

**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 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:

CA/HCC/0216/2020

Ranhawadi Gedara Sriyani Mangalika Rajapaksha alias Nona Akka

High Court of Colombo

Case No: HC/8315/2016

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

BEFORE

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

COUNSEL

: **Samantha Premachandra for the
Appellant.**
**Yuhan Abeywickrama, DSG for the
Respondent.**

ARGUED ON : **09/09/2025 and 01/10/2025**

DECIDED ON : **25/11/2025**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Colombo under Sections 54(A) (b) and 54(A) (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for trafficking and possession of 5.80 grams of Heroin (Diacetylmorphine) on 24th March 2014.

After the trial, the Appellant was found guilty on the 1st count and the learned High Court Judge of Colombo had sentenced her to life imprisonment on 25/09/2020. She was acquitted from the 2nd count.

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 her absence. During the argument she has been connected via the Zoom platform from prison.

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

1. The prosecution version lacks credibility and probability.
2. Inter se and per se contradictions of PW1 and PW2 had not been taken into consideration.
3. Version of the prosecution regarding the informant lacks credibility.
4. The dock statement of the Appellant was analysed on a wrong premise.

Background of the case.

In this case the raid was conducted upon the receipt of specific information by PW1. The raid was conducted by a team of police officers from the Police Organized Crimes and Vice Control Division headed by PW1. All members of the team had been named as witnesses in the indictment including the Government Analyst. The prosecution had called PW1, PW2, PW10, PW12, PW8 and the Government Analyst (PW14) and closed the case. The prosecution had marked productions P1 to P12 during the trial.

When the defence was called, the Appellant had made a dock statement and closed the case.

On 24/03/2014, PW1, IP/Janak attached to the Police Organized Crimes and Vice Control Division, while on crime prevention duty, had met an informant at Grandpass. The informant had told him that a lady called 'Nona Akka' with her husband, namely Siril Aiya, used to traffic Heroin in the night and that they could be apprehended near the stairs of the Prince of Wales Road, Grandpass. The informant had given the features of both the Appellant and the person called Siril Aiya. As per the information, the police had gone near the stairs at about 19.15pm and waited for the arrival of the Appellant and her husband.

When the Appellant and Siril alighted from a three-wheeler at the location, PW1 identified himself and upon repeated request to hand over the

substance, the Appellant had handed over a parcel taken from the left side pocket of her dress. As the substance in the parcel tested positive for Heroin, she was arrested and Siril was also detained by the police. Further, Rs.101,030/- in cash was also recovered from the Appellant.

Although the place of arrest is just 300 meters away from the Grandpass Police Station, the Appellant and Siril were brought to the Police Narcotics Bureau thereafter. The substance was weighed in the presence of the Appellant at the Police Narcotics Bureau. The parcel had contained about 14 grams of substance. Thereafter, the Appellant and Siril were brought to the Grandpass Police Station. After entering notes, PW1 had handed over the productions and the Appellant to the reserve police officer PW8, PC 6852 Sunil. The Heroin parcel was entered under production No.182/14.

PW2, SI/Somarathna had given evidence to corroborate the evidence of PW1.

In every criminal case, the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person and this burden never shifts. Hence, an accused person has no burden to prove his innocence unless he pleads a general or a special exception in the Penal Code.

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 the court held that:

“...the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable,” the case

is proved beyond reasonable doubt, but nothing short of that will suffice".

As the first, second and third grounds of the appeal are interconnected, the said grounds will be considered together in this appeal. In the first ground of appeal, the Appellant contends that the prosecution version lacks credibility and probability. And in the second ground, the Appellant contended that the inter se and per se contradictions of PW1 and PW2 had not been taken into consideration. In the third ground, the Appellant contends that the version of the prosecution regarding the informant lacks credibility.

PW1 had met the informant casually and received the information that the Appellant and a person called Siril, said to be the husband of the Appellant, were trafficking Heroin. Although the information revealed about the existence of a female suspect, PW1 had not taken any endeavour to get down a female police officer from the Grandpass Police Station, which is situated about 300 meters away from the place of the incident.

As the Appellant and Siril had alighted from a three-wheeler, neither a statement from the driver nor the number of the same was noted down by any of the witnesses.

Although the informant had mentioned the name of Siril as the person coming with the Appellant with the drugs, he was simply discharged even without a statement being recorded.

According to PW1, the Appellant and Siril were arrested at 8.00pm on 24.03.2014. By passing the Grandpass Police Station, the Appellant and Siril were taken to the Police Narcotics Bureau and returned to the Grandpass Police Station and handed over to the Grandpass Police at 1.15am on the following day. This was 5 hours and 15 minutes after the arrest.

Although PW1 admitted that they recovered Rs.101,030/- from the possession of the Appellant at the time of her arrest, this was neither entered in his notes nor produced as a production during the trial.

Although prosecution witnesses PW1 and PW2 said that Siril was taken along with the Appellant to the Police Narcotics Bureau on the request of the Appellant, this was not entered in their notes by the witnesses.

The above highlighted inconsistencies in the evidence of PW1 and PW2 cannot be considered trivial ones. These are strong challenges to the prosecution version. They certainly attack the root of the matter very strongly.

In the book **Sarkar on Evidence, 15th Edition** at page 112, it is stated as follows:

"Minor discrepancies are possible even in the version of truthful witnesses and such minor discrepancies only add to the truthfulness of their evidence. [Sidhan v. State of Kerela [1986] Cri LJ 470, 473 (Kerala)]. But discrepancies in the statements of witnesses on material points should not be lightly passed over, as they seriously affect the value of their testimony (Brij Lal v. Kunwar, 36A 187: 18 CWN 649: A 1914 PC 38). The main thing to be seen in whether the inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. In the latter, however no such benefit may be available to it. (Krishna Pillai Sree Kumar v. State of Kerala A [1981] SC 1237, 1239)."

In **The Attorney General v. Sandanam Pitchai Mary Theresa** [2011] 2 SLR 292 the court held that:

"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that

the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are material to the facts in issue".

In all detection cases the police detectives maintain records. When they are called upon by the prosecution to testify in court, they are allowed to use their notes to refresh their memory. Hence, their evidence cannot consist of inter se or per se contradictions as they give systematic evidence regarding that particular incident. If their evidence consists of inter se or per se contradictions, which affects the root of the case, their credibility becomes questionable.

According to PW1, he had received specific information that a lady called 'Nona Akka' and Siril were involved in trafficking drugs at the Prince of Wales Avenue. Although specific information had been received about the involvement of a female called 'Nona Akka', PW1 had failed to include a female police officer to the team. The raiding officers had not made any endeavour to call upon a lady police officer from the Grandpass Police Station, which is 300 meters away from the place of detection. Hence, the Counsel argues that the incident described by PW1 and PW2 fail the test of probability.

As stated above, the raiding team had taken the Appellant and the person called Siril to the Police Narcotics Bureau to weigh the production, instead of the nearest police station which is only 300 meters away from the place of arrest. Lots of valuable time could have been saved, had the Appellant and Siril been taken to the Grandpass Police Station. In this case the time duration between the time the Appellant was arrested, and the time the production was handed over to PW8 is 5 hours and 15 minutes. Further, Siril was released without a statement being recorded from him. This is quite unusual.

The Probability test is a prerequisite in criminal trials to prove the case beyond reasonable doubt. In this case the conduct of PW1 is highly questionable, which certainly does not pass the probability test.

Taking into consideration all these circumstances, I am of the view that the conviction of the Appellant cannot be allowed to stand as the prosecution had failed its duty to prove this case beyond a reasonable doubt. I set aside the conviction and sentence imposed by the Learned High Court Judge of Colombo dated 25/09/2020 on the Appellant. Therefore, she is acquitted from this case.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL