

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

**In the matter of an Appeal under and in terms of  
Section 331 of the Code of Criminal Procedure Act  
No. 15 of 1979.**

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

**Complainant**

Court of Appeal  
Case No. CA 147/2020

Vs.

High Court of Colombo  
Case No. HC 7457/2014

Abdul Hameed Mohammed Niyaz

**Accused**

**AND NOW BETWEEN**

Abdul Hameed Mohamed Niyaz

**Accused-Appellant**

Vs.

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

**Complainant-Respondent**

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

**Counsel:**    Nayantha Wijesundara for the Accused-Appellant.

Azard Navavi, S.D.S.G. for the State.

**Argued on:**  25.03.2025

**Decided on:** 28.03.2025

## **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. HC 7457/2014.
2. The charges in the indictment are as follows;
  - (a) On or about 13.08.2011, the appellant did traffic 2.59 grams of heroin without a license or permission of the director, an offence punishable in terms of Section 54(a)(b) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.
  - (b) During the course of the same transaction, the appellant did possess 2.59 grams of heroin without a license or permission of the director, an offence punishable in terms of Section 54 A(d)

of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No.13 of 1984.

3. When the indictment had been forwarded to the *High Court of Colombo*, the Learned High Court Judge have caused the appellant to be produced in Court by the prison authorities. Thereafter, has handed over a copy of the indictment together with the annexures to the appellant. Upon the appellant pleading not guilty to the charges the matter has been taken up for trial. At the conclusion of the trial, the Learned High Court Judge has found the appellant guilty of the charges, convicted and sentenced him to life imprisonment in respect of each charge.
4. The appellant being aggrieved by the disputed judgement and the sentencing order, has preferred the instant appeal to this Court and prayed that the conviction and the disputed sentencing order be set aside and the appellant to be acquitted of the charges.

#### **The case of the prosecution**

5. PW1 (IP *Chandana*) and PW2 (PS10757 *Fonseka*) have been attached to the *Kotahena Police Station* at the relevant period of time. PW1, PW2 together with PC61072, PC61115 and PC33936 have at 09.05 hrs on 13.08.2012 set out from the *Kotahena Police Station* to engage in routine surveillance activity. Accordingly, PW1 and the officers have travelled to *Maha Vidyala Mawatha* in *Colombo* and halted the vehicle they travelled

in, at a spot in the locality. While PC61072 *Bandara* had remained in the vehicle the officers travelled in, the others have proceeded on foot to a shanty town referred to as the *146waththa*. When the officers were about to move into the shanty town, a person had come from the direction of the *146waththa* and such person has aroused the suspicion of PW1. PW1 has proceeded to search the person, PW1 has recovered a pink coloured plastic bag from the possession of the person. The pink coloured plastic bag had contained a brown coloured powdered substance. PW1 through the smell, texture and the colour of the powdered substance has distinguished it to be a heroin mixed powder. Thereafter the person has been questioned, his identity verified and arrested. PW1 has also recovered a sum of Rs. 63,000 from the possession of such person. The person arrested has been identified to be the appellant by PW1 and PW2.

6. The officers together with the appellant have in due course travelled to a pawning centre named *Venkateshwara*. The heroin mixed powder has been weighed, while in the pink coloured plastic bag and then it has been placed in an envelope with a label and the envelope sealed. The sealed envelope has been purportedly registered as a production in Sri Lanka Police property receipt no. 19/2011. Upon the sealed envelope being handed over to the reserve officer on duty at the *Kotahena Police Station*, it has been kept in safe and proper custody until it was taken to the *Government Analyst Department* for analysis. The Government Analyst has conducted the necessary tests and prepared a report. Such report has been marked 37-7. The money recovered

from the possession of the suspect has been purportedly registered in the suspect property receipt no.15/2011.

**The case of the accused**

7. The appellant has maintained that he was taken into custody at the *146waththa* when he went there to perform manual labour. Upon the appellant being arrested, he has been taken to the *Kotahena Police Station* and detained overnight. The appellant has realised that he has been falsely implicated when an officer proceeded to obtain his fingerprints the following day.

**Grounds of appeal:**

8. The following grounds of appeal were urged by the Learned Counsel for the appellant when the matter was taken up for argument;
- i. The chain of custody has not been proved by the respondent due to the unexplained loss of the production and property receipts.
  - ii. The notes on the raid are vague, therefore, the prosecution version is improbable.
9. The Learned Counsel for the appellant has contended that as the prosecution has failed to forward to Court the *Sri Lanka Police* property receipt no. 91/2011 and the suspect property receipt no. 15/2011

therefore, the appellant has been denied an opportunity to challenge the chain of custody of the production.

10. Though the *Sri Lanka Police* property receipt and the suspect property receipt have been listed as items of evidence at the back of the indictment, the prosecution has failed to produce those receipts in Court. In the circumstances, the prosecution has made a formal request to Court that it be granted further time to inquire into the matter and report to Court its outcome. On 15.02.2016, an additional application has been made by the prosecution to add the Officer-in-Charge at the *Kotahena Police Station* as PW10 in order to advance an explanation through such witness the state of affairs of the receipts in issue. However, PW10 has not testified in Court though the Learned State Counsel has simply revealed that the particular receipts have been misplaced. The *Police* property receipt and the suspect property receipt being important documents to manifest the inward journey of the production and the taking into custody of a suspect's property, it is my view that the prosecution should have demonstrated to Court through cogent evidence that those receipts have been misplaced. However, the prosecution has failed in that regard.

11. Additionally, the Learned State Counsel has not made a formal application to produce the copies of those receipts as evidence at the trial. Consequently, it could be inferred that such request has not been made

because the prosecution did not possess copies of the receipts in its docket. This situation raises a doubt as to whether the production was registered at all and whether it was subsequently handed over to the officer on reserve duty at the *Kotahena Police Station*. It is also unclear as to whether the copies of the *Police* property receipt and the suspect property receipt have been forwarded to the Attorney General along with the IB extracts for his advice. For these reasons, I believe it is fraught with danger to rely solely on the oral testimony of the officers on duty at the reserve of the *Police Station* regarding the chain of custody of a production especially when the prosecution has failed to establish through compelling evidence that the particular *Police* property receipt and suspect property receipt have been misplaced.

12. Due to the aforesaid reasons, the Learned High Court Judge has misdirected himself when he concluded that the prosecution has proved beyond a reasonable doubt the inward journey of the production.

13. The incident referred to in the charge has occurred in the year 2011. Fourteen years have lapsed since the offence has been purportedly committed. Therefore, it does not seem just to call upon the appellant to defend himself again after such an unconscionable lapse of time.

In ***The Queen vs. G.K.Jayasinghe*** 69 NLR 314 at page 328, Sansoni, J, has stated,

*“...we have considered whether we should order a new trial in this case. We do not take that course, because there has been a lapse of three years since the commission of the offences, and because of our own view of the unreliable nature of the accomplice’s evidence on which alone the prosecution case rests.*

*We accordingly direct that the judgment of acquittal be entered.”*

14. Hence, having considered the matters referred to above, I am of the view that this is not a fit case to order a re-trial, I set aside the conviction together with the disputed sentencing order and acquit the appellant of the charges preferred against him.

*Appeal allowed.*

15. The Registrar of this Court is directed to communicate the 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**