

**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/0225/2017**

Wettasinghe Appuhamilage Osman
Perera

**High Court of Colombo
Case No: HC/2322/2005**

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

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

COUNSEL : **Champika Monarawila with Thanuli
Ameera Rupasinghe for the Appellant.
Riyas Bary, DSG for the Respondent.**

ARGUED ON : **25/09/2025**

DECIDED ON : **06/11/2025**

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) (d) and 54(A) (b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for the Possession and Trafficking of 4.4 grams of Heroin (Diacetylmorphine) on 22nd February 2002.

Following the trial, the Appellant was found guilty on both counts and the learned High Court Judge of Colombo imposed the death sentence for both counts on 20/03/2017.

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 his consent to argue this matter in his absence. At the hearing, the Appellant was connected via Zoom platform from prison.

The following Grounds of Appeal were raised on behalf of the Appellant.

1. The learned High Court Judge has not evaluated the evidence at the trial.
2. Whether the production chain has been established beyond reasonable doubt.

In this case, the raid was conducted based on specific information received. The raid was headed by PW1 with four male police officers from the Borella Police Station. Each of them including the Government Analyst has been named as witnesses in the indictment. The prosecution had called PW1, PW3, PW6, PW8, PW9, PW11, PW12 and PW13 and marked productions P1 to P6-P6A in support of their case. The Government Analyst's qualifications were admitted under Section 420 of the Code of Criminal Procedure Act No. 15 of 1979.

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

Background of the case.

On 22/02/2002, PW1 CI/Jagath, attached to the Borella Police Station, had conducted a raid, acting on information received by him at 8.20am on the date of the raid. According to the information, the Accused was said to have packeted Heroin and kept it in his possession for sale. PW1 admitted that he had prior knowledge about the location of the house, as he had raided this location on a previous occasion. PW1 and his group had not met the informant until the arrest of the Accused. When they reached the house clad in police uniform, they had searched a person said to have been standing in front of the house. Upon search, he had found a cellophane bag with some substance knotted in his sarong. When they searched the cellophane bag,

they had found 195 small packets in it. Upon the substances in the packets recovered from the Appellant tested positive for Heroin (Diacetylmorphine), he was arrested at 8.45 am. Although, the police had received specific information that the packeting had been done in the premises bearing the address No.78/7, First Lane, Gothami Road, the said premises were not checked by the police.

Thereafter, the police party had gone to Srilekha Jewellers to weigh the substance. Before weighing, the substance found in all the packets were put into one cellophane bag and weighed the same. With the cellophane bag, the substance weighed about 7.300 grams of Heroin. The cellophane bag weighed about 300 milligrams. Hence, the gross quantity of Heroin recovered was 7 grams. The production was sealed at the Jewellery Shop, and the same was entered in the production register under PR No. 192/2002, and the Appellant was handed over to the reserve duty officer PW8 PC 18581 Wimalasena.

Thereafter, PW3 was called to give evidence to corroborate the evidence of PW1 and it was followed by the evidence of the Government Analyst and PW6, PW8, PW9, and PW11.

In criminal cases, the prosecution bears the burden of proving the case against the accused person beyond reasonable doubt, and it is pertinent to note that this burden does not shift. Therefore, unless the accused pleads a general or special exception within the Penal Code, the accused will not bear the burden of proving his case.

In the case of **The King Vs. W. P. Buckley 43 NLR 474**, it was stated by Howard, C.J.:

“In arriving at a verdict of guilty, the majority of the jury must have viewed the evidence in sections accepted and convicted the appellant on those parts that were satisfactory and disregard those facts that pointed to the improbability of the story put forward by the Crown. The jury should have

viewed the evidence as a whole. If they had done so, we are of opinion that they must have had a reasonable doubt as to the guilt of the appellant. The verdict is in our opinion, unreasonable, in as much as taken as a whole the evidence does not support the conviction.”

Further, in the case of **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.”

In the case of **Ramanlal Trambaklal Bhatt vs R 1957 E. A 332 at 335**, in respect of whose onus is to prove the guilt of an accused person in a criminal case, it was held;

“Remembering that the legal onus is always on the prosecution to provide its case beyond reasonable doubt, we cannot agree that the prima facie case is made out if, at the close of the prosecution’s case, the case is merely one in which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather, hopes the defence will fill the gaps in the prosecution’s case. Nor can we agree that the question --- there is a case to answer depends only on whether there is some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence. A more scintilla of evidence can never be

enough, nor can any amount of worthless discredited evidence. It may not be easy to define what is meant by a prima facie case”, but at least it must mean one on which a reasonable, properly directing its minds to the law and the evidence could convict if no explanation is offered by the defence”

As the 1st and 2nd grounds of appeal raised by the Appellant are interrelated, the said grounds will be considered together in this case.

The role of probability plays a fundamental role in persuading the judge on certain key points, as a higher probability could essentially increase the likelihood of the judge being convinced. Furthermore, in criminal investigations, probability aids in the assessment and evaluation of the relevance of various types of evidence, thus playing a significant role in this context as well. To accurately accuse an individual “beyond reasonable doubt”, it is absolutely necessary to possess substantial evidence. In order to do this, situations will arise where certain assumptions are made, to arrive at conclusions. The likelihood or probability of such assumptions being accurate is what is referenced as the “principle of probability” in legal contexts, such as this.

In this situation, by way of relying on the information received by PW1, the raid had been conducted by the police officers. As per the informant, a person had been packeting Heroin at a house bearing the address No. 78/7, First Lane, Gothamin Road. The informant, however, did not reveal his identity.

It must be mentioned here that the utilization of informants in Sri Lankan criminal cases is quite common. Law enforcement officers often use informants to try to fabricate cases against someone they believe is guilty of a crime. Hence, quite understandably, the Judiciary faces quite an arduous task when it comes to verifying the reliability of an informant.

PW1, who was the recipient of this information, had not entered any notes in relation to this, rather, had gone directly to the house located in Gothami Road. PW1 had admitted that he was familiar with this place, as he had

conducted a raid previously at the same premises. Thus, the fact that the information had not been entered in the relevant books, raises a doubt regarding the integrity of the raid.

As per both PW1 and PW7, they had directly gone to the house specified in the information. As per the witnesses, the informant had not, in fact, revealed the identity. However, the Appellant was arrested in front of the aforementioned house. Further, despite the information alleging that a person was packeting Heroin inside the house, the said house was alarmingly not checked by the police team. This, too, raises further concerns in respect of probability, in this case.

According to PW1, the Appellant was said to have been arrested in front of a house. However, contrary to what was said by PW1, PW3 had claimed that the instruction given was to arrest a person who was standing in front of a house. The applicable portion has been reproduced below, as follows:

Pages 128-129 of the brief

ප්‍ර : එම ස්ථානයට ගමන් කරලා මොකක්ද ඉටු කරනු ලැබූ රාජකාරිය ?

උ : එම ස්ථානයේ අලුතෙන් හඳුනා මහල් නිවාසයක් අසල තමයි පීප් රථය නැවැත්වුණේ. ඒ නවත්වලා ස්ථානාධිපතිතුමා පීප් රථයෙන් බැහැලා ඊට පස්සේ අලි සියලුම දෙනා පීප් රථයෙන් බැස ඒ අවස්ථාවේ ස්ථානාධිපතිතුමා දැනුම් දුන්නා නිවස ඉදිරිපිට සිටි පුද්ගලයෙක් පරීක්ෂා කිරීමට යා යුතු බව. ඒ අනුව අපි සියලු පැමිණියා.

ප්‍ර : එම ස්ථානයට ගමන් කරලා මොකක්ද ඉටු කරනු ලැබූ රාජකාරිය ?

උ : එම ස්ථානයේ අලුතෙන් හඳුනා මහල් නිවාසයක් අසල තමයි පීප් රථය නැවැත්වුණේ. ඒ නවත්වලා ස්ථානාධිපතිතුමා පීප් රථයෙන් බැහැලා ඊට පස්සේ අලි සියලුම දෙනා පීප් රථයෙන් බැස ඒ අවස්ථාවේ ස්ථානාධිපතිතුමා දැනුම් දුන්නා නිවස ඉදිරිපිට සිටි පුද්ගලයෙක් පරීක්ෂා කිරීමට යා යුතු බව. ඒ අනුව අපි සියලු පැමිණියා.

The contention of the defence is that the Appellant was not arrested as stated by PW1 and PW3.

There is a weight discrepancy noted in the production. According to PW1, the quantity sent for analysis 7 grams. This is after deducting the weight of the cellophane bag. But the Government Analyst had noted 7.44 grams of gross quantity of substance received for analysis. This is .44 gram in excess sent for analysis. PW1 had weighed the production with a weighing machine from a jewellery shop. According to his evidence, he had satisfied the accuracy of the weighing machine. As such, there cannot be any excess weight.

The defence contends here that the Appellant was not arrested as claimed by PW1 and PW3.

Further, a weight discrepancy has been noted in respect of the production. As per PW1, the quantity sent for analysis was 7 grams, which is after deducting the weight of the cellophane cover. However, it was noted by the Government Analyst that 7.44 grams of gross quantity of substance was received for analysis, which is .44 grams in addition to what was sent for analysis. As per PW1, he has weighed this production with a weighing machine from a jewellery shop, and as per his evidence, he was satisfied with the accuracy of this weighing machine. Therefore, there cannot be such an additional or excess weight.

Judges formulate their judgments based on the information presented to them during court proceedings, including verbal arguments, written submissions, and supporting documents provided by the parties through their legal representatives. They meticulously examine the facts presented and evaluate the evidence that has been entered into the court record. Ultimately, their decisions are based on an objective analysis of the law and the evidence presented, rather than subjective personal beliefs. Relying on personal beliefs would introduce significant bias into the judicial process, undermining fairness and impartiality, which are fundamental principles of the legal system.

The profound duty of the trial court is to consider the evidence placed by the prosecution and the defence on equal footings to arrive at its finding.

In **R v. Hepworth** 1928 (AD) 265, at 277, Curlewis JA stated:

“A criminal trial is not a game where one side is entitled to claim the benefit of any omission or mistake made by the other side, and a Judge's position in a criminal trial is not merely that of an umpire to see that the rules of the game are applied by both sides. A Judge is an administrator of justice, not merely a figure-head, he has not only to direct and control the proceedings according to recognised rules of procedure but to see that justice is done”.

As such, the burden of proof usually lies on the person bringing a claim in a dispute. This has been reflected by the Latin maxim *semper necessitas probandi incumbit ei qui agit* which translates to: "The necessity of proof always lies with the person who lays charges."

To determine whether you are innocent or guilty, the concept of a fair trial plays a vital role. A fair trial is a universally recognised human right. Fair trials help to establish the truth and are vital for everyone involved in a case. It is a cornerstone of democracy, helping to ensure fair and just societies.

In this case, the learned High Court Judge had not allowed a witness to be called on behalf of the Appellant. Therefore, the Appellant was not afforded a fair trial as guaranteed in the Constitution.

In this case the raid was conducted on an information received. Further, the raid conducted and the recovery of productions have failed to pass the test of probability in this case. If the learned Trial Judge had examined the evidence presented from the correct perspective, he would have been inclined to accept the testimony provided by the Appellant.

In this case, the learned High Court judge had not permitted the Appellant to call a witness on behalf of himself. Thus, it is evident that the Appellant was not, in fact, afforded a fair trial as guaranteed in the Constitution.

In this case, the raid was conducted as a result of the reliance on the information received. Furthermore, the raid as well as the recovery of the productions have not passed the test of probability in this case. If the evidence presented had been examined by the learned Trial Judge from the correct point of view, he would have been rightfully led to accept the Appellant's testimony.

Guided by the above cited judicial decisions, I conclude that the 1st and 2nd grounds advanced by the Appellant have a very serious impact on the prosecution's case.

As the prosecution has failed its duty to prove this case beyond reasonable doubt, I set aside the conviction and sentence imposed by the learned High Court Judge of Colombo dated 20/03/2017 on the Appellant. Therefore, he 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

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL