

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

In the matter of an appeal in terms of Section (1) 331 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.

CA/HCC/0026/2021

HC Galle Case No: HC 2224/07

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

Sudath Nishantha Koman Godage

Accused

And Now between

Sudath Nishantha Koman Godage

Accused-appellant

Vs.

The Attorney General

Attorney General's Department

Colombo 12.

Complainant -Respondent

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

Amal Ranaraja, J

Counsel: Shavindra Fernando PC with Amanda Imbulan, Nimesha Wanaguru and Rikaz Riffard for the Accused- Appellant Sudharshana De Silva, ASG for the Respondent

Written

Submission: 17.12.2021 (by the Accused Appellant)

On 17.02.2022 (by the Respondent)

Argued On: 23.09.2025

Judgment On: 04.11.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as ‘the Accused’) was indicted before the High Court of Galle for possession and Trafficking 382.3 g of heroin under Section 54A (d) & (b) of the Poisons, Opium and Dangerous Drugs Ordinance, No. 13 of 1984, as amended.

At the trial, the prosecution led evidence through 7 witnesses and marking productions P1-P28, and thereafter closed its case. The Accused, in his defence, gave evidence in the witness box and called 3 witnesses in his defence. After the trial, the Learned High Court Judge found the accused guilty on both counts in the indictment and imposed the death sentence on 12.02.2021.

Being aggrieved by said judgment, this appeal was preferred by the Accused. The following Grounds of Appeal were urged by the counsel for the Accused.

- (a) The learned High Court Judge has completely disregarded the suspicious nature of the informant who gave the tip-off and his heavy involvement in the case.
- (b) The time difference and distance subsequent to the arrest do not support or confirm the prosecution's case but instead are in line with the defence evidence and corroborate what the defence alleges.
- (C) The absence of any external evidence of the incident of arrest, apart from the evidence of the officials involved.
- (d) The weight of the defence case
- (e) The involvement and sudden release of Susil Kumarasiri

Facts and circumstances of the case are as follows

PW 01, IP Nihal Perera, testified that on 14th May 2001, at approximately 11:50 a.m., he received information from a private informant regarding Heroin in Galle. Pursuant to this information, a team of police officers proceeded to the Ranmal Hotel in Hikkaduwa. Subsequently, acting on further details provided by the same informant on 15th May 2001, at around 1:00 a.m., the witness, accompanied by 9 police officers, departed from the hotel to a location in Galle, which the informant identified as the residence of the Accused.

The witness, accompanied by Officer Thennakoon and the informant, proceeded approximately 300 m along Dagedara Hiribura Road towards the residence of the Accused. The other officers stayed in the jeep at the start of the road. At around 2:25 a.m., the witness observed the Accused opening the gate, upon which the informant identified him as the individual engaged in drug trafficking and subsequently departed. Moments later, the Accused stepped out through the gate, at which point the witness and Officer Thennakoon effected his arrest around 2:30 a.m. At the time of arrest, the Accused was carrying a black shopping bag in his

right hand. Inside the bag was a nickel-coloured iron box, beneath which lay a cellophane bag containing drug substances. The nickel-coloured box also contained a scale with weights. Additionally, within one bag were two smaller bags—one light green and the other pink—which the witness identified as containing drugs.

The witness summoned the other team, and although the house search yielded no illegal items, a person who was residing there was arrested on suspicion. Thereafter, both the seized material and the Accused were taken to the Police Narcotics Bureau at approximately 6:40 a.m., where the material was weighed and recorded as 1 kg and 80 g. After the production was handed over to the PW 11, PS Gurnaratne at the reserve.

During cross-examination, counsel for the Accused questioned the witness regarding the label affixed to the parcel. The witness stated that he could not recall whether he had glued or stapled the label.

Furthermore, the witness admitted that the productions remained in his possession and were not sealed until arrival in Colombo. He further stated that the production was recovered from the possession of the Accused and remained in his custody until he arrived in Colombo. He also affirmed the ownership of the house by Susil Kumarasiri, who was arrested in the said house. It is noteworthy that the defence primarily questioned him regarding the sealing kit, to which he explained its absence during the operation.

He made reference to the information he received on that day.

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පූ : මොකද්ද ලැබුන තොරතුරු?

ස් : මත්ද්වා ජාවාරම් කරුවෙක් 15 වෙනිදා එලිවෙන පාන්දර මත්ද්වා රගෙන බස්

නැවතුම්පොලට එනවා. එහිදී පෙන්වා දෙන්න පුළුවන්. හවසට තොරතුරු දෙන්නම කියල
කතා කර ගත්තා.

The witness confirmed the sequence of events, detailing how the informant approached the officers and how the accused was apprehended through a joint effort between the witness and the informant. He also provided an explanation for not being in possession of the official notebooks at that time. During cross-examination, Learned Counsel for the defence inquired about the specific information that purportedly linked the owner of the house to the alleged plan to transport narcotics. In reply, the witness stated that the accused had been identified by the informant as he was exiting the house.

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පු : සාක්ෂිකරු පෙළද්ගලිකව දන්නේ නැහැ මෙම නිවාස විත්තිකරුගේද කාගේද කියලා?

උ : නැහැ

පු : දේමහල් තිවස හදුන එක්කෙනා කියලා තමන්ට ලැබුනේ?

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තමන් අසත්‍ය තොරතුරු කියන්නේ ?

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පු : ගාල්ල බස් නැවතුම් පොලෙන් මත් ද්‍රව්‍ය රගෙන ගිය බවට දැනුම් දුන්න. අලුතෙන්
ඉදිකළ නිවසේ සිට මෙම මත් ද්‍රව්‍ය රගෙන ගිය බවට පැවසුවද?

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The witness further stated that it is correct that the informant initially reported the Accused as approaching the bus stand, but subsequently identified him at the house. It is noted that the incident unfolded based on the information provided by the informant, and the identification of the Accused was made by the informant himself. The witness also affirmed that the Accused was arrested in front of the house.

පු : ඇයි එයාගේ ගෙදර තිබු බව් සොයාගත්තේ. ගෙදර ඉදිරිපිටි කියල කළින් දින ගරු අධිකරණයේ සාක්ෂි දෙමින් පවතා සිටි ආකාරයට?

ල : නිවස ඉදිරිපිටි තමයි මත්දුවා සමඟ අත්අඩංගුවට ගත්තේ.

The witness further affirmed that the Accused was apprehended with the production in front of the house. In response to a suggestion by defence counsel that he was testifying in favour of Susil Kumarasiri—who had been released by the Officer-in-Charge—the witness denied the allegation. He also clarified that the decision to release Susil Kumarasiri had not been made by him.

What we observe from the cross-examination it's clear that the defence mainly focused on the release of Susil Kumarasiri. But the witness confirmed that nothing was found on him when he was arrested. He further stated that Susil Kumarasiri was released only after an inquiry was conducted by the senior officers. When confronted with the route, the witness affirmed that the court may refer to the notes for verification.

Defence counsel put to the witness that he had initially proceeded to the Accused's residence, effected the arrest there, and subsequently took the Accused to the residence of Susil Kumarasiri. The witness denied this suggestion.

It is pertinent to note that one of the grounds advanced by the Accused, even during the argument stage, was that Susil Kumarasiri—admittedly the owner of the house—had been released by the police without a proper investigation. While it is acknowledged that Susil Kumarasiri was indeed the owner of the premises, no incriminating material was recovered either from his possession or from within the house. Further, we observe that Susil Kumarasiri was arrested with the Accused and taken to Colombo after interrogation, only he was released on the advice of the Attorney General. When we analyse the evidence he has provided on the following matters.

1. Throughout the journey, the informant was with them informant only identified the place and the accused, who was coming out of the house with a bag
2. In his evidence, he clearly states that the witness found the Heroin from the Accused

We note that there is no reason for us to disbelieve his version.

PW 5, P.S. Kapila Senaratne, corroborated the testimony of PW 1 and stated that he, along with other officers, remained near the Buddha statue at the beginning of the road until approximately 2:35 a.m., until the accused was apprehended by PW 01. On the PW 01's instructions, they have searched the house. The witness admitted to having assisted in sealing the productions and identified the handwriting on the envelopes used for sealing. Furthermore, during cross-examination, the witness acknowledged that he prepared notes under the instructions of PW 1, that the officer had made a complete and detailed record, and that his own extended notes pertained solely to the duties he had performed.

According to PW 11, Police Sergeant Gunaratne, on 15th May 2001 at 8:15 a.m., PW 01 handed over to him the productions under PR Numbers 119, 120, and 121 and two suspects. The productions were secured in the designated security box, while the suspects were placed in the jail cell and subsequently handed over to PW 13 at 5:55 p.m.

PW 13, Inspector of Police Dayananda, acknowledged that he received the productions from PW 11 and handed them over to the Government Analyst's Department on 18th May 2001.

During the testimony of PW 15, Government Analyst Siriyani Sakunthala Thennakoon, stated that on 18th May 2001, she received a production item from PW 13. The item was duly accepted following standard procedure and was fully sealed. The innermost bag contained the suspected substance. The brown powder contained in the polythene bag weighed 1,056.1 grams, of which the pure quantity of heroin was determined to be 382.3 grams.

In his dock statement, the Accused stated that, owing to his employment, he was renting a room in the house owned by Susil Kumarasiri. He was arrested while asleep, and the police requested access to the room, as the key was in his possession. The Accused further alleged that the police publicly identified him to the neighbours as a drug dealer. He noted that Susil Kumarasiri was present in the police jeep at the time of arrest. According to the Accused, the police had searched the house the previous night and recovered a parcel, but upon searching his room, they found nothing. These versions were not put forward to the PW 01 during cross-examination.

The main defence taken by him is that he was implicated in a false charge. According to the Accused, he had a room in that house which was not completed, and he used to go there every day. The informant has indicated that the house belongs to the accused. When a person observes person regularly goes to a house and comes back that this person is the owner. Learned high court judge correctly analysed the evidence of the defence. We hold that the evidence does not create any doubt over the evidence led by PW 01.

The learned High Court Judge, upon analysing the evidence, held that the manner in which Susil Kumarasiri was investigated and arrested does not give rise to any reasonable doubt in this case. It is pertinent to reproduce the relevant portion of the judgment.

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‘ඒ අනුව රජයේ උගත් නීතිඥ මහත්මිය සිය දේශනයේදී කියා සිටින පරිදිම සුසිල් කුමාර යන තැනැත්තා අන් අධ්‍යාපන ගැනීම සහ ඔහු සම්බන්ධයෙන් ගන්නා ලද නීතිමය කියා මාරුග මොනවද යන්න මත මෙම නඩුවේ විත්තිකරුට එරෙහිව පවතින නඩුව කෙරෙහි සැකයක් ඇති වන්නේ නැත. ඒ අනුව විත්තියේ සාක්ෂි සියල්ල පිළිගත්තද එමගින් විත්තිකරුට එරෙහිව පැමිණිල්ල විසින් මෙම ඉදිරිපත් කර ඇති සාක්ෂි මගින් පැමිණිල්ලේ නඩුව සාධාරණ සැකයෙන් තොරව සනාථ කර ඇති බවට වූ නිගමනය භබ කිරීමකට ලක් වන්නේ නැත.’

We note that the central issue in this matter is whether the Accused was in possession of the drugs, and it is undisputed that no materials were recovered from Susil Kumarasiri and from his house. I am mindful that even if Susil Kumarasiri had been in possession of drugs, such a fact would not, in itself, cast doubt on the Accused's possession of drugs. We are mindful that the arrest occurred at that moment because Susil Kumarasiri did not identify himself as the owner of the house, and the failure to properly verify his identity contributed to his apprehension.

It is noted that Susil Kumarasiri was released following the conclusion of the investigation. Upon analysing the testimony of PW 01, it is evident that the informant accompanied him throughout the operation and was the individual who pointed out both the house and the Accused to the witness, thereby facilitating the arrest. The principal defence advanced by the Accused is that his arrest was falsely effected in order to secure the release of Susil Kumarasiri. On the other hand, PW 1 has stated that the accused was arrested outside the house with drugs.

We don't see any discrepancy in the evidence of PW 01 and note that the subsequent arrest of another individual does not affect the validity of the initial arrest. In the drug cases following items have been proven by the prosecution

1. The accused was arrested with illegal substances.
2. The accused had the exclusive possession of such product,
3. After the arrest, the substance was properly sealed and handed over to the reserve, and it was kept under custody till it was sent to the Government Analyst.
4. Then the government analyst should confirm whether the production received by him comes under the Poisons, Opium and Dangerous Drugs Ordinance.

In this instant case, we note that it is observed that the prosecution has established that the Accused was in exclusive possession of the heroin, which was duly forwarded to the Government Analyst in accordance with proper procedure.

Taking all the aforementioned matters into account, we find no reason to interfere with the judgment of the Learned High Court Judge.

Accordingly, the appeal is dismissed, and the conviction and sentence imposed on the Accused are affirmed.

The appeal is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL