

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

In the matter of an application for Appeal
under and in terms of Section 331 of the
Criminal Procedure Code.

CA/HCC/84/19

HC/Puttalam HC 16/2015

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant

Vs.

Ranpatipathirage Prasanga Lakmal,

No. 803, Sirimavo Bandaranaike Mawatha,

Colombo 14.

Accused

AND NOW

Ranpatipathirage Prasanga Lakmal

No. 803, Sirimavo Bandaranaike Mawatha,

Colombo 14.

Accused-Appellant

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant-Respondent

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

Counsel: Darshana Kuruppu with Sahan, Anjana Kalindu and Tharushi
 Gamage for the Accused-Appellant
 Azard Navavi, ASG for the Respondent

Written

Submission: 06.02.2020 and 14.12.2022(by the Accused Appellant)
On 31.03.2021 (by the Respondent)

Argued On: 01.09.2025

Judgment On: 14.10.2025

JUDGEMENT

B. Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as 'the Accused') was indicted before the High Court of Puttalam for possession and Trafficking 20.41g of heroin under Section 54 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-P18, and thereafter closed its case. The Accused, in his defence, gave evidence in the witness box. After the trial, the Learned High Court Judge found the accused guilty on both counts in the indictment and sentenced him to life imprisonment.

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.

1. The Learned Trial judge has failed to consider the failure of the prosecution to prove the chain relating to the inward journey of the productions that were tendered to the Government Analyst beyond a reasonable doubt.
2. The Learned Trial judge has failed to give conscious consideration to the inter se contradictions and inherent improbabilities of the story of the prosecution and the lacunas in the investigation carried out by PW 01 - Ruwanthilake Bandara, thereby denying the Accused Appellant of his right to a fair investigation.
3. The Learned Trial Judge has failed to properly consider the Dock statement of the Accused Appellant

The facts of this case and the background to the incident may be set out briefly as follows;

According to the testimony of PW 01, Jayathilakage Ruwan Thilaka Bandara, who was serving as a Sub Inspector of Police attached to the Puttalam Police Station, he departed the station on 29th October 2013 at approximately 2:45 p.m., accompanied by PW 02 and Police Constable Lionel, for roadblock duty at Lunulinda Junction, Sirambiadiya, Puttalam. They arrived at the junction around 3:00 p.m. and positioned themselves on the left side of the road to monitor vehicles travelling from Puttalam towards Anuradhapura from Puttalam. After inspecting several vehicles, at approximately 3:45 p.m., PW 02 stopped a blue-colored three-wheeler bearing registration number WPYW2086, which appeared suspicious.

PW 01 initially questioned the driver regarding their whereabouts, to which the driver responded that they were travelling from Colombo to Anuradhapura. The accused was seated in the passenger seat, and PW 01, having observed the accused's evasive behaviour and lack of eye contact, instructed PW 02 to search. PW 02 first examined the bag, which yielded no items of concern. Upon inspecting the accused, PW 02 recovered a mobile phone and discovered a yellow-coloured parcel marked "W50" in the right pocket of the accused's shorts. The parcel was wrapped in cello tape, newspaper, and a pink grocery bag, all of which were removed by the witness, revealing a powdery substance contained within. At the same time driver had tried to walk away from the three-wheeler, then he was stopped and searched. They found a parcel in his pocket and found that it contained a similar substance. Then this officer took the custody of the two parcels marked with separate identification on both parcels, and then returned to the station. Thereafter, he sealed both parcels and handed over the productions to the reserved duty officer, PC 5360 Karunarathna, entering the production in 194/13 and 191/13.

On the morning of 30.10.2013, PW-01, accompanied by PW-02, PC Lionel, and the Accused, proceeded to the pharmacist at Puttalam Hospital for the purpose of weighing the substance. It should be note that he has not mentioned the name

person where he collected the production The net weight was recorded as 49,857 grams. Thereafter, they returned to the police station around 11:40 A.M. and entered the production in the PR No.200/13, handed over to the production to PC 78156 Wickramarathna, who was on reserved duty at 12:10. Thereafter, he took the accused to the Magistrate Court of Puttalam, where the accused was remanded. During the trial, production was shown to him, and he identified the production.

During the cross-examination, he stated that he had received the production from PC 78156 Wickramarathna around 9:30 a.m. to weigh it. Vide page 150 of the brief.

Page 150

ප්‍ර: කිරන්න ගෙනිව්වෙ තමන්ද. වෙනත් නිලදාරියෙක්ද?

උ : කිරන්න අරන් ගියේ මම.

ප්‍ර: තමන් කාගෙන්ද නැවත එය භාර ගත්තේ?

උ : පො.කො.78156 වික්‍රමරත්න

ප්‍ර : පො.කො . 78156 වික්‍රමරත්නගෙන් තමුන් භාර ගත්තේ?

උ : ඔව්.

ප්‍ර : කවදද කීයටද?

උ : එයාගෙන් භාර ගත්තේ 2013.10.30 වන දින පෙ.ව. 09.30 ට.

