

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

In the matter of an Appeal in terms of Section 331 of the Code of Criminal Procedure Act No. 15 of 1979, as amended, reads with Article 13 of the Constitution and the High Court of the Provinces (Special Provisions ) Act No. 19 of 1990.

**CA-HCC-86/22**

HC of Colombo Case No:

HC 2143/2020

The Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Kumara Unnahalage Swarnasiri Dias

**Accused**

**And Now**

Kumara Unnahalage Swarnasiri Dias  
No. 59, Riverside Garden,  
Angulana  
Moratuwa.

**Accused-Appellant**

**Vs.**

The Hon. Attorney General

Attorney General's department

Colombo 12.

**Complainant-Respondent**

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

**Amal Ranaraja, J**

**Counsel:** Shavindra Fernando, PC for the Accused-Appellant

Hiranjana Peiris, SDSG for the Respondents

**Argued On:** 30.06.2025

**Written**

**Submissions** 26.10.2023, 11.11.2023 and 26.10.2025 (by the Accused-Appellant)

**On** 29.12.2022 (by the Respondent)

**Judgment On:** 22.07.2025

### **JUDGMENT**

**B. Sasi Mahendran, J.**

The Accused Appellant (hereinafter referred to as "the Accused") was indicted before the High Court of Colombo for the possession and trafficking of 333.7g grams of Heroin (Diacetylmorphine) and possession of 660mg of Cannabis Sativa alias Ganja

under Section 54A(d) and 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act No. 13 of 1984.

The prosecution, to substantiate the charge, examined eleven witnesses. The Accused gave a dock statement and did not call any witnesses. After the trial, the Learned High Court Judge found the Accused guilty on all 3 counts, convicted, and sentenced him to life imprisonment for the 1<sup>st</sup> and 2<sup>nd</sup> charges and imposed a jail term of 6 months rigorous imprisonment for the 3<sup>rd</sup> charge.

Being aggrieved by said judgment and sentence, this appeal was preferred by the Accused.

**The following Grounds of Appeal were urged by the counsel for the Accused.**

- a. Did the Learned High Court Judge fail to consider the legal requirement set out in section 74 of the Prison Ordinance/Act where substance arrested by the prison authority from a prisoner?
- b. Did the Learned High Court Judge disregard the fact that the production shall be handed over to either a police magistrate immediately after the recovery, according to the Prison Act?
- c. Did the Learned High Court Judge falter in applying his judicial mind by dangerously relying on the witness testimony of PW1?
- d. Did the Learned High Court Judge err in law by not attaching sufficient and necessary weight to the evidence led by the defence namely the dock statement?
- e. Did the High Court Judge find the Accused Appellant guilty in the absence of cogent evidence to prove exclusive possession without considering conscious possession?

The relevant facts giving rise to the prosecution are that, according to PW01, Dulanjaya Randika Wijayananda, whose primary duty on 01.03.2019 was to conduct searches of officers, suspects, and prisoners entering the prison's search room, he carried out a search of the Accused, who had returned from the Mount Lavinia Court. During this search, PW01 observed an unusual swelling in the straps of the Accused's slippers. He then summoned PW02 to cut open the straps, which revealed a concealed package.

Additionally, a second package was discovered in the heel of one of the slippers. The contents were identified as Kerala Ganja. Subsequently, the production and the accused were handed over to PW10, and the productions were later taken to the Borella Police along with the Accused for further action. It was sent to the Government Analyst. According to the Government Analyst, the said powder contained 6.324 grams of heroin.

Upon the conclusion of the evidence of the prosecution, in the Dock statement, the accused vehemently denied the said accusation.

According to the accused, on 01.03.2019, he was brought before the Mount Lavinia Magistrate Court from the prison and placed in the holding cell adjacent to the magistrate's chambers. Due to illness, he had fallen asleep. Upon being called by an officer, he discovered that his slippers were missing. He then wore a pair of slippers that were lying near the doorway and proceeded to the defendant's cell. After the hearing concluded, he was escorted out, but the officer did not permit him to retrieve the slippers. During a search at the main entrance, officers pointed to the slippers and asked, "What are these?" The accused stated that the slippers were not his and claimed he did not know that they contained heroin.

In the present case, the accused was charged and convicted of heroin possession and trafficking. The central issue is whether the accused had the necessary knowledge of the parcels concealed within the straps of the slippers he was wearing.

General Possession is defined in **Stroud's Judicial Dictionary of Words and Phrases Eighth Edition Volume 3, Greenberg, page 2223;**

*"Controlled drug in his possession" (Misuse of Drugs Act 1971 (c.38) s.5(2)). A man who put a small quantity of cannabis into his wallet, knowing what it was, remained in "possession" of it within the meaning of this section even though he had long forgotten it was there (R. v Martindale [1986] 1 W.L.R. 1042). A woman who did no more than live with a man at a time when he possessed and dealt in drugs was not herself guilty of possession, notwithstanding that she must have known what he was doing (R. v Bland [1988] Crim. L.R. 41). Where an accused was apprehended while delivering a box containing cannabis resin to a co-defendant, he was held to be guilty of having a "controlled drug in his possession", notwithstanding his claim that he thought the box contained pornographic videos (R. v McNamara (1988) 87 Cr.App.R. 246). In construing*

*the word "possession" the question to be asked was whether on the facts the defendant had been proved to have, or ought to have imputed to him, the intention to possess what was in fact a controlled drug (R. v Lewis (1988) 87 Cr.App.R. 270)."*

**Lord Wilberforce in Warner v. Metropolitan Police Commissioner (1968) 52 Criminal Appeal Report 373.** has considered this matter;

*"The question, to which an answer is required, and in the end, a jury must answer it, is whether in the circumstances the Accused should be held to have possession of the substance, rather than mere control. In order to decide between these two, the jury should, in my opinion, be invited to consider all the circumstances- to use again the words of Pollock and Wright, possession in the common law, P. 119- the 'modes or events' by which the custody commences and the legal incident in which it is held. By these I mean, relating them to typical situations, that they must consider the manner and circumstances in which the substance, or something which contains it, had been received, what knowledge or means of knowledge or guilty knowledge as to the presence of the substance, or as to the nature of what has been received, the Accused had at the time of receipt or thereafter up to the moment when he is found with it; his legal relation to the substance or package (including his right of access to it). On such matters as these (not exhaustively stated) they must make the decision whether, in addition to physical control, he has, or ought to have imputed to him the intention to possess, or knowledge that he does possess, what is, in fact, a prohibited substance. If he has this intention or knowledge, it is not additionally necessary that he should know the nature of the substances."*

**Lord Widgery CJ in R v. Searle and Others, The Criminal Law Review 1971,592,** Held that;

*"If you think they were and that they all knew that those drugs were then in the possession of other people and they knew they were drugs then you probably will not have any difficulty in deciding that they are guilty, whichever of them you think is guilty," and "is it conceivable, do you think, that drugs were there in (those) quantities without anybody or everybody in the van knowing about it and that they were dangerous drugs? That really is the essence of the case.*

*Held, allowing the appeals, the effect of those parts of the summing -up was to equate knowledge with possession. However, mere knowledge of the presence of a*

*forbidden article in the hands of a confederate was not enough: joint possession had to be established. The sort of direction which ought to have been given was to ask the jury to consider whether the drugs formed a common pool from which all had the right to draw at will, and whether there was a joint enterprise to consume drugs together because then the possession of drugs by one of them in pursuance of that common intention might well be possession on the part of all of them: Thompson (1869) 21 L.T. 397. The summing-up was inadequate and possibly misleading. Although there was ample evidence to justify a conviction it was impossible to say with certainty that all the defendants were guilty and so it was not a case in which the proviso could be applied.”*

Recently His Lordship Aluwihare PC J in the case of **Mohamed Iqbal Mohamed Sadath v. Attorney General**, SC Appeal 110/15, (SC Minutes 14.12.2020), held:

*“Lord Wilberforce went on to state that, on such matters as above, though not exhaustively stated, it must be decided whether in addition to physical control, he has or ought to have imputed to him, the intention to possess or knowledge that he does possess, what is in fact a prohibited substance. The above reasoning in my view is a rational guideline that should be adopted in deciding as to whether the Accused had the knowledge (the requisite mens rea) that what he possessed is a prohibited substance, even though he may not have known the precise nature of the substance.” Further, he held that: “It would not be unreasonable to presume that it was well within his knowledge that people do smuggle contraband into the country under various guises, given the social standing of the Accused.”*

In light of the aforementioned authorities, it is necessary to assess the following facts in order to determine whether the accused possessed the requisite knowledge that the parcel found in his possession contained heroin.

1. The accused was transported from prison to the Magistrate's Court of Mount Lavinia.
2. According to witnesses 1 and 2, the specific straps of the slippers had been stitched.
3. According to the accused, when he attempted to inspect the slippers, the prison officer prevented him from doing so and instead handed him a pair to wear

The only inference that can be drawn from these facts is that the Accused did not had the requisite knowledge regarding the parcel which contained heroin. The Learned High Court Judge has failed to consider the Accused's Version.

I am mindful of the words uttered by **Chief Justice, Mr. Drake, and Justice Henry, in James MC Namara, 1988 (87) Cr. App. R. 246**, Held that;

*In the well-known case of Warner v. Metropolitan Police Commissioner (1968) 52 Cr. App. R. 373, [1969] 2 A.C. 256, Lord Wilberforce at p.433 and p. 300 respectively put the matter thus:*

*the following propositions seem to us to emerge. First of all a man does not have possession of something which has been put into his pocket or into his house without his knowledge: in other words something which is "planted" on him, to use the current vulgarism. Secondly, a mere mistake as to the quality of a thing under the defendant's control is not enough to prevent him being in possession. For instance, if a man is in possession of heroin, believing it to be cannabis or believing it perhaps to be aspirin.*

*Thirdly, if the defendant believe that the things is of a wholly different nature from that which in fact it is, then the result, to use the words of Lord Pearce, would be otherwise, Fourthly. in the case of a container or a box, the defendant's possession of the box leads to the strong inference that he is in possession of the contents or whatsoever it is inside the box. But if the contents are quite different in kind from he believed, he is not in possession of it.*

*"..... the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents."*

In the present case, the Accused has asserted that the slipper in question did not belong to him and that he had simply placed two slippers found in front of the door. He further claims that the officer prevented him from exchanging them.

Additionally, he maintains that he conveyed this account to the police officers. It is noteworthy that he was taken from Welikada Prison to the Magistrate Court, and subsequently returned to the prison. Thereafter, he was questioned regarding how the parcel had been so neatly stitched into the slipper. This raises the question: was the Accused deliberately involved in an attempt to smuggle the substance into the prison, or was this orchestrated by someone else?

The accused has created the doubt, but this was not considered by the Learned High Court Judge.

It is pertinent to refer to the dictum of Justice Sisira De Abrew with regard to how the evidence given by an accused should be evaluated in *Thirunganapillai Sivakumar v AG SC. Appeal 39/2019 SCM dated 23.01.2020* held that;

“For the benefit of the Trial Judges and the legal practitioners of this country, we would like to state the following guidelines as to how the evidence given by an Accused person should be evaluated.

- 1) If the accused's evidence is believed, it must be acted upon.
- 2) If the evidence of the accused raises a reasonable doubt, in the prosecution's case, the defence of the accused must succeed.
- 3) If the evidence of the accused is neither accepted nor rejected by the trial Court, the defence of the accused must succeed.”

In the present case, the learned Trial Judge has failed to follow the above guidelines.

Further, the learned Trial Judge has failed to decide whether he accepts the evidence of the accused person or rejects it.

So in the instant case, we hold that evidence of the Accused raises a reasonable doubt as to whether the Accused had the requisite knowledge that the parcel in his possession contained heroin. Therefore, I hold that the Learned High Court Judge has failed to address this point.

Considering all the aforementioned matters, we hold that the prosecution has failed to prove its case beyond a reasonable doubt. For the aforementioned reasons, we set aside



the Judgment of the High Court of Colombo dated 23.03.2022 and acquit the Accused-Appellant from all the charges on which he was convicted.

Accused acquitted.

The Registrar of this Court is directed to send a certified copy of this Judgment to the relevant High Court.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**