

**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.**

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

Court of Appeal
Case No. CA HCC 107/2022

Complainant

Vs.

High Court of Kandy
Case No. HC 101/2019

Mohomed Thausaq Mohamed Rizmi

Accused

AND NOW BETWEEN

Mohomed Thausaq Mohamed Rizmi

Accused-Appellant

Vs.

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

Complainant-Respondent

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

Counsel: S. K. Chaminda Seneviratne for the Accused-Appellant.

Hiranjan Peiris, A.S.G. for the Respondent.

Argued on: 11.12.2025

Judgment on: 22.01.2026

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Kandy* in High Court case number HC 101/2019.

The charges in the indictment are as follows:

Charge 01

That on or about, June 15, 2018, at *Pujapitiya*, in the district of *Kandy*, within the jurisdiction of this Court, the appellant did possess 6.352 grams of Diacetyl Morphine, 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, the appellant did traffic 6.352 grams of Diacetyl Morphine, 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.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the first charge and acquitted him of the second charge. Upon the conviction of the first charge, has proceeded to impose the death sentence on the appellant.
3. The appellant aggrieved by the conviction, disputed judgment together with the sentencing order has preferred the instant appeal to this Court.

Case of the prosecution

4. During the relevant period, PW01 and PW02 have been assigned to the police narcotics bureau subunit in Kandy. On June 15, 2018, PW01 has received a tip from an informant regarding the trafficking of a quantity of heroin by an individual in the *Pujapitiya* area of *Kandy*. PW01 has subsequently decided to conduct a raid to apprehend the person identified by the informant.
5. At approximately 15.40 hours, PW01, PW02 and the other officers named in the testimony have departed from their assigned unit. They have been dressed in civilian attire and have arrived in *Pujapitiya* around 16.30 hours. PW01 has met his informant near the “*Food City*” super market in *Pujapitiya* to discuss the specifics of the planned raid.
6. Thereafter, the officers have moved to a location near a temple on *Ankumbura* road. Each officer has positioned himself as described in the testimony. As at approximately 16.55 hours, the informant has alerted PW01 to the named individual’s movements. Anticipating the arrival, the

officers have stopped the three wheel scooter described by the informant as it approached their position.

7. PW01 has identified its driver as the individual named in the information i.e. the appellant, thereafter has detained and searched him. Upon inspection, PW01 has retrieved a parcel wrapped in a piece of a pink cellophane bag, from the appellant's right front trouser pocket. PW01 has determined that the contents of the parcel to be heroin.
8. Subsequently, the appellant has been questioned extensively regarding the source of the narcotic substance. The officers and the appellant have departed the scene of arrest at approximately 18.35 hours, arriving at the *Pujapitiya Police Station* around 18.50 hours. PW01 has then proceeded to weigh the heroin and seal the parcel for production as evidence in subsequent legal proceedings. The sealed parcel has been registered under police property receipt 298/2018.
9. *PC 21460 Siriwardana* has, as directed by PW01, recorded a statement of the appellant beginning 19.40 hours. At approximately 20.30 hours, the sealed parcel along with the appellant has been handed over to the Officer-in-Charge of the reserve at the *Pujapitiya Police Station*.
10. The sealed parcel has thereafter been sent to the Government Analyst Department for analysis. The report from the analyst designated as exhibit 15 has been presented as evidence.

Case of the appellant

11. The appellant has asserted the parcel containing heroin was not recovered from his possession. He has contended that the discovery of

the parcel was a fabrication or an act of planting, effectively meaning it was introduced, to implicate him falsely.

Grounds of appeal

12. When the matter was taken up for argument, the learned Counsel for the appellant urged the following grounds of appeal:

- i. The learned High Court Judge has not evaluated the prosecution evidence in total with the dock statement.
- ii. Has the inward journey of the production been established by the prosecution?

13. The Counsel for the appellant has maintained that the prosecution has not discharged its burden of proof because it neglected to present testimony from all witnesses identified on the back of the indictment. The Counsel has contended that this deliberate omission leaves gaps in the evidence presented, raising a reasonable doubt as to the appellant's guilt and prevented the prosecution from establishing its case with the cogency required by law.

14. Section 134 of the Evidence Ordinance No. 14 of 1895 reads as follows:

No particular number of witnesses shall in any case be required for the proof of any fact.

15. The primary implication of section 134 of the Evidence Ordinance is the adoption of the principle that "evidence must not be counted but weighed". This has several key consequences in the Sri Lankan legal system. A court can convict an accused or determine a case solely on the

uncorroborated evidence of a single witness provided that the judge finds that the witness to be cogent, credible, trustworthy and impressive.

16. The law does not require corroboration of witness's testimony as an essential condition for a conviction. The trial Judge has the discretion to rely on the testimony if satisfied with its veracity after careful probing. The emphasis is shifted from a mere head count of witnesses to a careful judicial analysis and evaluation of the witness's demeanor, consistency, and overall trustworthiness of his testimony.

17. This principle applies across various cases including charges like drug related offences based on police detections. In essence, section 134 of the Evidence Ordinance ensures that justice is not hindered by technical requirements for a minimum number of witnesses.

18. In *Sumanasena v Attorney General* [1999] 3 SLR 137, Jayasuriya J. has held as follows:

"Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of law."

19. In the present case, the prosecution has presented essential witness testimony to establish its case. The testimony covers the entire chain of events, commencing with the initial information received regarding the offence. It details the subsequent execution of the raid, the detention, search of the appellant and the recovery of the parcel of heroin.

20. Furthermore, witnesses have testified about the appellant's arrest, the weighing and sealing of the heroin containing parcel and its subsequent transfer to proper custody. The prosecution's evidence also traces the

inward journey of this sealed parcel until it was retrieved to be taken for analysis at the Government Analyst Department.

21. Crucially, the appellant has not disputed that the securely sealed parcel was handed over to the Government Analyst Department nor has the appellant contested that its contents were the subject of the analysis. This lack of dispute has been recorded as an admission by the trial Court. The government analysis report designated as exhibit 15 confirms that the contents in the parcel consisted of 6.352 grams of pure heroin.
22. Therefore, in these circumstances, it is my considered view that the prosecution has successfully led the testimony of witness who were indispensable in establishing all material elements of its case.
23. In Sri Lanka, the making of notes by police officers is a professional duty and a critical part of the investigative process. The requirement for notes to be made at the time or as soon as practicable afterwards, is paramount. Notes made while the event is fresh in the officer's mind are considered a more accurate record than memory alone, which is fallible over time.
24. As cases may go to trial, months or years after an incident, officers can rely on their notes to refresh their memory and provide accurate testimony in courts. It is crucial for police officers to include significant details in their notes for accuracy of evidence and legal purposes. But it is about relevant details and not about every trivial thing.
25. In essence, the notes should be clear, factual, and objective record of what happened, supporting the officer's memory and the integrity of the case rather than a word to word transcript of every passing incident.

26. The learned Counsel for the appellant with reference to pages 90 and 91 of the brief has argued that PW01 has acknowledged the omission of critical details from his notes. These critical details pertaining to the precise location on the appellant's clothing from which the parcel of heroin was retrieved and the method by which PW01 secured it, were not recorded.

පු: මහත්මයා සටහනක් යොදා තියෙන්වාද වූදිත භාරයෙන් ගත්ත හේරෝයින් ප්‍රමාණය තමන්ගේ අන්ත තබාගත්තා කියලා?

උ: සටහන් යොදා නැහැ. මාගේ සන්තකයේ තබා ගන්නවා කියලා තියෙනවා ස්වාමිනි.

[vide page 90 of the brief]

පු: ඇද සිටි බොටම් කළීසමේ කවර ස්ථානයකින්ද හඳුනා ගැනීම සිද්ධ කළේ?

උ: ඒ සම්බන්ධයෙන් සටහන් කරලා නැහැ. තිබුණු ස්ථානය පිළිබඳ සටහන් යොදා නැහැ.

[vide page 91 of the brief]

27. This failure to document these essential particulars, the learned Counsel has argued created a reasonable doubt as to whether the parcel of heroin was in fact recovered from the possession of the appellant.

28. As previously discussed, the primary purpose for a police officer making a note is to refresh the officer's memory and ensure accurate testimony. To achieve this, it is crucial that the officer includes sufficient details ensuring both accuracy and legal compliance. While the relevance is key, not every trivial fact requires inclusion.

29. In this specific instance, the relevant facts that warrant inclusion are the recovery of the parcel of heroin from the appellant's possession and the subsequent unbroken chain of custody maintained by PW01 until the

officers accompanied by the appellant reach the *Pujapitiya Police Station*. These facts being directly pertinent to the legality and execution of the raid have been accurately documented in PW01's notes. Therefore, any arguments suggesting that PW01's notes is deficient of crucial details, is without merit.

30. The appellant has also been thoroughly question about where he obtained the parcel of heroin that has been found in his possession. Such circumstances have not enabled PW01 to make a note at the scene of arrest.
31. A dock statement should not be considered in isolation but should be evaluated by a judge within the context of all the evidence presented in the case. The trier of fact must consider the entire prosecution's case and the accused's narrative holistically. The statement must be considered to see if it creates a reasonable doubt regarding the prosecution's case. If the trier believes the statement or if it raises a reasonable doubt, the defence must succeed.
32. In the case of *The Queen v D. G. De S. Kularatne*, 71 NLR 529, it was held that:

“...when an unsworn statement is made by the accused from the dock, the jurors must be informed that such statement must be looked upon as evidence, subject however to the infirmity that the accused had deliberately refrained from giving sworn testimony. But the jury must also be directed that (a) if they believe the unsworn statement it must be acted upon, (b) if it raises a reasonable doubt in their minds about the case for the prosecution, the defence must succeed, and (c) that it should not be used against another accused.”

33. In the judgment under dispute, the learned High Court Judge has meticulously reproduced the appellant's dock statement. The court has then proceeded to analyze the contents of the statement against the backdrop of the prosecution's evidence.
34. The ultimate finding has been that the appellant's dock statement did not succeed in casting a reasonable doubt upon the prosecution's case concerning the first charge set out in the indictment. This conclusion has been arrived at through a holistic review, wherein the dock statement has been considered as an integral part of the entire evidentiary record, rather than in isolation. Consequently, the dock statement has been evaluated within its appropriate evidentiary context.
35. Further, the officers serving at the *Pujapitiya Police Station Reserve*, during the relevant period the sealed heroin parcel was kept there, have testified regarding their diligent efforts in tracing the inward journey of the sealed parcel containing heroin. This parcel recovered from the appellant's possession has been subsequently transferred to the Government Analyst Department for examination.
36. Officers have maintained detailed notes documenting their reporting to duty at the reserve and the meticulous process of taking charge of all items present in the reserve including the sealed parcel of heroin. While this specific inclusion has not been explicitly articulated in their notes, the appellant has not challenged the fact that the securely sealed heroin parcel was delivered to the Government Analyst Department for analysis nor the subsequent analysis of its content. Therefore, based on these established facts, the second ground of appeal is without merit.

37. Due to the matters discussed above, I am not inclined to interfere with the conviction, disputed judgment and the sentencing order and proceed to affirm the same. I dismiss the appeal.

Appeal dismissed.

I make no order regarding costs.

38. The Registrar of this Court is directed to send this judgment to the *High Court in Kandy* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree.

Judge of the Court of Appeal