

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

**Court of Appeal Case No.**  
**HCC 232/2017**

Chandana Pradeep Hewabaddage

**High Court of Colombo**  
**Case No. HC 6204/2012**

Accused

AND NOW BETWEEN

Chandana Pradeep Hewabaddage

Accused Appellant

V.

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

Complainant Respondent

**BEFORE** : **K.K. WICKREMASINGHE, J**  
**K. PRIYANTHA FERNANDO, J**

**COUNSEL** : Hafeel Farisz for the Accused Appellant.  
Riyaz Bary SSC for the Respondent.

**ARGUED ON** : 05.11.2019

**WRITTEN SUBMISSIONS**

**FILED ON** : 22.05.2018 by the Accused Appellant.  
29.08.2018 by the Respondent.

**JUDGMENT ON** : 10.12.2019

**K. PRIYANTHA FERNANDO, J.**

01. The Accused Appellant (Appellant) was indicted in the High Court of Colombo for possession of 17.51 grams of heroin on 26.05.2011. After trial the learned High Court Judge convicted the Appellant and sentenced him to death. Being aggrieved by the above conviction and the sentence, the Appellant preferred the instant appeal on the following grounds.

Grounds urged in the written submissions of the Appellant;

- (a) That the conviction is contrary to law and against the weight of the evidence led in the case.

- (b) The learned Trial Judge has failed to notice and/or take into consideration the dubious, fluctuating evidence of the prosecution witnesses.
- (c) The learned Trial Judge has failed to put his judicial mind into analyzing if the prosecution has proved its case beyond reasonable doubt.
- (d) The learned Trial Judge has failed to analyze the narrative of the defence.

Ground urged at the argument stage;

- (e) The Appellant was denied a fair trial.

02. Evidence for the prosecution was that, upon receiving the information by the PW2, the officers of the Police Narcotics Bureau conducted the raid led by PW1. The information had been that one Chandana had gone to bring heroin and on his arrival, packing will be done in a wooden room near the 'Beire' lake. The informant had gone with the raiding party in the vehicle to a certain point to show the officers the wooden hut. The informant had guided the police officers to the place and had left. As they opened the door, few people had escaped from the door that was towards the lake. PW1 had arrested the Appellant preventing him from escaping. The illicit drugs had been found in the Appellant's possession in his trouser pocket. A further Rs.14,350/- had been there in the Appellant's wallet.

All five grounds of appeal will be discussed together.

03. Counsel for the Appellant submitted that the Appellant had been a drug addict and that he had gone to buy heroin for his consumption. After buying heroin he

had gone to smoke behind the abandoned house when he was caught by the police as he had mentioned in his statement from the dock. It is improbable for the Appellant to have such a quantity of heroin, counsel submitted. Counsel further submitted that the evidence of the PW1 that he led the other officers to look for the persons who escaped in the vicinity is also improbable as according to the evidence of the PW1 they have escaped by jumping into the lake. The investigators have failed to bring the owner of the house.

04. It was further submitted on behalf of the Appellant that the informant should not be the investigator, otherwise an Accused is deprived of a fair trial.
05. Counsel for the Respondent submitted that the prosecution witnesses who took part in the raid had given clear and consistent evidence as to how the Appellant was arrested with heroin. It was further submitted that the position put to the witnesses for the prosecution when cross examining them is inconsistent with the statement the Appellant made from the dock. The police officers had no reason to introduce such a big quantity of heroin to the Appellant, counsel submitted.
06. PW1 and PW2 had testified as to how they got the information, how they conducted the raid and how the Appellant was arrested with the drugs in his possession without contradictions. They have given clear evidence as to how the other suspects escaped and how the Appellant was caught. In his dock statement, the Appellant admitted that he was arrested, but that he was not in the company of the others who escaped. In his dock statement Appellant said that when he was smoking the drugs, four persons ran trampling him. Then the police officers had arrested him. However, his suggestion to the PW2 in cross examination was that three persons ran away from the house (page 141 of the

brief) which is contrary to his statement from the dock. Although the Appellant suggested to the PW2 that one 'Chuti' and two others escaped, in his dock statement he said that four persons escaped. He never mentioned about 'Chuti'.

07. Although the counsel for the Appellant submitted that the owner of the house was not brought by the investigators, the Appellant himself in his dock statement said that it was an abandoned house. Further, the PW1 also clearly testified that it was an abandoned house with no furniture or clothes were seen. It was also clearly evident that behind that house was a marsh connected to the lake.
08. Counsel for the Appellant submitted that the informant should not be the investigator. In this case, clearly the informant is not the investigator. Hence, the decided case precedence, *Mohan Lal V. The State of Punjab (Criminal Appeal No.1880 of 2011)* that was brought to the attention of this court by the counsel for the Appellant has no application to this case. Therefore, the Appellant was not deprived of a fair trial as submitted by the counsel.
09. The learned High Court Judge has sufficiently analyzed the dock statement of the Appellant in pages 20 and 21 of his Judgment (pages 250 and 251 of the brief). He has rightly rejected the defence version and given good and sufficient reasons for doing so. The learned Trial Judge has carefully analyzed the evidence of the prosecution as well as the defence and found that the prosecution has proved the charge against the Appellant beyond reasonable doubt.
10. For the aforementioned reasons, I find that the grounds of appeal urged by the Appellant has no merit and should fail. I have no reason to interfere with the conviction and the sentence imposed on the Appellant by the learned High

Court Judge. Conviction and sentence imposed by the learned High Court Judge is affirmed.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K.K. WICKREMASINGHE, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**