

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

In the matter of an appeal in terms of  
section 331 (3) of the Code of Criminal  
Procedure Act.15 of 1979

Democratic Socialist Republic of Sri  
Lanka.

**Complainant**

**Vs**

Yomi Merinnage Ratnapala Silva

**Accused**

Court of Appeal Case No:  
**CA/HCC/0111/24**

High Court of Colombo Case No:  
**HC 7703/14**

**AND NOW BETWEEN**

Yomi Merrinnage Ratnapala Silva

**Accused-Appellant**

**Vs**

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

**Respondent**

Before : **P Kumararatnam, J.**  
**Pradeep Hettiarachchi, J.**

Counsel : N.Jayasinha with Randunu Heellage and Imangi Herath for the  
Accused-Appellant  
Sudharshana De Silva SDSG for the Respondents

Argued on : 28.05.2025

Decided on : 06.08.2025

**Pradeep Hettiarachchi, J**

**JUDGMENT**

1. This appeal arises from the judgment dated 30-01-2024, delivered by the learned High Court Judge of Colombo. The Appellant was indicted before the High Court of Colombo in Case No. HC 7703/14 on the following counts:
  - A. That on or above 13-08-2013 in Ratmalana, the Appellant by trafficking 2.16 g of heroin committed an offence punishable under section 54 A(b) of Poisons, Opium and Dangerous Drugs Ordinance (as amended).
  - B. At the same time, during the same transaction for possession of 2.16 g of heroin without the authority or a license as permitted by the director in terms of chapter 5 Poisons, Opium and Dangerous Drugs Ordinance, an offence punishable under section 54 A (d) of the Ordinance.
2. At the trial before the High Court, five witnesses testified for the prosecution, while the defense called no witnesses. At the conclusion of the trial, the learned High Court Judge found the appellant guilty of charges 1 and 2, convicted him, and sentenced him to life imprisonment. Being aggrieved by the said conviction and the sentence the appellant has preferred the instant appeal.
3. The grounds of appeal advanced by the Appellant are as follows;
  - (a) The learned High Court Judge has failed to consider the vital contradictions between the prosecution witnesses and thereby arrived at a wrong conclusion that the prosecution witnesses fully corroborate the evidence of each other.
  - (b) The sentence is excessive in view of the Act No. 41 of 2022.

**Facts of the Case**

4. PW1, was a Sub-Inspector of Police attached to the STF camp at Rajagiriya at the time the alleged raid had taken place. According to PW1's evidence, the raid was conducted consequent to an information received by PW1 from one of his informants. The other officers who took part in the raid were PS 13381, PC 2725, PC 70494, PC 77099 and

PCD 27423. They went in a jeep bearing number GC-9884 towards Atthidiya Road. They left the STF Camp after entering the out entry at 21.35pm.

5. They proceeded along Atthidiya Road toward Maliban junction in Ratmalana. They then parked the vehicle near the Keells Super Market on Atthidiya Road to meet the informant.
6. The informant gave specific information about the appellant's arrival. He stated that the appellant, identified as "Ratmalane Ratnapala," would be arriving on his motorcycle bearing No. BAG-9175 around 11:00 PM at Sumangala Mawatha, carrying a parcel of heroin. The informant also described the appellant as being a fat person, about 50 years old, and approximately 5 ½ feet tall.
7. The STF officers proceeded 35 feet down Sumangala Road and positioned themselves in front of a medical center. PW 5 was sent 15 meters toward Maliban Junction, while Police Constable Senananayake was sent further down Sumangala Road. In the meantime, PW1 and PW2 remained near the jeep with PC 2725 Sisira.
8. At approximately 10:00 PM, PW 1 received a phone call from the informant on Galle Road, who notified him of the appellant's arrival. After spotting the appellant turning his motorcycle onto Sumangala Mawatha, PW 1 ordered him to stop and dismount.
9. When searching the appellant, PW1 felt something hidden in the appellant's groin area and asked him to hand it over. The appellant then reached into his trousers, took a parcel out of his underwear, and gave it to PW1.
10. The appellant's parcel was wrapped in newspaper and sealed with tape. PW1 tore open the newspaper, revealing a cellophane bag filled with a brown, heroin-like substance. The appellant was arrested shortly after, at approximately 11:20 PM.
11. They proceeded to the Narcotic Bureau, where a field test and weighing of the substance were conducted. The field test revealed that the substance from the appellant was heroin, and the cellophane-wrapped package had a gross weight of 20 grams and 430 milligrams. The productions were subsequently sealed and given to reserve officer Bandara.
12. The main ground for the appeal is that the High Court Judge overlooked vital contradictions among the prosecution witnesses. This led the judge to the incorrect conclusion that their testimonies were fully consistent.

