

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

In the matter of an Appeal made
under Section 331(1) of the Code
of Criminal Procedure Act No.15
of 1979.

**Court of Appeal No:
CA/HCC 0163/2023
High Court of Kegalle
HC/4136/2019**

Hewage Rajith Kumara Sunil
Jayaratne

Accused-Appellant

Vs.

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

Complainant-Respondent

BEFORE : **P. Kumararatnam, J.
R. P. Hettiarachchi, J.**

COUNSEL : **Amila Palliyage with Sandeepani
Wijesooriya, Savani Udugampola, Lakitha
Wakishta Arachchi and Subaj De Silva for
the Appellant.
Shanaka Wijesinghe, PC, ASG for the
Respondent.**

ARGUED ON : **29/05/2025**

DECIDED ON : **04/07/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter after referred as the Appellant) was indicted by the Attorney General before the High Court of Kegalle under Sections 54(A) (d) and 54(A) (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for Possession and Trafficking respectively of 6.143 grams of Heroin on 13th March, 2018.

After the trial the Appellant was found guilty of both counts and the Learned High Court Judge of Kegalle has sentenced the Appellant to death on both counts on 06th of April, 2023.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence.

On behalf of the Appellant following Grounds of Appeal were raised.

1. The Learned High Court Judge erred in law by failing to consider the variation in quantity of the production which affects the root of the prosecution case.
2. The version of the prosecution is improbable.
3. The Learned High Court Judge erred in law by compelling the Appellant to adduce more evidence.
4. The Learned High Court Judge erred in law by rejecting the defence evidence on wrong premises.

According to PW1, SI/Gamini, attached to Aranayake Police Station on 13.02.2018 received information via PW2, PS/48508 Priyantha regarding drug trafficking by the Appellant. He had organized the raid with seven police officers.

Thereafter, they had left the police station around 14:30 hours on four motor bikes. They had travelled about three kilometres and arrived at a place called “Samagama”. There, they had spotted the Appellant who was walking towards them. Seeing their approach, the Appellant had behaved in a suspicious manner. When the Appellant had tried to flee, PW1 had caught the Appellant and had conducted a search on him. Upon the search of his body, a small parcel was found in the right-side pocket of the Appellant’s trouser. and six currency notes each amounting to Rs.5000/- were recovered by the police from the left-side pocket of his trouser. As the parcel recovered from the Appellant contained some substance which reacted for Heroin (Diacetylmorphine) he was arrested under the charge of possession and trafficking of Heroin.

Thereafter, he was taken to a jewellery shop situated at Dippitiya and the substance was weighed in front of the Appellant. According to PW1, the weight of the parcel was 8.400 grams. Thereafter, the Appellant along with

the production were handed over to the reserve police officer PC 3986 Pathmini at the Aranayake Police Station.

The parcel pertaining to the Appellant had been registered under production No. 348/2018, which was produced to the Mawanella Magistrate Court along with the Appellant. The production had been retained at the police station under different reserve duty officers before being taken to the Magistrate Court in Mawanella. After obtaining a court order, the production had been handed over to the Government Analyst Department on 29/03/2018.

The prosecution led 05 witnesses excluding the Government Analyst, marked productions and closed the case. The Government Analyst Report was admitted under Section 420 of Code of Criminal Procedure Act. Thereafter, the defence was called and the Appellant made a dock statement and called a witness.

In his dock statement, the Appellant took up the position that he was never in possession of any dangerous drugs as claimed by the prosecution. According to him, his father was arrested first and when he visited the police station, his father was released and he was taken into custody. In his contention the drugs were introduced to him by the 1st and 2nd witnesses. His father gave evidence in support of his defence.

It is essential to consider here the fundamental doctrine that all persons are presumed innocent until proven guilty and entitled to their freedom unless and until they are found guilty by a Court of competent jurisdiction. This principle places the burden of proof on the prosecution to demonstrate, beyond a reasonable doubt, that the accused committed the crime. It ensures fairness in the legal process and protects individuals from being unfairly convicted or punished.

As seen in the landmark case of **Woolmington v. DPP** [1935] A.C.462. where Viscount Sankey J held that:

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt..... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal.

In the same vein, Perera, J., in **Karunadasa Vs. Officer-in-Charge, Motor Traffic Division, Police Station Nittambuwa** (1987) 1 SLR 155 stated that;

“It is an imperative requirement in a criminal case that the prosecution must be convincing, no matter how weak the defence is, before the Court is entitled to convict on it. It is necessary to borne in mind that the general rule is that the burden is on the prosecution, to prove the guilt of the accused. The prosecution must prove their case apart from any statement made by the accused or any evidence tendered by him. The weakness of the defence must not be allowed to bolster up a weak case for the prosecution. The rule is based on the principle that every man is presumed to be innocent until the contrary is proved, and criminality is never to be presumed.”

In the prosecution of an accused for drug related offences, the prosecution does not only need to prove the case beyond a reasonable doubt but must also ensure, with cogent evidence that the inward journey of the production has not been disturbed at the all-material points.

This was elaborated in **Witharana Doli Nona v. The Republic of Sri Lanka** CA/19/99 where it was held that:

“It is a recognised principle that in drug related cases the prosecution must prove the chain relating to the inward journey. The purpose of this principle is to establish that the productions have not been tampered with. Prosecution must prove that the productions taken from the accused appellant was examined by the Government Analyst. To prove this, the prosecution must prove all the links of the chain from the time it was taken from the possession of the accused appellant to the government Analyst’s Department”.

Similarly, in **Mahasarukkalige Chandani v. Attorney General** CA/213/2009 decided on 30/06/2016 His Lordship Justice Malalgoda held that:

“As observed above, that Government Analyst Report which is the principal evidence in a drug offence entirely depends on the inward journey of the production chain and therefore, there is a duty cast on the prosecution to establish the inward journey of the production with reliable evidence”.

Further, in the case of **Mohamed Nimnaz V. Attorney General** CA/95/94 held:

“A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences relation to drugs, we are of the view that the prosecutor should not be given a second chance to fill the gaps of badly handled prosecutions where the identity of the good analysis for examination has to be proved beyond reasonable doubt. A prosecutor should take pains to ensure that the chain of events pertaining to the productions that had been taken charge from the Appellant from the time

it was taken into custody to the time it reaches the Government Analyst and comes back to the court should be established”.

Under the first ground of appeal, the Appellant takes up the position that there is a discrepancy in the weight of Heroin recovered from the Appellant and the Government Analyst Report. The Counsel for the Appellant contends that the Learned Trial Judge misdirected himself by failing to analyse the weight discrepancy which disturbs the production chain. He submits further that this is a substantial fact that the prosecution will have to prove beyond a reasonable doubt.

According to the Chief Investigation Officer PW1, SI Gamini, the substance found in the possession of the Appellant was weighed using an electronic scale used in the afore-mentioned jewellery shop. He had chosen this option considering that the weighing machines used in the jewellery shops are registered and accurate. In that instance, the parcel recovered from the Appellant was seem to be weighing about 8.400 grams of substance.

However, when the productions were taken to the Government Analyst Department, a notable difference in weight had been noted in the parcel. According to the Government Analyst Report which had been marked as P9 in the High Court Trial, the weight of the parcel was mentioned as 6.956 grams. This is 1.494 grams less than the original weight. The Government Analyst has also made a note of it in the report. Hence, the Appellant argues that the weight difference creates a serious doubt in the prosecution case.

When this Court invited the Respondent to explain the discrepancy in the weight of the substance, the Additional Solicitor General submitted that as the Appellant had admitted the Government Analyst Report under Section 420 of the CPC, he cannot contest this discrepancy in the appeal.

The Appellant admitted the contents of the Government Analyst Report. The prosecution had not taken any endeavour to clarify the weight discrepancy highlighted by the Government Analyst during the trial.

Nevertheless, it is the paramount duty of the Prosecution to prove that it is the same production recovered at the time of detection which has reached the Government Analyst. The main reason is to establish that the evidence, which is related to the alleged crime, was collected from the accused and was in its original condition rather than having been tempered with or planted deceitfully to make someone else guilty, which helps in establishing an undisturbed inward journey of the substance, which as stated above is essential in the prosecution of accused for drug related offences. Handling of production evidence is a lengthy process but the court necessitates it for the proper adjudication of causes related to drugs cases. This proves the integrity of the production which had been recovered from the accused has been preserved until it reaches the Government Analyst Department.

In this regard, the Learned High Court Judge in her judgment had not made any comments about the discrepancy in weight in the given case. In the absence of any comment regarding this particular point; no doubt, the Appellant had not been afforded a fair trial. Thereby, this has caused great prejudice to him.

As the weight discrepancy is a substantial fact, the prosecution had not put relevant questions to PW1. Further, the Government Analyst was not called to explain the reason for the difference. Considering the pure Heroin detected in this case, a discrepancy in weight is crucial which certainly have impact on the outcome of the net result of the Government Analyst.

As the discrepancy in weight in a drug related case of this nature is crucial to the outcome of the case, it is not necessary to address the other grounds of appeal raised by the Appellant.

Therefore, I set aside the conviction and sentence imposed on the Appellant by the Learned High Court Judge of Kegalle dated 06/04/2023. Therefore, he is acquitted from both charges.

Accordingly, the appeal is allowed.

The Registrar of this Court is directed to send this judgment to the High Court of Kegalle along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL