IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application under in terms of section 83(2) of the Case of Criminal Procedure Act No. 15 of 1979.

Democratic Socialist Republic of Sri Lanka.

Complainant

Vs.

1. Jayamanna Mohottilage Anjula Jayamanna

Accused

Court of Appeal Case No:
CA/HCC/0087/25

High Court of Anuradhapura Case No:
HC-260/2019

AND NOW BETWEEN

Jayamanna MohottilageAnjula Jayamanna

Accussed-Appellant

Vs

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

Respondent

Before	:	**P. Kumararatnam, J.** **Pradeep Hettiarachchi, J.**
Counsel	:	Kavithri Hirusha Ubeysekara for the Accused-Appellant Yohan Abeywikrama D.S.G. for the Respondent
Argued on	:	29.10.2025
Decided on	:	23.01.2026

Pradeep Hettiarachchi, J

Judgement

1. This appeal arises from the judgment and sentence dated 19.02.2025 of the learned High Court Judge of Anuradhapura. The accused –appellant (Hereinafter referred to as the appellant) was indicted for possessing and trafficking of 2.13 grams of Heroin which are offences punishable under Sections 54A(d) and 54A(b) of the poisons Opium and Dangerous Drugs Ordinance as amended by the Act No 13 of 1984.

2. At the conclusion of the trial, the learned Judge of the High Court convicted the appellant on both counts and sentenced him to life imprisonment. Aggrieved by the said conviction and sentence, the appellant has preferred the instant appeal before this Court.

   Following are the grounds of appeal advanced by the appellant.

   a. The inward journey has not been proved beyond reasonable doubt;
   b. The learned High Court Judge has failed to analyze the infirmities and improbabilities in the prosecution evidence; and,
   c. The learned High Court Judge has failed to duly consider the defense of the appellant.

3. There were ten witnesses testified for the prosecution. PW1 ASP Saman Priyantha was the Head Quarters Inspector of Thambuttegama Police during the period relevant to the arrest of the appellant.

4. According to PW1, the appellant was arrested on 17.10.2017, upon an information received by PW1 during a routine patrol. The police party consisted of 7 officers including PW1. Upon receiving the information, they put up a road block near Lunuwewa by parking a police bike across Nochchiyagama road. Thereafter, they stopped a motorbike coming from Nochchiyagama towards Thambuttegama and searched the rider and found heroin in his possession.

5. Subsequently, they went to 'Pasindu Gold House At Thambuttegama town and weighed the substance and sealed it. After that they returned to the police station they handed over the appellant and the sealed parcel to the police reserve.

6. PW2, who also participated in the raid as an officer assisting PW1, stated that it was the HQI who blew his whistle and stopped the appellant while he was riding his motorcycle. According to PW2, after the appellant was stopped, the HQI himself inserted his hand under the appellant's trousers and recovered the suspected parcel, which was found in the appellant's undergarments. The witness further stated that the search took place near the police vehicle, and that the recovered substance consisted of two packets.

7. The Government Analyst Report dated 30.11.2017 was marked in evidence through the interpreter of the High Court.

Serious discrepancies in the inward journey:

8. According to PW1, when the parcel was recovered from the possession of the appellant, it contained two packets wrapped in pink-coloured cellophane. However, when the productions were marked at the trial, only one packet was produced before court. At page 121 of the record, PW1 admitted that there was only one cellophane packet, whereas in his examination-in-chief he categorically stated that two cellophane packets were recovered from the appellant.

9. Further, the item marked P7 consisted of two grocery bags, which again is inconsistent with PW1's earlier version. In his examination-in-chief, while explaining the manner in which the alleged substance was weighed, PW1 clearly stated that there were two packets, and that he emptied the contents of both packets onto a half-sheet of paper and weighed them together. This version is wholly inconsistent with the productions placed before court.

10. These contradictions are not minor or trivial discrepancies; they go to the root of the alleged recovery, which forms a crucial link in the prosecution case. It is well settled that where evidence relating to recovery and productions is riddled with inconsistencies, such evidence cannot be relied upon with confidence. A defective or doubtful recovery seriously undermines the prosecution case, particularly where such recovery forms the foundation of the charge.

11. In the circumstances, the discrepancies in the testimony of PW1 with regard to the number of packets allegedly recovered, the manner in which they were handled, and the inconsistency between oral evidence and documentary productions, seriously impair the credibility of the prosecution evidence relating to the alleged recovery. Consequently, it is unsafe to place reliance on this aspect of the prosecution case, and the benefit of such doubt must necessarily be in favour of the appellant.

12. 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.

13. 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***.

14. The object and purpose of proving the chain of productions is to ensure that what was recovered is sent to the Government Analyst, and to exclude any possibility of mixing up or tampering with the production. This position was emphasized in ***Witharana Doli Nona vs Republic of Sri Lanka (CA-19/19) and in Perera vs Attorney General [1998] 1 S.L.R. 378*** as follows:

> *"The prosecution must prove the chain relating to the inward journey. The purpose is to establish that the productions have not been tampered with and that the very productions taken from the accused-appellant was examined by the Government Analyst. To this end, the prosecution must prove all the links of the chain from the time it was taken from the accused-appellant to the Government Analysts' Department"*

15. In ***Mahasarukkalige Chandrani vs AG (CA 213/2009 C.A.M. 30.09.2016)*** Court observed:

> *Government Analyst Report which is the principal evidence in a drug offense is entirely dependent on the inward journey of the production chain and therefore, there is a duty cast on the prosecution to establish the inward journey of the production with reliable evidence.*

16. The importance of proving the chain of evidence was emphasized In ***S v Matshaba <u>2016 (2) SACR 651</u> (NWM)*** as follows:

> "*The importance of proving the chain of evidence is to indicate the absence of alteration or substitution of evidence. If no admissions are made by the defence, the State bears the onus to prove the chain of evidence. The State must establish the name of each person who handles the evidence, the date on which it was handled and the duration. Failure to establish the chain of evidence affects the integrity of such evidence and thus renders it inadmissible".*

17. Furthermore, it must be noted that nowhere in the evidence of PW1 has he stated in whose custody the alleged recovered heroin was kept from the time of recovery until they reached the jewellery shop, and thereafter until it was handed over at the police station. The failure to establish a clear and unbroken chain of custody casts serious doubt on the integrity of the alleged recovery.

18. Moreover, the alterations made to certain dates in the Information Book were not satisfactorily explained by PW1. In criminal prosecutions, particularly in cases involving narcotic substances, such unexplained alterations in contemporaneous records materially undermine the credibility of the prosecution version.

19. It is also noteworthy that, according to the Government Analyst's Report marked P9, the brown-coloured powder was contained in a paper packet, which directly contradicts the evidence of PW1, who stated that he wrapped the substance in a white half-sheet of paper. Significantly, the Government Analyst's Report makes no reference whatsoever to two cellophane packets, despite PW1's categorical assertion that the recovery consisted of two packets wrapped in pink-coloured cellophane.

20. Another discrepancy which cannot be lightly disregarded relates to the gross weight of the alleged substance. According to PW1, the substance weighed 4.52 grams, whereas the Government Analyst's Report records the gross weight as 2.99 grams. No reasonable or plausible explanation was offered by the prosecution to account for this substantial discrepancy.

21. These inconsistencies, when viewed cumulatively, go beyond mere minor discrepancies and strike at the very foundation of the prosecution case. The Supreme Court has consistently held that where there are serious contradictions regarding recovery, custody, description, and weight of narcotic substances, it is unsafe to sustain a conviction

22. Furthermore, there is no evidence whatsoever regarding the individual weight of each packet prior to them being untied and emptied onto a half-sheet of paper, nor is there any record of the weight of the empty wrappers or bags. This omission assumes significance in view of the discrepancies already noted with regard to the number of packets and the gross weight of the alleged substance, and further weakens the reliability of the prosecution evidence relating to recovery and weighing.

23. There are also material infirmities in the testimony of PW4. In his examination-in-chief, PW4 stated that he had taken over the productions from PC Manjula on 22.10.2017 at 17.15 hours. However, in cross-examination, he admitted that this version was incorrect, and that he had in fact taken over the productions from PW Wikramasinghe.

Such contradictions relating to the handling and custody of productions cannot be brushed aside as mere clerical or typographical errors.

24. It is well settled that inconsistencies in evidence concerning the custody, handling, and transmission of productions to court strike at the chain of custody, which is a vital requirement in prosecutions involving narcotic substances. The Supreme Court has repeatedly held that where such material contradictions remain unexplained, the prosecution version becomes unreliable

25. It is also significant to note that the Government Analyst was not called to testify at the trial. As a result, there was no opportunity to clarify or reconcile the discrepancy regarding the packaging of the alleged substance. PW1 stated that the substance was emptied onto a half-sheet of paper and folded, whereas the Government Analyst's report indicates that the substance was contained in a paper packet. This material inconsistency, left unexplained, further undermines the credibility of the prosecution evidence and casts doubt on the integrity of the alleged recovery.

26. Furthermore, PW1 failed to make any contemporaneous notes regarding the details of the scale used to weigh the alleged substance. No evidence was led as to whether the scale was tested, calibrated, or otherwise reliable. Equally, no record was maintained as to whose custody the productions remained from the time of recovery until the weighing was conducted, nor is there any evidence indicating under whose custody the appellant was kept during this period. These omissions materially weaken the reliability of the prosecution case.

27. PW7, who was the Reserve Officer responsible for handing over the productions to the Magistrate's Court, produced a Production Receipt dated 23.10.2017. However, the date appearing beneath his signature at the bottom of the same document is 25.10.2017. No explanation whatsoever was offered by the prosecution to resolve this discrepancy. Such unexplained inconsistencies in official court records raise serious doubts as to the proper handling and timely production of the alleged exhibits.

28. Even more concerning is the evidence of PW8, who stated that he received the productions from the Magistrate's Court on 01.11.2017 at 5.18 p.m., but thereafter returned home with the productions in his personal custody and only on the following

day took them to the Government Analyst. This conduct amounts to a serious breach of the mandatory safeguards governing the custody and handling of narcotic exhibits.

29. The retention of court productions overnight by a police officer, without any judicial authorization, documentation, or supervision, creates a clear and unexplained break in the chain of custody. This constitutes a grave breach of procedure, as narcotic substances intended for forensic analysis must remain under strict and documented custody at all times. The retention of such productions overnight by a police officer, without judicial authorization or proper documentation, severely compromises the integrity of the exhibits.

30. In the absence of a satisfactory explanation for this irregularity, the prosecution has failed to establish beyond reasonable doubt that the substance analysed by the Government Analyst was the same substance allegedly recovered from the appellant. The benefit of such doubt must necessarily be given to the appellant.

31. The importance of maintaining accurate and contemporaneous notes by officers involved in raids of this nature, as well as the necessity of preserving an unbroken chain of custody of productions from the time of recovery until their delivery to the Government Analyst for analysis, has been repeatedly emphasized by Sri Lankan courts. These procedural safeguards are not mere formalities, they are essential to ensure the integrity, reliability, and admissibility of the evidence. Regrettably, in practice, these obligations are too often disregarded or taken lightly, thereby undermining the credibility of the prosecution case and compromising the administration of justice.

Inter se contradictions:

32. There exist material inconsistencies between the evidence of PW1 and PW2 regarding the place where the appellant was searched and the manner in which the alleged heroin was recovered. PW1 stated that the appellant was taken to a place covered by trees and was bodily searched there. In contrast, PW2 testified that the appellant was taken near the police vehicle and searched. This version is further corroborated by PW12, who also stated that the search was conducted in close proximity to the police vehicle.

33. These contradictions are not minor or peripheral; they relate directly to the very act of search and recovery, which constitutes the cornerstone of the prosecution case. When prosecution witnesses give divergent and irreconcilable versions regarding such a vital aspect, the credibility of the alleged recovery becomes seriously questionable. Our courts have consistently held that where there are material inconsistencies among police witnesses relating to the search, seizure, and recovery of narcotic substances, it is unsafe to sustain a conviction.

34. According to PW1, all the police officers who participated in the raid blocked the road and stopped the motorcycle. In contrast, PW2 testified that it was the HQI who blew his whistle and stopped the motorcycle. This inconsistency, though seemingly minor in isolation, assumes significance when considered together with the other contradictions in the prosecution evidence.

35. More importantly, and indeed most vital, is the contradiction relating to the manner in which the alleged heroin parcel was recovered from the appellant, a matter that goes to the very root of the prosecution case. According to PW1, the appellant was asked to take the parcel out himself, whereas PW2 stated that the HQI personally searched the appellant, inserted his hand, and took out the parcel. These two versions are mutually destructive and cannot stand together.

36. Significantly, this material discrepancy was never explained or reconciled, even during re-examination. Where the prosecution fails to clarify such fundamental inconsistencies relating to the act of recovery, the court is left with an unavoidable and reasonable doubt as to whether the alleged recovery took place in the manner asserted by the prosecution.

37. Evidently, PW1 failed to make any contemporaneous notes regarding the searching of the police officers prior to their departure for the raid, which constitutes a clear violation of the mandatory requirements of the Police Ordinance and established police procedure. Such safeguards are intended to ensure transparency and to eliminate the possibility of false implication.

38. Further, no odometer readings of the police vehicle were recorded, either before leaving the police station or upon returning, thereby depriving the court of an objective means

of verifying the movements of the police party. This omission further weakens the credibility of the prosecution narrative relating to the conduct of the raid.

39. More importantly, no contemporaneous notes were made regarding the manner in which the appellant was searched. In prosecutions involving narcotic substances, strict compliance with procedural safeguards governing searches is imperative. The failure to document the search process, particularly in a case where the recovery itself is hotly contested and riddled with inconsistencies, assumes critical significance.

Improbability of the story:

40. According to PW1, the information regarding the appellant was received at 2.00 p.m., and the arrest was effected at 2.30 p.m. Thereafter, the police party proceeded to Pasindu Gold House to weigh the alleged parcel, where they arrived at 3.15 p.m., despite the distance being approximately 3 kilometers. It is further in evidence that the distance between Pasindu Gold House and the police station is about 50 meters.

41. PW1 admitted that the weighing and sealing of the production were completed by 4.00 p.m., and that they thereafter returned to the police station. However, the time of in entry recorded at the police station is 5.00 p.m. When PW1 was questioned as to whether it took one full hour to cover a distance of 50 meters, he was unable to provide any satisfactory explanation.

42. This unexplained delay assumes greater significance in light of the admitted fact that no odometer readings of the police vehicle were recorded, either prior to leaving the police station or upon returning. When the time discrepancies, the short distances involved, and the absence of objective verification through odometer readings are considered together, the prosecution narrative becomes highly doubtful.

43. In a raid of this nature, police officers are required to make contemporaneous notes of every material step taken during the operation, and they also enjoy the advantage of refreshing their memory from such notes when testifying, unlike lay witnesses in an ordinary criminal trial who testify largely from recollection. Consequently, the evidence of police officers engaged in a raid is expected to be precise, consistent, and free from material contradictions.

44. Accordingly, contradictions inter se in the testimony of such officers must be subjected to strict scrutiny, and where such contradictions exist in relation to material aspects of the case, they inevitably impair the credibility of the evidence.

45. In the present case, the material contradictions apparent in the evidence of PW1 and PW2, particularly in relation to the manner of search, recovery, and handling of the alleged narcotic substance, clearly go to the root of the prosecution case. These inconsistencies are not trivial or peripheral; rather, they strike at the very foundation of the alleged recovery.

46. Moreover, the cumulative effect of these contradictions casts a serious and reasonable doubt on the prosecution narrative and renders the testimony of PW1 and PW2 unsafe and untrustworthy. In such circumstances, it would be wholly unsafe to found a conviction upon such evidence, and the benefit of doubt must necessarily be in favor of the appellant.

47. In ***Nandasena v. Attorney-General*** **[1996] 1 Sri LR 1,** the Supreme Court held that where the evidence of the prosecution witness gives rise to reasonable doubt, the accused is entitled to an acquittal, irrespective of whether the defence version is accepted in its entirety.

48. The Supreme Court in ***Saman v. Attorney-General*** **[1999] 3 Sri LR 147** emphasized that contradictions and inconsistencies which go to the root of the prosecution case cannot be brushed aside as minor discrepancies, and where such infirmities are present, the benefit of doubt must necessarily accrue to the accused.

49. Similarly, in **Kularatne v. Attorney-General** ***[2000] 2 Sri LR 394***, it was held that a conviction based on evidence riddled with inconsistencies would amount to a miscarriage of justice.

50. It was also submitted that the learned trial Judge failed to properly analyze and evaluate the defense evidence, in particular the dock statement of the appellant. In his judgment, the learned trial Judge dealt with the dock statement in a single paragraph, without any meaningful analysis or consideration of its implications.

51. The appellant did not dispute the lawfulness of his arrest, but specifically disputed the alleged recovery of heroin from his possession. The defense stance is corroborated by several infirmities in the prosecution evidence, including:

    1. Material lapses in the chain of custody of the alleged productions;
    2. Contradictory accounts regarding the manner in which the alleged recovery was made;
    3. Discrepancies concerning the place of search of the appellant;
    4. The failure of the police to record odometer readings of the police vehicle; and
    5. The unbelievability of the time durations recorded in the testimonies of the prosecution witnesses.

52. These factors, taken cumulatively, lend credibility to the dock statement and raise a reasonable doubt as to the prosecution case. In these circumstances, the dock statement should not have been lightly disregarded, and the learned trial Judge's failure to properly consider it constitutes a serious misdirection.

53. In this regard the following authority would be of much relevance.

In ***Kithsiri Vs. Attorney General [2014] -I Sri.L.R 38*** it was held that:

> *[1] Courts in evaluating evidence should not look at the evidence of the accused person with a scant eye. Defence witnesses are entitled to equal treatment with those of the prosecution and Courts ought to overcome their traditional instinctive disbelief in defence witnesses. Quite often they tell lies but so do the prosecution witnesses.*
>
> *[2] There is no reason to reject the accused appellants evidence. This means that the evidence of the accused was capable of creating a reasonable doubt in the prosecution case. Evidence of main prosecution witness creates a reasonable doubt in his own evidence and corroborates the position taken up by the accused-appellant.*

54. Upon consideration of the foregoing factual and legal context, it is manifestly unsafe to allow the conviction to stand. Accordingly, the conviction and sentence imposed on the appellant are set aside, and the appellant is acquitted of all charges. The appeal is therefore allowed.

Judge of the Court of Appeal

P. Kumararatnam,J

I agree,

Judge of the Court of Appeal