

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

*In the matter of an Appeal to the Supreme Court
against a Judgment of the High Court, in terms
of section 451(3) of the Code of Criminal
Procedure Act read with Article 127 of the
Constitution.*

Honourable Attorney-General
Attorney General's Department,
Colombo 12.

Complainant – Appellant

Supreme Court
Supreme Court No. SC/TAB 05/2023

Vs.

High Court (Trial-at-Bar)
Case No. HC(TAB) 3887/2022

1. Jayakodi Aarachchige Anura
Chaminda Appuhamy
2. Thavarasa Sadukaran
3. Aglesa Pille Thavarsa
4. Yakdehi Arachchige Lasantha
Priyalal Apphamy *alias* Yaddehi
Arachchige Lasantha Priyalal
5. Kandiah Chandrakumar

Accused - Respondents

BEFORE : S. THURAIRAJA, PC, J
YASANTHA KODAGODA, PC, J
A.L. SHIRAN GOONERATNE, J
ACHALA WENGAPPULI, J &
K. PRIYANTHA FERNANDO, J

Participation of the Accused – Respondents

1st Accused- Respondent: Present and represented.

2nd Accused – Respondent: Absent and represented. Surety (wife) present.

3rd Accused – Respondent: Absent and unrepresented.

4th Accused – Respondent: Present and represented.

5th Accused – Respondent: Absent and unrepresented.

COUNSEL

: Azard Navavi, Senior Deputy Solicitor General with Chrisanga Fernando, State Counsel instructed by Senior State Attorney for the Complainant-Appellant.

Thanuka Nandasiri instructed by Isuru Edirisinghe for the 1st Accused-Respondent.

Palitha Fernando, PC with Sanjaya Ariyaratna instructed by Isuru Edirisnghe for the 2nd Accused-Respondent.

Neranjana Jayasinghe with Sanjaya Ariyaratna, Randunu Heellage and Imangsi Senarath for the 4th Accused-Respondent.

ARGUED & DECIDED ON

: 9th June 2025

JUDGMENT

Yasantha Kodagoda, PC, J.

Prior to this matter being fixed for hearing, Summons were issued on all Accused – Respondents. Only the 1st and 4th Accused – Respondents presented themselves before this Court. They were enlarged on bail. Following the issue of Notices on the Sureties of the Accused – Respondents who did not appear, the wife of the 2nd Accused – Respondent appeared before Court. On a request made by the Complainant – Appellant (the Attorney-General), the Court issued Warrants of Arrest on those Accused – Respondents who were not present before Court. Learned Senior Deputy Solicitor General (Snr. DSG) informed Court of steps being taken by the Complainant – Appellant to trace the whereabouts of the 2nd, 3rd and 5th Accused – Respondents.

He submitted that the assistance of INTERPOL had been sought and obtained. He also informed this Court that INTERPOL had issued 'Red Notices' on these three Accused – Respondents. Being satisfied that this Court could not take any further action to secure the attendance of the 2nd, 3rd and 5th Accused – Respondents, this Appeal was fixed for hearing and was taken-up today.

This Judgment relates to an Appeal preferred by the Honourable Attorney General (Complainant - Appellant) against a verdict of acquittal entered by a Trial-at-Bar of the High Court of the Western Province holden in Colombo. The Accused-Respondents had been indicted by the Complainant – Appellant for having jointly committed offences contained in sections 54A(b), 54A(c) and 54A(d) of the Poisons, Opium, and Dangerous Drugs Ordinance. The essence of the indictment preferred to the High Court by the Complainant - Appellant was that the five Accused named on the face of the indictment had, on or about 21st April 2019, committed the offences of importation, trafficking and joint possession of 196.986 kilograms of Diacetyl Morphine (commonly referred to as 'heroin').

The narrative of the prosecution's case is that, on intelligence received by the State Intelligence Service and passed on to the Sri Lanka Navy, the latter had followed up on the intelligence and engaged in a search operation using the naval patrol boat '*Sagara*' commanded by Captain Anil Bowatte, which, at the time of the receipt of information, was already patrolling the seas of Sri Lanka on routine reconnaissance duties. The intelligence received was to the effect that a large quantity of heroin was being trafficked into Sri Lanka using a fishing vessel. Thus, the Navy patrol vessel proceeded in the direction in which the fishing vessel was said to be sailing. On 21st April 2019, in mid sea, the Navy detected a multi-day fishing trawler (registered with the Department of Fisheries and Aquatic Resources) which coincided with the information received. The Navy vessel accosted the fishing craft, and on instructions given by Captain Bowatte, Commander Nishantha Dhahanayake boarded the fishing vessel along with several other Navy personnel, and searched it. Navy officers found 13 large polysac bags kept in front of the 'wheel house' of the fishing vessel. There were five persons on the fishing vessel. Having opened one sack, they observed inside it another polysac bag, and inside that polysac bag, a large number of polythene packets. On suspicion that these packets contained heroin, the Navy personnel apprehended the 5 suspects (Accused – Respondents) and transferred them along with the suspected contraband to the Navy boat. The Navy brought the fishing boat, the 5 suspects and the 13 polysac bags to shore, and at the Naval Base in Trincomalee, handed them over to the officers of the Police Narcotics Bureau (PNB). Deputy Inspector General Sajeewa Medawatte of the PNB took charge of the 5 suspects and 13 polysac bags. Inspection of the 13 polysac bags by officers of the PNB revealed that,

inside each polysac bag was another polysac bag, and inside the inner bag were a large number of polythene packets which totaled to 248. Field testing of the substance inside the polythene packets revealed that the powdery substance was Diacetyl Morphine. The gross weight of the substance detected by the Navy was found to be 273 kg. Later, the afore-stated 248 packets and the 26 polysac bags (13 polysac bags inside each of which were another polysac bag) were sealed and forwarded to the Government Analyst through the Magistrates Court. The five suspects (Accused – Respondents) were arrested, produced before the learned Magistrate and placed in remand custody.

Following a full trial at which fourteen (14) witnesses had testified for the prosecution, the trial-at-bar called for the defence of the Accused. The 1st Accused had given evidence under oath, and the other four Accused had made statements from the dock. At the end of the trial, the Trial-at-Bar had acquitted all Accused. It is against such verdict of acquittal that the Complainant - Appellant (Honourable Attorney-General) had preferred this Appeal.

The core of the submission made by learned Snr. DSG on behalf of the Appellant was that the Trial-at-Bar had committed the following errors in the appreciation and analysis of the prosecution's evidence:

- i) That the court had failed to appreciate the significance of the unimpugned evidence of prosecution witnesses Nos. 1 and 2 (Navy officers Captain Anil Bowatte and Commander Nishantha Dhahanayake) who made the detection, apprehended the suspects, and brought the suspects ashore along with the heroin) regarding the circumstances relating to the (i) detection of heroin, (ii) apprehension of the suspects (Accused – Respondents) who were in joint possession of the heroin, and (iii) handing over of the heroin and the suspects to the officers of the PNB.
- ii) That the court had failed to appreciate the significance of the admissions recorded at the commencement of the trial as well as during the trial, which significantly strengthened the case for the prosecution.
- iii) That the court had attached inappropriate significance to certain minor discrepancies arising out of the testimonies of some of the prosecution witnesses pertaining to the marking and the sealing of certain external covers (the two sets of 13 polysac bags), inside which polythene packets containing heroin were found.
- iv) That, in view of the foregoing, the court had erroneously concluded that the prosecution had failed to prove its case beyond reasonable doubt.

Learned Snr. DSG submitted that the Accused had been acquitted due to the foregoing erroneous appreciation of evidence and conclusions reached by the Judges of the Trial-at-Bar.

In response, we heard learned President's Counsel and the other two Counsel who represented the Accused-Respondents. While not directly contesting the submission made by learned Snr. DSG, they submitted that the prosecution's case pertaining to the substance recovered (productions in the case) had given rise to a reasonable doubt and therefore the Accused were entitled to the benefit of such doubt.

On a consideration of the evidence led at the trial and the submissions of learned counsel, it is the view of this Court that, regrettably, the core finding of the learned Judges of the High Court who sat at the Trial-at-Bar which led to the Acquittal of the Accused was perverse. Such perverse finding appears to have arisen due to a misappreciation of the evidence of the Government Analyst regarding the productions received by him in comparison with the evidence of officers of the Police Narcotics Bureau regarding the productions that were sent to him for analysis and report. This discrepancy relates to the markings given and the sealing of the external covers (the 13 external polysac bags), inside which another set of polysac bags were found. It is inside such inner polysac bags that the packets (polythene packets) containing heroin were found. It is necessary to note that there has been no discrepancy in the evidence presented by the prosecution regarding the 13 inner polysac bags and the 248 polythene packets (inside which heroin was found).

We have carefully read and understood the evidence led by the prosecution and the cross-examination of prosecution witnesses by learned defence counsel. In fact, there has been hardly any cross-examination of the testimony given by the two officers of the Sri Lanka Navy, who made the detection and brought the suspects, the heroin and the vessel ashore. On a consideration of the totality of the evidence led at the trial, we do not find a reasonable doubt regarding the evidential integrity pertaining to the prosecution's narrative pertaining to the substance recovered during the detection having been sent to the Government Analyst and the Government Analyst having received such productions and analyzed them. This is in view of the fact that the Government Analyst Report dated 9th July 2020 reveals very clearly that the core productions being the 248 polythene packets which contained the total of 253.486 Kg of heroin with a purity rate of 70% had in fact been received by the Government Analyst. It is a matter of concern that the learned Judges of the Trial-at-Bar had not given due consideration to the fact that such a large quantity of heroin could not have been introduced either by the Sri Lankan Navy or by the Police. Furthermore, this Court notes that, during the course of the trial, an admission had been recorded on

25th October 2022 that the integrity of those 248 polythene packets having been sealed correctly, marked and thereafter forwarded to the Government Analyst was not being challenged by the defense. It is an alarming fact that the learned Judges had not judicially considered the impact of such admission and inferences to be drawn in that regard.

