

**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 Criminal Procedure  
Act No: 15 of 1979.

C.A No: 180/2004

H.C Colombo Case No:

HCB 769/96

1. Thalangama Mahapathirana  
Ranjith Pathirana.

2. Hettiarachchige Titus  
Karunathilake Logus

**Accused –Appellant.**

Vs.

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

**Respondent.**

Before : Rohini Marasinghe, J and  
Sarath De Abrew, J.

Counsel : Dr. Ranjith Fernando for the 1<sup>st</sup> and 2<sup>nd</sup>  
Accused – Appellants.

Sarath Jayamanne D.S.G for the Respondent.

Argued on : 09.09.2009.

Written Submissions

Tendered on : 25.11.2009.

Decided on : 15.05.2012.

**Sarath De Abrew J.**

The first and second Accused – Appellants (2<sup>nd</sup> and 3<sup>rd</sup> Accused) along with the 1<sup>st</sup> Accused in the case, were indicted on two counts in the High Court of Colombo on the basis of joint possession of heroine. Count 1 related to possession of 4.2 grams and count 2 related to possession of 1 gram under section 54(a)(c) of the Opium Poisons and Dangerous Drugs Ordinance.

The 1<sup>st</sup> Accused passed away during the course of the trial which proceeded against the 2<sup>nd</sup> and 3<sup>rd</sup> Accused, the 1<sup>st</sup> and 2<sup>nd</sup> Accused-Appellants. After trial, both Accused-Appellants were convicted on count 01 and 02 and sentenced to life imprisonment on count 01 and 03 years Rigorous Imprisonment and a fine of Rs.

15,000/- each on count 02 respectively. Being aggrieved of the above conviction and sentence the 1<sup>st</sup> and 2<sup>nd</sup> Accused-Appellants have preferred this appeal to this court.

The learned Counsel for the Accused-Appellants, in his initial written submissions urged a ground of appeal that it would be unsafe to sustain the conviction in view of the uncontroverted evidence of the 1<sup>st</sup> Accused-Appellant (2<sup>nd</sup> Accused) on oath in the light of the improbability of the 2<sup>nd</sup> Accused-Appellant ( 3<sup>rd</sup> Accused) escaping at the time of the raid. However, the learned counsel for the Appellant filed a subsequent written submission, confining his appeal to the question of sentence and urged that, in the event of the this court upholding the conviction of the Accused - Appellants, the sentences imposed be made operative from the date of the conviction, namely 10<sup>th</sup> November 2004, while citing several authorities to support the submission that even a sentence of life imprisonment could be back dated to be effective from the date of conviction.

The learned D.S.G. too filed written submissions on the issue of probability of the prosecution version and the improbability of the evidence of the 2<sup>nd</sup> Accused (the 1<sup>st</sup> Accused Appellant) from the witness box and supported the conviction and sentence.

The facts briefly are as follows. The raid was conducted on information received by a team of police officers of Kelaniya Police on 05.03.1994 on a partly constructed desolate house in Pethiyagoda, Kelaniya. The owner Justin Perera, has given evidence that he had not visited the house for a few months and it had been closed. The raid was conducted around 1.45 a.m. on the day in question by I.P. Rohan Prasanna and I.P. Nimal and a team of police officers. The 1<sup>st</sup> and 2<sup>nd</sup> Accused were apprehended inside the house while the 3<sup>rd</sup> accused escaped through a side door in the darkness, but later surrendered to court. The 1<sup>st</sup> Accused was arrested along with 35 packets of heroine while the 2<sup>nd</sup> Accused was arrested with 30 packets of heroine. A polythene cover containing heroine had been recovered from the place the 3<sup>rd</sup> Accused was seated along with his purse containing his identity card and driving licence.

The 2<sup>nd</sup> Accused (1<sup>st</sup> Accused-Appellant) had given evidence from the witness box and has taken up a position almost compatible with the prosecution version. He deviated from the prosecution version only in respect of what he was doing at the time of the detection and had claimed he was fast asleep when he was apprehended by the police. The 2<sup>nd</sup> Accused (1<sup>st</sup> Accused-Appellant) had implicated the 3<sup>rd</sup> Accused (2<sup>nd</sup> Accused-Appellant) who had

not challenged the evidence of the 2<sup>nd</sup> Accused. The 3<sup>rd</sup> Accused ( 2<sup>nd</sup> Accused-Appellant) had made a dock statement admitting he is addicted to heroine and his personal belongings had been found at the house which was raided due to the reason he had pledged them to obtain heroine for his consumption.

We have carefully perused the evidence led at the trial and the judgment of the learned Trial Judge. In the light of the evidence led at the trial, we see no merit in the initial contention raised by the appellants as to the improbability of the prosecution version and the circumstances leading to the escape of the 3<sup>rd</sup> Accused (2<sup>nd</sup> Accused –Appellant). Therefore we are of the view that there are no sufficient grounds to interfere with the conviction on counts 01 and 02 as regards the 01<sup>st</sup> and 2<sup>nd</sup> Accused-appellants.

The learned Counsel for the Appellants cited the following authorities and urged court to back date the life sentences to be effective from the date of the conviction.

S.C. Spl /L.A No; 14/2002 - S.N. Silva C.J.

C.A 208/96 (Decided on 24.02.1999) –F.N.D Jayasuriya J.

C.A 40/98 (Decided on 19.07.1999) – F.N.D. Jayasuriya J.

In the light of the above, we affirm the conviction and sentences imposed on the 01<sup>st</sup> and 2<sup>nd</sup> Accused Appellants by the learned High Court Judge of Colombo on 08.11.2004 and make further order that the life imprisonment terms imposed on the appellants be effective and operative from the date of conviction with the period spent in remand since the date of conviction being set off against such prison terms. Subject to the above variation, the conviction and sentences are affirmed.

Subject to the above, the appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL.**

I agree.

Rohini Marasinghe J.

**JUDGE OF THE COURT OF APPEAL.**

WC/-