13. Since the appellant's primary argument focuses on inconsistencies both within and between the prosecution's evidence, it's appropriate to examine the testimonies of PW1, PW2, and PW5, as the prosecution heavily relied on their evidence to prove the charges against the appellant. In this regard, following authorities would be of much relevance.
14. In evaluating contradictions *inter-se* of two witnesses, the Judge must probe whether discrepancy is due to dishonesty, or defective memory or whether witness's power of observation was limited - per Colin Thome J. in ***Bandaranayake vs. Jagathsena [1984] 2 SLR 397***. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be given too much importance. ***Boghi Bhai Hirji Bhai vs. State of Gujarat AIR 1983 SC 753***.
15. It can be observed from PW 1's testimony on page 72 that he did not reveal the specific nature of the information he received from the informant over the phone. According to the evidence of PW 1 and PW 2, they drove to Aththidiya and parked their vehicle 100 yards before the Maliban Junction, parking the jeep on Aththidiya Road in front of the Keells Super Market.
16. PW1 further testified that the informant agreed to meet them on Aththidiya Road before the Maliban Junction. This was confirmed by PW2 in his testimony on page 197. However, Asanka Bandara Edirisinghe (PW5) contradicts PW1 and PW2's evidence regarding where the informant met PW1.
17. On page 332, PW5 explicitly stated that the Keells Super Market was on Galle Road, located about 100 meters from the Maliban Junction toward Galle, on the land side. This testimony directly contradicts the evidence from PW1 and PW2, who both claimed the Keells Super Market was on Aththidiya Road before the Maliban Junction.

PW 5 testified as follows;

ප්‍ර : එතකොට මහත්තයා ඔය කීල්ස් සුපර් ආයතනය රත්මලනේ නියෙන්ගේ ගාලු

පැන්නට වෙන්නද?

උ : ගාල්ල පැන්නට වෙන්නට.

ප්‍ර : ඒ කියන්නේ මැලිබන් හන්දියෙන් ගාලු පාරට ඇවිල්ලා මහත්මයලා ගලු පාරෙන්

ගමන් කිරීම සිදුකලා ?

උ : ගාලු පාරේ ස්වාමීනි මීටර් 100 ක් පමණ ගමන් සිදු කිරීම සිදු කලා.

ප්‍ර : ගමන් කලාස පාරේ කොයි පැත්තේ ද නියෙන්තේ මුහුද පැත්තේද නැත්නම් අර

ගොඩබිම පැත්තේද නියෙන්තේ කීල්ස් සුපර් මාකට් එක නියෙන්තේ ?

උ : ගොඩබිම පැත්තේ.

ප්‍ර : ගාලු පාරේ නියෙන්තේ කීල්ස් සුපර් ආයතනය ?

උ : එහෙමයි ස්වාමීනි.

ප්‍ර : අන්තිමය පාරේ නෙවෙයිනේ ?

(Pages 333–334)

18. The starting point of this case is the alleged raid and the appellant's subsequent arrest, which, according to PW1, was a direct result of information from an informant. Significantly, when PW1 first received a phone call from the informant at 8:45 p.m. on August 13, 2013, he was not given the specific details that would lead to the arrest. Instead, the informant's message, according to PW1's evidence, was a simple instruction to come to Aththidiya Road for additional information.

