

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

**CA NO.287/2009**

HC Welikada No.788/2006

HC Colombo No. 374/2001

Daraniyagalage Samaranayake Peris Sisira Jayawardane  
No: 29/16,  
Bodiyawatta,  
Sri Saranankara Road,  
Kalubowila.

**Appellant**

**Vs.**

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

**Respondent**

C.A. NO.287/2009

H.C. Welikada No.788/2006

H.C. Colombo No. 374/2001

BEFORE : SISIRA DE ABREW, J. &  
P.W.D.C. JAYATHILAKE, J.

COUNSEL : Amila Palliyage for the accused-appellant.  
Shanil Kularatne SSC for the respondent.

ARGUED AND

DECIDED ON : 12<sup>th</sup> February, 2013.

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**SISIRA DE ABREW, J.**

The accused-appellant produced by the Prison Authorities is present in Court.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted for being in possession of 4.4 grams of heroin. The learned High Court Judge imposed life imprisonment on the accused-appellant. Being aggrieved by the said conviction and the sentence, the accused-appellant has

appealed to this Court. The facts of this case as stated by the prosecution witnesses may be summarized as follows:-

I.P. Mr. Dayananda and S.I. Mr. Bogamuwa on an information received by their informants proceeded to a place called Bodiawatta. They searched the accused-appellant and found a parcel of heroin hidden in the under garment of the accused-appellant. Thereafter he was taken into custody.

The accused-appellant too gave evidence under oath in this case. The accused-appellant who is a painter by profession admitted in his evidence, that he was a heroin addict. He further admitted that on the day of the incident he purchased two packets of heroin and he consumed one packet. According to him, he put the other packet inside a small pocket in his under garment which he was not wearing. He put ✓ this under garment in a polythene <sup>in</sup> bag which he was carrying his painting tools. His position is that he was arrested, when he was smoking heroin. Position of the police officers was that the accused-appellant was wearing an under garment and inside the said under garment a parcel of heroin was found. The prosecution produced the said under garment as P7. When the accused was giving evidence very strangely the packet of heroin spoken by him was found inside the said under garment marked as P7. This packet of heroin was

produced as V,1. Thus the accused-appellant admitted in his evidence that the packet of heroin he purchased in the morning of this date was found inside his under garment. We note that this under garment has not been sent to the Government Analyst. This under garment was in the custody of the police and was later produced at the trial. The position taken up by the accused-appellant in his evidence is corroborated by finding the packet of heroin marked as V,1. Thus it appears that the position taken up by the accused-appellant is true. If the position taken up by the accused-appellant in his evidence is true, the accused should be acquitted from the charge with which he was convicted. Learned trial Judge has failed to consider this aspect. As I pointed out earlier the position taken up by the accused-appellant is true. Therefore the accused-appellant is entitled to be acquitted on the charge. We therefore set aside the conviction and the sentence. Since the accused-appellant had admitted that he was having a packet of heroin in his under garment which he was not wearing at that time, he can be found guilty for being in possession of heroin. (a lesser amount) We are unable to decide at this stage the weight of the said packet of heroin. According to the existing law if heroin below one gram is found in the possession of a person he could be convicted and can be sentenced to a period not less than 3 years and not exceeding 7 years. Both Counsel agree that the accused-appellant could be convicted for being in possession of less than one gram of heroin.

Considering all these matters, we convict the accused-appellant for being in possession of heroin which is less than one gram. We set aside the term of life imprisonment imposed by the learned trial Judge. We sentence the accused-appellant to a term of 4 years rigorous imprisonment. We direct the Prison Authorities to implement the sentence from the date of sentencing by the learned High Court Judge namely 19.05.2009. The learned High Court Judge is directed to issue a fresh committal.

JUDGE OF THE COURT OF APPEAL

**P.W.D.C. JAYATHILAKE, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

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