

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

In the matter of an appeal in the terms of Section 331 (1) of the code of Criminal Procedure Act No. 15 of 1979 read with Article 138 of the constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No: CA /HCC/89/2005
High Court Colombo Case No: HC/262/2001**

Hon. Attorney General,

Complainant

Vs.

Thalaramba Kankanamlage Lakshman
Jayaweera

Accused

And Now Between

Thalaramba Kankanamlage Lakshman
Jayaweera

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunarathna J.**

R. Gurusinghe J.

P.Kumararatnam J

Counsel: R. Arsecularathne PC with Chamindri Arsecularathne AAL for
the accused-appellant
Janaka Bandara SSC for the Complainant-Respondent

Written Submissions: By the Accused-Appellant on 12.12.2019 and 07.01.2022.

By the Complainant-Respondent on 21.11.2018 and
04.01.2022.

Argued on : 04.05.2021 and 10.12.2021

Decided on : **23.02.2022**

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Judge of the High Court of Colombo, dated 20.10.2005, by which, the accused-appellant, who is before this court, on zoom platform was convicted and sentenced to death.

The accused-appellant abovenamed (hereinafter referred to as "the appellant") stood indicted for being in possession and trafficking of 4.64 g of heroin without any legal excuse on or about 16.03.2000 within the jurisdiction of the Colombo High Court which is an offence punishable under section 54 A (D) and section 54 A (B) of the Poisons Opium and Dangerous Drugs Act Number 13 of 1984. After the trial in the High Court of Colombo, the accused was found guilty of the two counts and was given a death sentence for both counts.

Being aggrieved by the said conviction and sentence, the accused-appellant has preferred this appeal to this Court.

Grounds of Appeal are as follows;

- (i) Contradictions between Dayananda and Bandara were rejected by the learned High Court Judge applying wrong principles of law;
 - a. The principle laid down in Francis Appuhamy's case (Francis Appuhamy v. The Queen 68 NLR 437, 443 (PC)) on divisibility of credibility;
 - b. Bhoghinbhai Hirgirbhai vs State of Gujarat case. ALR 1983 SC 753 (vide page 263 —265 of the brief)
- (ii) The evidence given by the accused-appellant was wrongly rejected by the learned High Court Judge on the basis that;
 - a. the defence failed to call a witness named Indrani to establish the accused's stance;
 - b. the accused did not reveal to Court that the police had reasons to falsely implicate him;
 - c. the defence failed to create a reasonable doubt that dejection of this nature had not taken place;

and thereby misdirected himself on the law about the burden of proof. (vide page 263 and 286 of the brief)

- (iii) Evidence favourable to the accused-appellant which gives credence to his testimony in Court was disregarded by the learned High Court Judge, in that;
 - a. Indrani's statement was not recorded (vide page 109 of the brief)
 - b. Indrani's house was not searched (vide page 107 of the brief)
 - c. accused appellant's wife's statement was not recorded (vide page 109 of the brief)
 - d. Dayananda (PW1) could not even tell Court the place where the accused-appellant was arrested. (vide page 109 of the brief)

- (iv) The yardstick the learned High Court Judge applied to weigh the credibility of the prosecution witnesses;
 - a. that the defence failed to mark a single contradiction applicable to weigh the evidence of the defence. (vide page 265 of the brief)
- (v) The learned High Court Judge concluded that the prosecution has proved the case beyond a reasonable doubt before considering the evidence of the accused-appellant. (vide pages 269, 271, 282, 284 and 285 of the brief)
- (vi) The motive given by the accused-appellant was not considered by the learned High Court Judge. (vide pages 206, 214 and 286 of the brief)
- (vii) No answer was given by Dayananda (PW1) to the suggestion put by the defence, that heroin was introduced to the Accused Appellant.
- (viii) The Learned High Court Judge misdirected himself on the question that has to be decided by the Court;
 - a. whether the accused-appellant was arrested by the officers of the Narcotics Bureau in possession of 4.64 grams of heroin. (vide page 263 of the brief)
- (ix) The learned High Court Judge misdirected himself on the law by holding that the accused-appellant had not created a reasonable doubt in the prosecution's case because there has only been one contradiction. (vide page 264 of the brief)
- (x) The learned High Court Judge failed to consider that witness Dayananda admitted that the accused-appellant was arrested whilst sleeping with his wife. (vide page 107 of the brief)

The appellant pleaded not guilty to the indictment. The trial commenced on 26.07.2004. After trial, the appellant was convicted and sentenced to death.

The prosecution led the evidence of;

- (i) R.T. Dayananda - Inspector of Police (PW 1),
- (ii) M.R. Jayasundara Bandara - Police Constable (PW 2),
- (iii) D. Siriyani Sakunthala Thennakoon - Deputy Government Analyst (PW 7),
- (iv) D.P. Sunil Padmasiri Perera - Inspector of Police (PW 6).

According to the evidence given by R.T. Dayananda - Inspector of Police (PW 1), the raid was conducted around 5.00 a.m. on 16.03.2000 upon information obtained through a telephone call, six police officers had taken part in this raid. He further stated that according to the information they obtained, they went to a place called "Mylan Koriyawa" and found the house as described by the informant.

Two officers climbed up to the upper floor of the two-storied house where they found the appellant inside. PW 1 further stated that they found a parcel wrapped with pink-coloured cellophane, hidden inside the appellant's underwear and that the parcel contained brown-coloured powder, which they later identified as a drug upon a field test. The appellant had

been arrested by the officers after informing him of the charge of being suspected of possessing illicit drugs. The witness PW 1 further explained that the appellant had been taken to the Narcotics Control Unit. After examining the parcel, it had been identified as having contained heroin and the whole weight had been measured as 15 g and 300 mg.

Inspector Dayananda (PW1), further said that the parcels and the underwear which the appellant had been wearing at the time of the arrest, had been separated, packed and sealed and the fingerprints of the appellant had been put and marked and was handed over to Police Inspector Perera (PW 6). The marked products had been identified by the witness in court.

M.R. Jayasundara Bandara - Police Constable (PW 2), said that they had left for the raid at the command of Inspector Dayananda and reached the destination. He further stated that the appellant had been wearing a white sarong and a long-sleeved shirt and he seemed to be in a hurry at the time of the raid. They had further found out that Indrani, the owner of the house, had taken the keys away when they came to search the house and she had been brought back with the keys and the house had been thereafter searched.

The evidence was given by D. Siriyani Sakunthala Thennakoon - Deputy Government Analyst (PW 7), who confirmed that the parcel had been identified as having contained heroin after examination, which weighed 4 g and 64 mg. She further stated that the parcel had been received by K.P.O Chandrani, Assistant Government Analyst, from Inspector Perera. According to the evidence given by D.P. Sunil Padmasiri Perera - Inspector of Police (PW 6), the productions had been in his custody in his personal locker until it was handed over to the Government Analyst.

After the prosecution case has concluded the appellant, upon being called for his defence, gave evidence from the witness stand, stating that he was asleep at his own home at that moment when the police came and asked for Indrani's drugs. He further stated that he was taken to Indrani's house when he said he didn't have what the police were looking for and arrested him over a framed charge.

The learned President's Counsel for the accused-appellant argued that the contradiction between PW 1 and PW 2 is very serious contradictions. The learned trial Judge applied wrong principles of law and decided to convict the accused-appellant.

Inspector Jayasundara Bandara (PW 2) giving evidence before the trial Judge had stated on 17.05.2005 as follows;

(page 149 and 150 of the appeal brief)

ප්‍ර : කාටද තොරතුර ලැබුණේ?

උ : පොලිස් පරීක්ෂක දයානන්ද මහතාට.

ප්‍ර : කොහේදීද?

උ : කාර්යාංශයේ රැදී සිටින අවස්ථාවේදී.

ප්‍ර : කීයටද?