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. If in fact the productions recovered from the suspect or suspects, as the case may be, were sealed and marked, without avoidable delay and subjecting such productions to any tampering, it would be unnecessary to present the evidence of each and every police officer or other official in whose custody the productions were during the subsequent period and its journey to the Government Analyst's Department. What is necessary is for each of the above-mentioned six (6) requirements to be established through the testimony of credible witnesses whose testimony is trustworthy. A comforting factor for a trial court (which would not be essential, should the primary evidence be reliable and cogent), would be the existence of some form of reliable corroborative evidence. The making of accurate, contemporary and detailed notes and other official entries and corroborative human testimony, photographs or videography would serve this purpose. In the final analysis of the evidential integrity of the chain of evidence relating to the productions, it would be necessary for the court to pay due regard to the position of the defence which may be manifest by the lines of cross-examination

of prosecution witnesses, suggestions made to prosecution witnesses and evidence presented by the defence. It would be necessary for the trial Judge to arrive at a finding regarding the six (6) requirements referred to above, following an objective and holistic judicial consideration of the evidence presented on behalf of both the prosecution and the defence. In that regard the attendant circumstances including the quantity of the substance recovered, circumstances under which the detection or recovery was made and the conduct of the detection officers would be highly pertinent.

We have noted that the case for the defence does not raise a reasonable doubt regarding the case for the prosecution, particularly as the evidence given under oath by the 1st Accused and the dock statements made by the remaining Accused had been rejected by the Trial-at-Bar.

In these circumstances, it appears to this Court convincingly that the inference the learned Judges of the Trial-at-Bar had arrived at by virtue of the purported discrepancy with regard to the external polysac bags [inside which 13 inner polysac bags and the 248 polythene packets in which the heroin is said to have been found] is erroneous. An objective and holistic consideration of the evidence led at the trial denotes clearly that such purported discrepancy does not affect the root of the prosecution's case, and therefore should not have been acted upon. Therefore, it is the view of this Court that the learned Judges of the High Court had arrived at a perverse finding which has seriously prejudiced the case for the prosecution. In the light of this perverse finding it would not be in the interest of justice founded upon the primary goals of Criminal Justice and *fair trial* to allow the impugned Acquittal to stand.

When these aspects of the impugned Judgment of the Trial-at-Bar was put to the learned Counsel for the Accused – Respondents, as true officers of Court called upon to assist in the due administration of Criminal Justice is expected to do, the learned President's Counsel (one time Attorney-General) as well as the other two Counsel for the Accused – Respondents, submitted that they would not, in the interest of justice, have any objection to the Acquittal of the Accused being set aside and this matter being referred back to the High Court for a re-trial. On a consideration of the totality of the relevant circumstances, this Court finds itself in agreement with that view of learned counsel for the Accused – Respondents.

In these circumstances, this Court quashes and thereby sets aside the verdict of Acquittal contained in the impugned Judgment of the Trial-at-Bar dated 6th April 2023, and direct the Trial-at-bar (to be constituted based on a direction by Her Ladyship the Hon. Chief Justice) to conduct the trial afresh. It is to be observed that this Court will

not interfere with any of the pre-trial decisions taken by the Trial-at-Bar which would include proceedings during the pre-trial conference conducted. Given the period of time that has lapsed since the date of Acquittal, the Trial-at-Bar is directed to give priority to the conduct of the re-trial. The trial will be founded upon the earlier mentioned indictment preferred to the High Court by the Honourable Attorney General.

It is the view of this Court that in the given circumstances of this matter, such re-trial would necessarily have to be conducted by three new Judges of the High Court appointed by Her Ladyship the Honourable Chief Justice.

The Attorney General shall be entitled to acting terms of the law and secure the attendance of all the Accused to face the re-trial.

The Orders for bail made by this Court shall stand until the new Trial-at-Bar decides on the matter.

The Appeal is allowed. Parties shall bear their own costs.

Accused are directed to report to the High Court of Colombo when they are Noticed to do so.

Judge of the Supreme Court

S. Thurairaja, PC, J.

I agree.

Judge of the Supreme Court

Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Priyantha Fernando, J.

I agree.

Judge of the Supreme Court