellophane bag and placed it in an envelope which he has kept in his possession. Subsequently, PW01 has arrested the individual identified as the appellant. On the way

back to the *Colombo Crimes Division*, the officers have stopped at a pawn shop to weigh the contents of the pink cellophane bag. After weighing the cellophane bag has been wrapped in a white paper and placed in an envelope which has then been sealed and kept in the possession of PW01.

11. Upon returning to the *Colombo Crimes Division*, the officers have followed the relevant procedures. The sealed envelope registered as a production in the Sri Lanka Police Property receipt book and allocated the number PR 174/13. After completing those procedures, PW01 has handed over both the appellant and the production to the officer in charge of the reserve of such division at that time.

12. The production has been retained at the reserve without any tampering and has been subsequently forwarded to the *Government Analyst* for analysis. The *Government Analysts* has conducted a series of tests and prepared a comprehensive report which has been submitted as evidence and marked as an exhibit 'ප්‍ර-8'. According to the findings of the report, the analysis has revealed the powdered substance had contained 03.19 grams of heroin.

Case of the appellant

13. The appellant asserts that the law enforcement officers questioned him regarding the residence of one *Nona Amma*. After the appellant identified the house, the officers searched the premises and

recovered several suspicious items. Following this discovery, the officers have questioned the appellant about *Nona Amma's* whereabouts. When the appellant was unable to provide the requested information, the officers have presented a recovered item and falsely implicated the appellant in the matter.

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

- i. Did the Learned High Court Judge err in law by convicting the appellant for trafficking without having additional evidence?
- ii. Did the Learned High Court Judge err in law by failing to consider the improbability of the prosecution's case?

15. The Learned Counsel has also contended that the Learned High Court Judge has erred in law by convicting the appellant of trafficking a narcotic substance without sufficient additional evidence to substantiate such a charge. This argument raises a critical question about the standard of evidence required in trafficking cases.

16. Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance (as amended) provides as follows,

“traffic” means-

- (a) to sell, give, procure, store, administer, transport, send, deliver or distribute; or

(b) to offer to do anything specified in paragraph (a).”

17. In ***Mohamed Iqbal Mohamed Sadat vs. The Attorney General***, SC/SPL/ LA/58/15, SC Appeal 110/15 decided on December 14, 2020, Aluwihare, P.C., J, has stated as follows;

“As far as the mental element is concerned, I am of the view that the offence or [drug] trafficking is similar to possession, since it requires to be established that the perpetrator knowingly possessed or had control over a dangerous drug. Thus, one cannot engage in drug trafficking while being unaware that he or she is in possession of a drug, or if he or she reasonably but mistakenly believes that the substance is legal. The offence of drug trafficking, however, also requires that the prosecution establish that the perpetrator was involved in the selling, procuring, storing, administering, transporting, delivering or distributing of such drugs, or had offered to do anything referred to above [Definition of the term “traffic” in section 54 A of the Ordinance]. It is this additional requirement [of an act] that transforms the status of the offence [of possession] to trafficking.

Since possession and trafficking can look the same at first glance, prosecution for drug trafficking typically requires producing additional circumstantial evidence to indicate that the accused was in possession of drugs not for personal use but for commercial purposes. The quantity of the drug detected would be a good indicator

to decide whether the perpetrator is a user [an addict] or is trading in drugs. This would be a question of fact”.

18. The evidence presented indicates that the gross quantity of the powdered substance mixed with heroin seized was 19.69 grams. This quantity is significantly larger than what would typically be possessed by an individual for personal consumption, suggesting that the appellant may not have been carrying the substance for personal use. The possession of such a substantial quantity of a narcotic substance can lead to reasonable inferences about the individual's intent and activity concerning the substance. It is widely recognised that an addict would ordinarily possess only a minimal quantity for personal consumption. Particularly because of the high cost of narcotics. Therefore, the sheer amount in question supports an inference that the appellant possessed the narcotic substance for distribution rather than for personal use. Given these circumstances, it would be reasonable for the Court to infer that the appellant had this large quantity of powdered substance mixed with heroin for the purpose of selling. Consequently, the contention presented by the Learned Counsel for the appellant which suggests that the conviction of trafficking lacked a solid evidentiary foundation, appears to lack merit. The overwhelming evidence of the excessive quantity presents a compelling case supporting the trafficking charge.

19. The Learned Counsel for the appellant has also drawn the attention of this Court to specific portions of evidence found in pages 44, 45, 46, 65, 66 and 67 of the brief. Specifically, as regards

to the distance at which the appellant was first spotted and thereafter apprehended. The Learned Counsel contends that it is evident the appellant has identified the team of officers from a distance. Had he in fact been in possession of a narcotic substance it is argued he would have altered his course and blended in among the crowd to evade contact with the officers.

20. However, the Learned Counsel's argument attempts to generalise the behaviour of an individual in a specific situation. This approach is fundamentally flawed. Human behaviour is inherently complex and can vary significantly from person to person, influenced by a multitude of factors. Each individual's response to a similar situation is likely to be affected by their unique circumstances, personal experiences and psychological state at the particular moment.

21. To draw sweeping conclusions about how one person may or may not react to the presence of law enforcement officers overlooks these crucial nuances. Therefore, it is essential to recognise that while the appellant's behaviour may seem indicative of innocence or guilt, it cannot be applied to all individuals in comparable situations.

22. Further, this Court must also remain mindful of the variety of motivations and reactions that can arise when a person finds

himself confronted with the authority, particularly in the context of potentially having illegal substances in his possession.

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

I make no order regarding costs.

24. The terms of life imprisonment shall commence from the date of conviction.

25. The Registrar of this Court is directed to send 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