19. It's clear from the above that PW1 only received detailed information about the appellant and his movements after arriving on Aththidiya Road and meeting the informant. In other words, PW1 had no details about the appellant until he met the informant near the Keells Super Market on Aththidiya Road. Therefore, the key information that led to the appellant's arrest was only received after PW1 met the informant near the Keells Super Market in Atthidiya.

20. Consequently, it is the prosecution's duty to prove each and every significant step leading to the appellant's arrest beyond a reasonable doubt. When the prosecution's own witness, PW5, contradicts the location where the informant allegedly met PW1, it inevitably undermines the credibility of the evidence given by both PW1 and PW2. As previously noted, the information received by PW1 from the informant near Keells Super contained details sufficient to identify the appellant and track his movements. In other words, the receipt of the information near Keells Super formed the foundation of the raid. Therefore,

any discrepancy or inconsistency among the witnesses regarding this aspect would undoubtedly create a reasonable doubt about the entire process that led to the appellant's arrest and the alleged recovery of heroin from his possession. Simply put, there exists a material contradiction concerning the receipt of the crucial information that led to the arrest of the appellant. Regrettably, this vital contradiction, which goes to the root of the case, appears to have escaped the attention of the learned High Court Judge.

21. It is also noteworthy that these officers are required to maintain notes detailing the steps leading to the arrest of the appellant and the recovery of heroin until it was handed over to the Government Analyst's Department. Moreover, they are permitted to refer to these notes to refresh their memory while testifying. Therefore, unlike in a typical criminal case where eyewitnesses rely solely on memory, these officers are expected to give evidence relating to the material facts of the case without any significant contradictions.

22. According to PW1, when the team arrived at Keells Super, the informant was already present. PW2, in his evidence-in-chief, also confirmed the same. However, during cross-examination, PW2 stated that they parked the jeep near Keells Super and waited for 10–15 minutes until the informant arrived, thereby contradicting his own earlier testimony.

PW 2 testified as follows;

ප්‍ර : කොච්චර වෙලාවක් කීල්ස් එක ලග වාහනය නතර කරගෙන හිටියාද ?

උ : විනාඩි 10 ක් 15 ක් පමණ ස්වාමීණි.

ප්‍ර : විනාඩි 10 ක් 15 ක් පමණ ගියාට පස්සේ ඔය පුද්ගලයා කොයි පැත්තේ ඉදන්ද ආවේ ?

උ : ජිප් එක ගිහින් නතර කරලා ස්වල්ප වෙලාවකින් ආවා ස්වාමීණි.

ප්‍ර : මහත්මයා මම ඇහුවනේ දැන් කීවා විනාඩි 10 ක් 15 ක් පමණ ගියාට පස්සේ කීවා මම

අහන්නේ ඊලඟ ප්‍රශ්නයේ දී ඊට පස්සේ ඔය පුද්ගලයා කොයි පැත්තෙන්ද ආවේ?

උ : ගාලු පාර පැත්තේ ඉදන් ආවේග

ප්‍ර : මොකකින්ද ආවේ?

උ : පයින් ආවේ.

ප්‍ර : තොරතුරුකරු කීල්ස් සුපර් එක ලගට එන්න කලින් ජීප් එකෙන් කවුරුහරි බැහැලා

හිටියද මේ තොරතුරුකරු එනකම් ?

උ : දිනේ මහත්මයා බැහැලා හිටියා.

ප්‍ර : බැහැලා හිටියට පස්සේ තමයි තොරතුරුකරු ගාලු පාර පැත්තෙන් ආවේ?

උ : එසේය ගරු ස්වාමීණි.

(Pages 240–243)

23. Hence, consistency *per se* as well as *inter se* is lacking in the evidence of PW1 and PW2.

More importantly, as stated earlier, the testimony of PW5 clearly contradicts the evidence of both PW1 and PW2 regarding the location where they parked the jeep and met the informant. PW5 categorically stated that they proceeded along Galle Road for about 100 meters from the Maliban Junction and located Keells Supermarket. If that is the case, the Keells Super where the informant allegedly met PW1 was on Galle Road—not on Attidiya Road, as claimed by PW1 and PW2.

24. A further inconsistency can be observed in the prosecution's evidence regarding the issuance of crime notebooks and the entries made by the respective officers concerning the duties they performed. According to PW2, an officer named Sisira possessed five crime notebooks, and it was PC 2725 Sisira who distributed them to the others for the purpose of making entries.

25. However, contradicting PW2's account, PW5 stated during cross-examination that when they left the STF camp, each officer had already been issued a notebook. Furthermore, in his evidence-in-chief, PW1 listed the items taken for the raid, but made no mention of the notebooks. Later, he claimed that the notebooks were kept inside the box containing the instruments necessary for sealing the drugs—an explanation that, in my view, is far from satisfactory. Additionally, it is evident that PW1 was uncertain as to whether he had made any notes regarding the informant's request to meet him prior to the raid.

26. The learned High Court Judge has failed to give adequate consideration to any of the aforementioned inconsistencies evident in the prosecution's evidence. In his judgment, the learned Judge merely stated that the credibility of the evidence of PW1 and PW2, with respect to the material facts, was never challenged during cross-examination. However,

the learned trial Judge did not specify which material facts remained unaffected after cross-examination.

27. More importantly, the learned Judge failed to analyse the evidence of PW5. Had he properly examined PW5's testimony and compared it with the evidence of PW1 and PW2, he would not have overlooked the material contradictions that existed among their testimonies.

28. It is important to note that in the judgment, the trial judge stated that the defense failed to provide even a simple explanation for the prosecution's case. However, the defense is not obligated to offer any explanation until the prosecution has established its charges against the accused beyond a reasonable doubt. The prosecution's weak case cannot be strengthened simply because the defense chose not to provide an explanation. The following authorities provide guidance on this issue.

29. In ***Narendra Kumar Vs. State (NCT of Delhi)***, AIR 2012 SC 2281, the Indian Supreme Court held:

*“Prosecution case has to stand on its own legs and cannot take support from the weaknesses of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the Court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.”*

30. In ***Kalinga Premathilake Vs. The Director General of the Commission to Investigate Allegations of Bribery or Corruption***, SC Appeal No. 99/2007 decided on 30-07-2009, it was held, “What needs consideration now is when the evidence led for the prosecution in this case is closely scrutinized, whether it would be satisfied that prosecution had discharged the burden of proving the case beyond reasonable doubt. If not, the appellant is liable to be acquitted of the charges. The prosecution must stand or fall on its own legs and it cannot derive any strength from the weaknesses in the defence, and when the guilt of the accused is not established beyond reasonable doubt, he is liable to be acquitted as a matter of right and not as a matter of grace or favour.”



31. Similar sentiments were expressed in *James Silva Vs. The Republic of Sri Lanka (1980) 2 SLR 167*, as follows:

*“There is a serious misdirection in law. It is a grave error for a Trial Judge to direct himself that he must examine the tenability and truthfulness of the evidence of the accused in the light of the evidence led by the prosecution. To examine the evidence of the accused, in the light of the prosecution witnesses is to reverse the presumption of innocence. It is also worth mentioning that the learned High Court Judge has considered the weaknesses of the defence case extensively in determining that there is no doubt as to the prosecution case. It is trite law that the prosecution must stand on its own legs and it cannot derive any strength from the weaknesses in the defence.”*

32. Therefore, it is my considered view that the inter se contradictions between the evidence of PW1, PW2, and PW5 go to the root of the prosecution’s case. This is particularly significant in a context where the officers involved in the raid and arrest are required to make their own notes regarding the entire transaction and are permitted to refer to those notes while giving evidence. In such circumstances, this glaring discrepancy cannot be easily disregarded.
33. For the reasons stated above, this appeal succeeds. Accordingly, I set aside the judgment of the High Court. Thus, the conviction and sentence also stand set aside.

**Judge of the Court of Appeal**

**P. Kumararatnam, J**

I agree,

**Judge of the Court of Appeal**