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ප්‍ර : ඊට පස්සේ තමුන් භාරයේ නඩු භාරයේ නඩු භාණ්ඩ කොපමණ කාලයක් තිබුනද?

උ : පෙ.ව 09.30 සිට පෙ.ව 11.40 තෙක්.

ප්‍ර : එතකොට තමුන් පෙ.ව. 11.40 ට කාටද භාණ්ඩ භාර දුන්නේ?

උ : ආපහු භාර දුන්නේ එදා උපස්ථයේ හිටපු පො.කෝ. 78120 වික්‍රමරත්න නිලධාරියාට.

He further stated that he handed over the production to PW 11, PC 78120 Wickramarathna at approximately 11:40 a.m.

According to the testimony of PW 02, PC 12118 Ajith Susantha, he has corroborated the evidence of PW 01. According to him he has accompanied the PW 01 with other officer proceeded to the Lunulinda Junction where they stop this three wheeler arrested the driver and the accused and searched them and found the production from their pockets and arrested and brought to the police station and production was hand over to the PC 5360 Karunarathna before hand over the production it was entered in the PR no. 193/13. The witness stated that they were unable to bring any notebooks to the scene and, as a result, recorded their notes only after returning to the police station.

According to the testimony of PW-11, Asanka Wickremaratne, on 30.10.2013 at 11:40 a.m., under P.R. 200/13, the production was handed over to him by PW-01. The witness asserted that on the same day, after securing production in the police station's safety locker, it was released to PW-04, Karunaratne, at 5:35 p.m. (Vide page 259 of the brief).

Page 259

ප්‍ර: එහිදී මෙම නඩුවට අදාළ නඩු භාණ්ඩ උප සේවයේ රාජකාරි කරන අවස්තාවේ දී භාරගෙන තිබෙනවාද?

උ : එහෙමයි

ප්‍ර: කවදද කීයටද කුමන නිලදාරියාගෙන්ද මෙම නඩුවට අදාළ නඩු භාණ්ඩ භාරගෙන තිබෙන්නේ?

උ : 2013.10.30 වන දින උ.පො.ප.බණ්ඩාර නිලදාරියාගෙන් භාරගෙන තිබෙනවා.

ප්‍ර: කීයටද භාරගෙන තිබෙන්නේ?

උ : 11.55 ට.

During the testimony of PW-04, Karunaratne, it was stated that on 29 October 2013, at 18:30 hours, under P.R. 191/13, the production was handed over to him by PW-01. On the following day, the production was returned to PW-01 for the purpose of weighing. Vide page 276 of the brief.

ප්‍ර: කුමන පී.ආර්. අංකයක් යටතේද මෙම නඩුවට අදාළ නඩු භාණ්ඩ මහත්මයා විසින් භාරගෙන තිබෙන්නේ?

උ : 191/13

ප්‍ර: කවදාද කීයටද කාගෙන්ද අදාළ නඩු භාණ්ඩ මහත්මයා විසින් භාරගෙන තිබෙන්නේ?

උ : 2013.10.29 වන දින උ.පො.ප බණ්ඩාර නිලදාරියාගෙන් පැය 06.30 ට.

ප්‍ර : ඉන් අනතුරුව මෙම නඩුවට අදාළ භාරගත් නඩු භාණ්ඩ නැවත භාර දීමක් මහත්මයා විසින් සිදු කරනු ලැබුවාද?

උ : එහෙමයො.මෙම නඩු භාණ්ඩ උ.පො.ප බණ්ඩාර නිලදාරියාට පසු දින. ලබා දුන්නා එය කිරා මැන බැලීම සඳහා රැගෙන යාමට.

ප්‍ර: ඒ කියන්නේ පී ආර් 191/13 ට අදාළ නඩු භාණ්ඩ මහත්මයා පහුවදා උදේ ඒ කියන්නේ 30 වනදා උදේ උ.පො.ප බණ්ඩාර කියන නිලදාරියාට භාර දීමක් සිදු කලා කිරා මැන බැලීමේ කාර්ය සඳහා.

උ: එහෙමයි.

On the same day, he received the production from PW 11 at 17.35 hours. Furthermore, on 31.10, 01.11, and 02.11, there were multiple instances in which the witness handed over the production to PC 7648 Viraj. During cross-examination, the witness affirmed that he had worked continuously for five days alongside PC Viraj, each day on a 12-hour shift.

PW 05, Police Constable 7648 Viraj, received the productions under No. PR No. 200/13 from PW 04, 4.45 p.m. on 31.10.2013. On 2nd November 2013, he handed over the production to 79123 Danushka, who has taken it to the government analyst.

The accused, giving evidence, has stated that he was returning from his wife's residence when, during the journey, the officers stopped the vehicle, and another three-wheeler was there. After 15 minutes, the officers have instructed them to proceed, allegedly saying “හරි මම ඕගොල්ලො යන්න”. Shortly thereafter, the police searched, and the Accused claims that the officers planted two packets of heroin in his and the driver's pockets. He further states that they were produced before the Magistrate approximately one hour later and were subsequently held in

custody for four days, during which no officer came to record a statement from them.

The Learned High Court Judge rejected the defence argument concerning ownership of the vehicle, noting that although the vehicle belonged to the Accused, the driver possessed a valid driving license, rendering the objection immaterial. The Judge further observed that the Accused had not previously denied ownership of the heroin, when the police had placed them before the Magistrate.

We note that the Learned High Court Judge has failed to address the inconsistency surrounding the handing over of the productions on 30.10.2013. According to the testimony of PW 01, the productions were handed over to him by PW 11 on that date. However, PW 11 asserts that he received the productions 200/13 only after they were weighed at the hospital around 11.40 a.m.

On the other hand, PW 04 testified that he handed the productions under PR NO 191/13, to PW 01 for the purpose of measurement, which was received by PW 01. Also, he confirmed that he received the production from PW 11. We note that when PW 01 gave evidence, he failed to mention from whom he got the production on that day. But he asserts that the production he received from the reserve under PR No: 191/13. PW 04 stated that his duty is a 12-hour shift, 18.30 received the production according. Witness No. P11 Asanka confirmed that he handed over the production to PW 04 at 17.35p.m.

I am mindful of the observation made by J.A.N. De Silva.J. as he was then in *Perera V. Attorney General* 1998 (1) SLR page 378 at page 380:

“It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore it is correct to state that the most important journey is the inwards

journey because the final Analyst report will be depend on that. The outward journey does not attract the same importance.”

It is acknowledged that PW 01, in his testimony, stated that he received the production from PC 78156. However, he gave this evidence without referring to the relevant notes. This oversight could have been rectified had the Learned State Counsel directed the witness to refer to his notes in the Information Book. Notably, the State Counsel also failed to address and correct this discrepancy during re-examination.

On the other hand, PW 4 and PW 11 have clearly indicated how they acted regarding the production. And also, this court is concerned that the failure of the state counsel to properly prosecute the evidence and not giving a reason gives an advantage to the defence. If the state counsel was vigilant before he closed the prosecution, he should have asked the PW 01 to clear any doubt by relying on PW 01 by perusing the inward and outward journey on 30.10.2013.

It is noted that the Learned High Court Judge failed to address the inconsistency surrounding the handling and transfer of productions on 30.10.2013. According to the testimony of PW 01, the productions were handed over to him by PW 11 on that date. However, PW 11 stated that he received the productions marked 200/13 only after they were weighed at the hospital. Furthermore, PW 04 testified that he handed over the productions to PW 01 for measurement under PR No. 191/13, which PW 01 acknowledged receiving. PW 04 also confirmed that he had received the productions from PW 11.

During his examination-in-chief, PW 01 failed to specify the source from which he obtained the productions on the relevant day. PW 04 testified that he was on a 12-hour duty shift and received the productions at 18:30. He also stated that he had handed over the productions to PW 01 at approximately 09:30 a.m. Furthermore, PW 11, Asanka, testified that he received the productions from PW 01 at around 11:40 a.m. and later handed them over to PW 04 at 17:35 p.m.

Although it is acknowledged that PW 01 received the productions from officer 78156, his testimony was provided without reference to the relevant records. It is important to note that, at the time of giving evidence, PW 01 was no longer attached to the police—a fact observed by the Learned High Court Judge. It is pertinent to reproduce that part of the judgment.

Page 315 of the brief,

“විශේෂයෙන්ම උ.පො.ප බණ්ඩාර සාක්ෂි දෙන අවස්ථාව වන විට පොලිස් සේවයේ සිටි නිලධාරියෙකු නොවන අතර ඔහු මෙම නඩුවේ වූදින නොකළ වරදකට පැටලවීමේ ස්වඥාපයකින් සාක්ෂි දුන් බවක් මා නිරීක්ෂණය නොකරන ලදි.”

This oversight should have been rectified by the Learned State Counsel, who failed to instruct the witness to refer to his inward and outward journey entries recorded in the Information Book—an action permissible under the Evidence Ordinance. Moreover, the Learned State Counsel did not take any steps to clarify this issue during the re-examination of the witness.

On the other hand, PW 04 and PW 11 have clearly articulated their respective roles in the handling of the productions. However, this Court is compelled to express concern over the Learned State Counsel’s failure to adequately prosecute the evidence and address the inconsistencies that have arisen, which inadvertently operate to the advantage of the defence. Had the State Counsel exercised due diligence prior to closing the prosecution, these uncertainties could have been resolved by directing PW 01 to read and verify the relevant entries in the Information Book, including his inward and outward journey records.

The fact remains that the Accused was arrested in 2013 in possession of 25.41 grams of pure heroin. However, judgment in the case was delivered only in 2019. In light of the evidentiary gaps and procedural shortcomings, particularly the failure of PW 01 to consult the relevant records before testifying, despite having the right to do so. I am of the view that this case warrants a retrial.

In view of the foregoing reasons, we are inclined to set aside the conviction, the impugned judgment, and the sentence imposed on 09.03.2019.

Retrial ordered.

The Registrar of this Court is directed to send this judgment together with the original case record to the High Court of Puttalam for compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL