

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

**In the matter of an Appeal against an order
of the High Court under Section 331 of the
Code of Criminal Procedure Act No.15 of
1979.**

The Democratic Socialist Republic of
Sri Lanka

Complainant

Court of Appeal Case No.:

CA/HCC/0040/23

Vs.

High Court of Colombo

Case No.:

HC 356/2017

Kankanige Sumedha Indika

Accused

AND NOW BETWEEN

Kankanige Sumedha Indika

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: Kasun Liyanage with Thilakkana Indunil for the Accused-Appellant.

Lakmini Girihagama, D.S.G for the Respondent.

Argued on: 16.06.2025

Decided on: 15.07.2025

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 356/17.

2. The charges in the indictment are as follows;

Charge 01

That on or about May 11,2016, within the jurisdiction of this Court, you did traffic 03.82 grams of 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.

Charge 02

During the course of the same transaction, you did possess 03.32 grams of heroin, 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 of the charges in the indictment and sentenced the appellant to life imprisonment in respect of each charge.

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

Case of the prosecution

5. As of the date referred to in the charges, PW01 has been attached to the intelligence and surveillance unit at the *Prison Headquarters* in *Sri Lanka*. His duties had included conducting body checks on prisoners who were committed to remand custody, among other responsibilities.
6. On May 11, 2016, PW01 has been on duty at the *Colombo Remand Prison*. At approximately 17.45 hours, a group of detainees who had been remanded by the Learned Magistrate of the *Kaduwela Magistrates Court* has been brought to the *Colombo Remand Prison*. PW01 has proceeded to search those detainees.
7. Among the group had been a detainee who has raised the suspicions of PW01. Consequently, PW01 has directed the particular detainee to the *Prison Hospital* for examination by the prison doctor. Upon examination, the doctor, identified as PW07, has discovered a contraption hidden in the detainee's rectum. This contraption has contained 24 small cellophane parcels which held a powdered substance.
8. Later the powdered substance has been forwarded to the *Government Analyst* for examination.
9. Following the necessary tests, the *Government Analyst* has concluded that the powdered substance was a heroin mixed one, with a pure heroin quantity of 03.82 grams. The *Analyst's* report has been marked as B-13.

Case of the appellant

10. The appellant has maintained his innocence regarding the incident referred to in the charges. He has firmly asserted that he was not involved in any unlawful activity and that the allegations against him are unfounded.

Ground of appeal

11. When the appeal was taken up for argument, the Learned Counsel for the appellant urged the following ground of appeal;
 - i. The prosecution has failed to prove the chain of custody beyond a reasonable doubt.
12. PW01 in his testimony has stated that the contraption discovered from the appellant was a rubber condom with its ends sealed with tape. Inside the rubber condom, 24 small cellophane parcels had been found. After this contraption was discovered, the small parcels had been taken out and the powdered substance within them securely placed in a single plastic packet. Such packet thereafter has been placed in an envelope and such envelope sealed consequently.
13. Finally, the sealed envelope together with its contents has been sent to the *Government Analyst* for analysis.
14. In his account, PW07, the prison doctor tasked with examining the appellant has stated that during the examination, he discovered a small parcel wrapped in polythene concealed within the appellant's rectum. That parcel had contained a powdered substance. The doctor has further re-affirmed such finding during his re-examination. Furthermore, when the modified rubber condom marked B-2 was presented to the doctor, he had been unable to identify it.
15. The significant discrepancy raises concern about the contraption used by the appellant to retain the heroin mixed powdered substance; the pure quantity of heroin of which has been determined to be 03.82 grams. This also raises a critical question;

Was this powdered substance genuinely in the possession of the appellant at the time of his arrest?

16. The prosecution's case hinges on the assertion that the appellant possessed the heroin mixed powdered substance, however, the conflicting evidence regarding how the heroin mixed powdered substance was contained undermines the strength of the argument of the prosecution. If the nature of the contraption used to retain such powdered substance or if its connection to the appellant is unclear, the prosecution's claims weaken considerably.

17. Moreover, establishing possession is important to the prosecution's case. Without concrete evidence linking the appellant to the powdered substance, the argument against him loses its foundation. Therefore, the identified discrepancies regarding both the contraption and the circumstances of possession not only impeach the prosecution's case but also raise a reasonable doubt regarding the appellant's guilt
18. Due to the above mentioned reasons, I am inclined to interfere with the conviction and the disputed judgment together with the sentencing order. I set aside the conviction and the disputed judgment together with the sentencing order and acquit the appellant of the charges in the indictment.

Appeal allowed.

I make no order regarding cost.

19. The Registrar of this Court is directed to communicate this judgment to the *High Court of Colombo* for necessary compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal