

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 and in terms of Article 138 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.

CA Case No: HCC 330/19

HC of Colombo Case No: HC 7183/14

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

Complainant

VS

Lebbe Thambi Mohammed Saleem

Accused

AND NOW BETWEEN

Lebbe Thambi Mohammed Saleem

Accused -Petitioner

-VS

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

Complainant – Respondent

Before: B. Sasi Mahendran, J.
Damith Thotawatta, J

Counsel : Selvaraja Dushyanthan, for the Accused-Appellant
Sudharshana de Silva, ASG for the Respondent

Written 03.11.2025 (by the Accused-Appellant)

Submissions: 02.05.2023 (by the Respondent)

On

Argued On : 08.12.2025

Judgment On: 29.01.2026

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as ‘the Appellant’) was indicted before the High Court of Colombo for Possession and Trafficking 18.35 g of Heroin under Section 54 (a) (d) and Section 54 (a) (b) of the Poisons, Opium and Dangerous Drugs Ordinance, No. 13 of 1984, as amended.

At the trial, the prosecution presented evidence through 8 witnesses and marking productions P1-P5 and thereafter closed its case. The Appellant, in his defence, gave evidence in the witness box.

At the conclusion of the trial, the Learned High Court Judge, by judgment dated 24.07.2019, found the Appellant guilty of Possession and Trafficking 18.35 g of Heroin.

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant preferred an appeal before this Court, articulating the following grounds in support of their challenge.

- (1) The prosecution has failed to establish the probability of the chain of custody of the productions beyond reasonable doubt.
- (2) The learned trial judge wrongly decided that the discrepancies in the evidence of the prosecution case are not shaking the root of the case.
- 3) The learned trial judge before considering the defense evidence decided in advance that the prosecution has proved its case beyond reasonable doubt.

The facts and circumstances of this case are as follows,

PW1, Senarath Bandara Bogamuwa, testified that on 17.10.2012 at 14:10 hours, he received information from WPS Samanlatha, PW 2, regarding the trafficking of heroin by one Mohammed Salim, alias Raja, in the area near Nawaloka Hospital. Accordingly, a team of officers with the witness departed from the office at 15:35, and PC Sameera was attired in his official uniform. The officers proceeded to the Slave Island railway station, where they met the informant. The officers, along with the informant, went near Sampath Bank, in front of Nawaloka Hospital, where the informant then identified the appellant, who was wearing blue strap trousers, and another person and thereafter departed.

Thereafter, the appellant was arrested and, upon being searched, a parcel containing three bags of heroin was recovered from the right trouser pocket of the appellant. The other individual was also searched, but no illicit items were found in his possession. After identifying the production of Heroin, the Appellant was arrested at 19.15 hours.

Thereafter, the officers proceeded to the Slave Island Police Station and, acting upon information provided by the appellant, travelled to Katunayake. They remained there until the following morning, awaiting the arrival of one Amurdeen, whom the appellant had identified as the individual who supplied him with the drugs. Subsequently, the officers returned to the PNB. At PNB, the productions were duly weighed and sealed, recording a total weight of 124.600 grams. Further, the witness explained how the production was sealed. Thereafter, the productions were kept in the locker of PW1 and, on the following day, handed over to IP Rajakaruna at 10.15 a.m. The witness identified

the productions that had been sealed and subsequently forwarded to the Government Analyst.

Under cross-examination, the witness stated that he had perused the notes of PW2 where the information was recorded and had signed the relevant entry therein. The defence contended that immediately after the appellant's arrest, he was taken directly to the PNB. The witness admitted the fact that at first, they met the informant at the entrance of the Slave Island Railway Station and did not proceed inside the station. It was further stated that both the witness and PW2 conversed with the informant at that location, and the informant indicated that he would provide additional information to PW2. The defence proposed that the witness had gone to Viharamahadevi Park to meet a lady, and that pursuant to a call made by her, the appellant was asked to come near the hospital, where the witness had denied this version. The witness stated that the production was recovered from the right side pocket of the trousers. The witness stated he took the production from the Appellant's possession.

We note that during cross-examination, the defence attempted to demonstrate that the witness had not recorded every item in his possession in the journal. Nevertheless, the essential facts remain how the information was received, the manner in which the search was conducted, the productions sealed and subsequently handed over. It is acknowledged that there exists a minor discrepancy as to the precise time at which the witness departed from the Slave Island Police Station and arrived in Katunayake.

PW2, WPS 874 Samanlatha, testified that at approximately 2:15 p.m., she received the information, recorded it in her pocket notes, and thereafter informed her superior, PW1. According to the witness, she received information that Lebbe Thanbi Mohamed Saleem was engaged in drug trafficking and that he would be arriving at Nawaloka Hospital.

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The witness stated that she and PW1 proceeded inside the Slave Island Railway Station after stopping the van to meet the informant, while the other officers remained in the van. She had introduced the informant to PW1. The informant indicated that the trafficking would occur after 6:00 p.m. and that he would subsequently inform them of the location. They remained inside the station for approximately five minutes. Thereafter, they proceeded to Viharamahadevi Park and, upon receiving further information, went to Nawaloka Hospital. The vehicle was stopped near Gangaramaya Temple, and the witness, together with PW1 and Officer Ranasinghe, proceeded towards Sampath Bank. At that point, the informant identified two individuals as drug traffickers who were coming from Slave Island towards Nawaloka Hospital. The witness explained how they approached the suspects, which corroborates the evidence of PW1. Thereafter, PW1 and Officer Ranasinghe proceeded towards the appellant and arrested them.

During the argument stage, counsel for the respondent raised the following grounds

1. There is a delay in sealing the production by the police
2. There is a discrepancy between the testimonies of PW1 and PW2.

In defence, the appellant has denied possession of illegal drugs. According to PW1, after the appellant was arrested and taken to the Slave Island police station, he disclosed the identity of the person who had supplied him with drugs. The officers then proceeded to Katunayaka in an attempt to apprehend that individual. When this attempt failed, they returned to the PNB and took necessary steps to hand over the production to the reserve. Since the officers are from the PNB, and its office was located close to the Slave Island police station, we note that it was not necessary to seal the productions at Slave Island itself. Although the defence argued that leaving for Katunayaka without first returning to the PNB could raise doubts, the evidence shows that they went directly from the Slave Island police station to Katunayaka in order to arrest the said person who trafficked the drugs to the Appellant. In these circumstances, I find no undue delay in sealing the productions.

I am mindful of the observation made by his lordship Yasntha Kodagoda J in the case of *Jayakodi Arachchige Anura Chaminda Appuhamy and others v. AG*, SC/TAB 05/2023, decided on 09.06.2025,

“It is necessary for this Court to observe that, in a case of this nature, where it is alleged that heroin was found in the possession of the Accused, as regards the said

substance (commonly referred to as the 'productions'), what is necessary for the prosecution to establish are the following:

- (i) That the productions referred to in the prosecution's case were in fact recovered from the possession of the Accused.*
- (ii) That without unnecessary delay, the productions recovered from the suspects were properly sealed and given unique markings.*
- (iii) That without unnecessary delay, such sealed and marked productions were forwarded to the Government Analyst in the manner provided by law.*
- (iv) That what the Government Analyst received were the sealed and marked productions recovered from the suspects.*
- (v) That what the Government Analyst analyzed and reported on were the productions that were recovered from the suspects.*
- (vi) That the Government Analysts Report arises out of the quantitative and qualitative scientific analysis of the productions recovered from the possession of the Accused.*

What is necessary is for the prosecution to prove each of these requirements beyond reasonable doubt and not to the even higher degree of mathematical accuracy."

I am mindful of the evidence led by the prosecution with regard to the detection and the procedure of sealing. There is no necessity for us to disbelieve the testimony of the witnesses. With regard to the discrepancies between the evidence of PW1 and PW2, it is observed that such inconsistencies do not go to the root of the case. However, the Court must consider whether these discrepancies are of such a nature as to create any doubt in the prosecution's case.

The defence has pointed out that PW1 testified that he and PW2 met the informant at the entrance of the Slave Island Railway Station, whereas PW2's version was that they proceeded inside the railway station and met the informant there. The question arises whether this discrepancy creates doubt in the prosecution's case. It must be noted that PW2 was the person who knew the informant and received the information directly. According to her, the information was communicated by the informant. PW1, on the other hand, was not directly involved with the informant. While the Court expects consistency between the officers, it cannot be expected that each statement will reproduce the other verbatim, as both are human witnesses. Minor variations in their accounts are natural

and do not necessarily undermine the credibility of the prosecution's case. I am mindful of the following judgements.

State of Uttar Pradesh v. M.K. Anthony, reported in Supreme Court Journal 1984

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“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and a refined lawyer.”

Samaraweera V. The Attorney General 1990 (1) SLR, 256 at page 260, P.R.D. Perera, J, held that

“Where however the maxim set out above is applicable it must be borne in mind that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood. Nor does it apply to cases of testimony on the same point between different witnesses. (Vide The Queen v. Julis (1) C. C. A.)”

In the instant case, the defence has not alleged that the witnesses had any personal interest in falsely accusing the appellant. In view of this, although they are trained officers, it must be recognized that each witness had a distinct role in the conduct of the raid. Therefore, it cannot be expected that their testimonies should be entirely identical. We are also mindful that, to a certain extent, the defence version is corroborated by the prosecution's evidence.

Upon careful consideration, we find that the prosecution has established, beyond a reasonable doubt, that the Appellant was in exclusive possession of the drugs. There is no reason for us to disbelieve the version put forward by the prosecution.

In those circumstances, I am not inclined to interfere with the judgment delivered by the Learned High Court Judge together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Damith Thotawatta, J

I AGREE

JUDGE OF THE COURT OF APPEAL