- උ : දයානන්ද මහතාට ලැබුන තොරතුරේ වේලාව මා සඳහන් කරලා නැහැ.
- ප්‍ර : තමාලා පිටවෙන කොට පිටවීමේ සටහන් දානවා නේද?
- උ : ඔව්.
- ප්‍ර : ඒ පිටවීමේ සටහනේ පළවන ජේළිය ගරු අධිකරණයට කියවන්න.
- උ : එය පොලිස් පරීක්ෂක දයානන්ද මහතා තමයි දැන්මෙ.
- ප්‍ර : පිටවීමේ සටහනේ වාක්‍ය කියන්න.
- උ : පොලිස් පරීක්ෂක දයානන්ද වන මා බණ්ඩාරට හා මට ලැබී ඇති ආරන්වි කිහිපයක් පරීක්ෂා කර බැලීම සඳහා යනවා.
- ප්‍ර : තමන්ටයි ඒ මහත්තයාටයි ලැබුණු ආරංචි පරීක්ෂා කරන්න යනවා කියලානේ තිබෙන්නේ.
- උ : එසේ සඳහන් වනවා.
- අධිකරණයෙන් ;
 - ප්‍ර : තමන්ට තවත් ආරංචි ලැබුණද?
 - උ : නැත.
- ප්‍ර : තමාට යෝජනා කරනවා ඉන්ද්‍රානිගේ ගෙදර මේ භාණ්ඩ තිබෙනවා කියලා තමන්ට ආරංචිය ලැබීලා වැටලීමට ගියේ කියලා.
- උ : නැත.

Inspector Dayananda (PW 1) giving evidence before the trial Judge had stated on 26.07.2004 as follows;

(page 62 and 63 of the appeal brief)

- ප්‍ර : ඔය කියන දවසේ උදේ 4.45 ට සේවයට වාර්තා කරන්න යම් විශේෂ රාජකාරියක් තිබුණද?
- උ : වැටලීමකට යාමට තිබුණ නිසා ඒ විදියට වාර්තා කළා.
- ප්‍ර : තමා කිව්වා එදින පාන්දර 4.45 ට සේවයට වාර්තා කලා කියලා. මෙදින තමාට යම් ඔත්තුවක් ලැබුණද?
- උ : මා පැමිණියේ පොලිස් කොස්තාපල් බණ්ඩාරට ලැබුණ ඔත්තුවක් අනුව. වැටලීමට යාමට සුදානම් වෙන්න කියා මට කාර්යාලයට පැමිණි පසු දැණුම් දුන්නා.
- ප්‍ර : කියට විතරද එච් දැණුම් දුන්නේ?
- උ : පැය 05:00 ට පමණ.

(page 96 and 97 of the appeal brief)

- ප්‍ර : මත් ද්‍රව්‍ය කොහේ තිබෙනවා කියාද කිව්වේ. මයිලන් වත්තේද වෙන කොහේවත් ද?
- උ : වැටලීමට පිටත්වන අවස්ථාව වෙනතුරු අදාල තොරතුර සම්බන්ධව වෙනත් අයට කිව්වේ නැහැ.

ප්‍ර : තමා බංඩාරගේ වැටලීමට යන්න ආවේ?

උ : ඔව්.

ප්‍ර : තමා ඒ සඳහා 4.45 ට වාර්තා කලා?

උ : ඔව්.

ප්‍ර : බංඩාර ඇවිත් කිව්වා මේ වැටලීමට යනවා කියා. ඒ වෙලාවේ 4.45 ට බංඩාරගෙන් ඇහුවාද අපි අද කොහේද යන්නේ කියා?

උ : බංඩාර ඔය සම්බන්ධව එදින උදේ පාන්දර තමයි දැනුම් දීමට තිබුණේ.

අධිකරණයෙන් ;

ප්‍ර : තමා ගියාද වැටලීමට?

උ : ගියා.

ප්‍ර : ආරංචිය ආවට පස්සේද ගියේ?

උ : ඔව්.

ප්‍ර : බංඩාරට මේ සම්බන්ධව දැනුම් දුන්නද?

උ : දැනුම් දෙන බවයි මට දැනුම් දුන්නේ?

ප්‍ර : ආරංචියක් නැතිව දැනුම් දෙනවා කියා තමා කියනවා. 4.45 ට ආවා කියා තමා කිව්වාද?

උ : ඔව්.

(page 99 and 100 of the appeal brief)

ප්‍ර : තමා කියන විදියට තමා දැනගෙන සිටියේ එක තොරතුරක් ගැන පමණයි නේද?

උ : එහෙමයි.

ප්‍ර : තමා කියන විදියට තමා දැනගෙන සිටියේ එක තොරතුරක් ගැන පමණයි නේද?

උ : එහෙමයි.

ප්‍ර : මහත්මයා තමා දැන් මේ ගරු අධිකරණයට කිව්වා බංඩාරට ආරංචියක් ලැබිලා තිබුණේ නැහැ කියල?

උ : ඔව්.

ප්‍ර : බංඩාරට ලැබුණ ආරංචියක් පරීක්ෂා කරන්න යනවා කියල සටහන්වල තිබෙනවා නේද?

උ : ඔව්.

Considering the evidence on pages 94, 96, 98 and 100 of the appeal brief, it is clear that the original information related to the raid was obtained by Inspector Bandara. However, considering the evidence on pages 113, 114, 126 and 127, of the appeal brief it is revealed that the first information was received by Inspector Dayananda. Responding to a question posed by the court, Inspector Bandara said that according to the evidence on page 149, of the appeal brief Inspector Dayananda had received the initial information regarding the raid.

It is very clear when we compare the evidence of PW 1 and PW 2 that there are many inter-se contradictions. The argument advanced on behalf of the appellant is that inter-se contradictions in the substantive evidence of witnesses PW 1 and PW 2 negate the case of the prosecution and in that event, the benefit of doubt must go in favour of the accused-appellant. When these two witnesses contradict each other none of them could be believed.

It is important to note that the learned trial Judge correctly analysed the contradictions and the discrepancies of prosecution witness 1 and prosecution witness 2 in his judgment.

Pages 262 and 263 of the appeal brief is as follows; (page 18 and 19 of the judgement)

“පොලිස් කොස්තාපල් බංඩාර තම සාක්ෂියේදී ප්‍රකාශ කර සිට ඇත්තේ පොලිස් පරීක්ෂක දයානන්දගෙන් ලැබුණ තොරතුරක් මත මෙම වැටලීම කරන ලද බවයි. කෙසේ වුවද පොලිස් පරීක්ෂක දයානන්ද තම සාක්ෂියේදී ප්‍රකාශ කර සිටිනු ලැබුවේ පොලිස් කොස්තාපල් බංඩාරට ලැබුණ තොරතුරක් මත මෙම වැටලීමට යන ලද බවයි. කෙසේ වුවද පොලිස් කොස්තාපල් බංඩාර විත්තියෙන් නගන ලද හරස් ප්‍රශ්නවලදී ප්‍රකාශ කරනු ලැබුවේ තමන්ගේ තොරතුරක් දයානන්ද මහතාගේ තොරතුරක් පරීක්ෂා කිරීමට ගියේ නැති බවත්, පොලිස් පරීක්ෂක දයානන්ද මහතාට ලැබුණ තොරතුර සම්බන්ධයෙන් වැටලීමට ගිය බවයි. මෙම පොලිස් පරීක්ෂක දයානන්ද ගේ හා පොලිස් කොස්තාපල් බංඩාර විසින් තමන්ට ලැබුණ ඔත්තුව සම්බන්ධයෙන් දෙන ලද සාක්ෂිවලින් කා හට මෙම ඔත්තුව ලැබුණේ දැයි නිශ්චිතභාවයක් අධිකරණයට පෙනී නොයන ලදී. මෙම ඔත්තුව පොලිස් පරීක්ෂක දයානන්දට ලැබුණ බව පොලිස් කොස්තාපල් බංඩාර ප්‍රකාශ කලද පොලිස් පරීක්ෂක දයානන්ද ප්‍රකාශ කර ඇත්තේ, එම තොරතුර පොලිස් කොස්තාපල් බංඩාරට ලැබුණ බවයි. මෙම පැ.සා 01 හා පැ.සා 02 අතර ඇති එකම සාක්ෂි පරස්පරතාව මෙය බව අධිකරණයට පෙනී යයි.”

The learned trial Judge misdirected himself and decided to go against his conscience although he has found that there is a serious contradiction between the key witnesses. It is my view that this is a material contradiction that goes to the root of this case. What is important in this case falls to be decided on a consideration of the nature and extent of the misdirection on the burden of proof, all facts and circumstances of the case, the quality of the evidence adduced, and the weight to be attached to it.

Page 263 of the appeal brief is as follows; (page 19 of the judgement)

“මෙම වැටලීම සම්බන්ධව භාණ්ඩ හා විත්තිකරු අත්අඩංගුවට ගැනීම සම්බන්ධයෙන් දෙන ලද සාක්ෂි අධිකරණය විශ්ලේෂණය කර බැලීමේදී අධිකරණයට සනාත වන්නේ එම සාක්ෂි කිසිවක් බිඳහෙලීමට විත්තිය සමත් වී නැති බවයි.

Superior Courts have decided that there is no burden for the accused-appellant to rebut the evidence of the prosecution case. The defence need not prove anything in a criminal trial since the burden is on the prosecution to prove their case beyond a reasonable doubt. The court’s acceptance of a police investigators’ notes as being circumstantially corroborative of that officer’s evidence and account of the events: when a police investigator testifies in court, they are usually permitted by the court to refer to their notes to refresh their memory and provide a full account of the events. If the investigator's notes are detailed and accurate, the court can give significant weight to the officer's account of those events. If the notes lack detail or are incomplete on significant points, the court may assign less value to the accuracy of the investigator's account.

Page 263 of the appeal brief is as follows; (page 19 of the judgement)

“විත්තිකරු අධිකරණයේ සාක්ෂි දී ඇති අතර, එම සාක්ෂි දීමේදී ඔහු මෙම වැටලීම කරන නිලධාරීන් විසින් උදේ 5.30 ට පමණ අත්අඩංගුවට ගෙන ඇති බවත් ඔහු ප්‍රකාශ කර ඇත. එහෙයින් මෙවැනි වැටලීමක් සිදු නොවූ බවට කිසිදු සැකයක් පැමිණිල්ලේ සාක්ෂි කෙරෙහි ඇති කිරීමට විත්තිය සමත් වී නැත.”

This view of the learned trial Judge is incorrect and against the valid legal principles and practices in our Courts. Therefore it cannot stand. The learned trial Judge quoted the case of Bharwada Bhoginbhai Hirijibhai vs State of Gujarat 1983 AIR 753, 1983 SCR (3) 280.

“Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all-important "probabilities-factor" echoes in favour of the version narrated by the witnesses.”

It was the view of the learned trial Judge that the contradiction did not go to the root of the prosecution case and therefore the credibility of the prosecution witnesses PW 1 and PW 2 was not shaken up.

A credible witness is competent to give evidence and is worthy of belief. In deciding upon the credibility of a witness, it is always pertinent to consider whether he is capable of knowing the thing thoroughly about which he testifies. Whether he was present at the transaction, whether he paid sufficient attention to qualify himself to be a reporter of it and whether he honestly relates the affair fully as he knows it, without any purpose or desire to deceive or suppress or add to the truth.

A credible witness is a witness who comes across as competent and worthy of belief. Their testimony is assumed to be more than likely true due to their experience, knowledge, training, and sense of honesty. The judge and jurors will use these factors to determine whether they believe the witness is credible.

An attorney can show the trial Judge that a witness is not credible by showing the following elements;

- (i) inconsistent statements,
- (ii) reputation for untruthfulness,
- (iii) defects in perception,
- (iv) prior convictions that show dishonesty or untruthfulness, and
- (v) bias.

An attorney may also enhance a witness’s credibility by showing that the witness has always been consistent in their statements.

To gain credibility, we must be assured, first, that the witness has not been mistaken nor deceived. To be assured as far as possible on this subject, it is proper to consider the nature and quality of the facts proved. The quality and person of the witness, the testimony in itself and to compare it with the depositions of other witnesses on the subject and with known

facts. Secondly, we must be satisfied that he does not wish to deceive. There are strong assurances of this when the witness under oath is a man of integrity and is disinterested.

Witnesses not infrequently are mistaken or wish to deceive. The most that can be expected is that moral certainty that arises from analogy. The credibility which is attached to such testimony arises from the double presumption that the witnesses have good sense and intelligence and that they are not mistaken nor deceived. They are further presumed to have probity, and that they do not wish to deceive.

Considering the evidence of PW 1 and PW 2, it is my view that the learned High Court Judge has interpreted Bharwada Bhoginbhai Hirjibhai vs the State of Gujarat case (*supra*) applied in this case wrongly and decided to convict the accused-appellant who has already completed more than 17 years in prison. Those contradictions go to the root of the prosecution case. The impact of those contradictions is not negligible. Therefore, we unanimously decide that the accused-appellant was dealt with unfairly and unreasonably by the trial Judge.

The other argument raised by the learned President's Counsel for the accused-appellant was that the evidence favourable to the accused-appellant which gives credence to his testimony in Court was disregarded by the learned High Court Judge. According to the evidence available, Indrani was the owner of the house, where the accused-appellant was residing with his wife on the day when the raid was conducted. Indrani's statement was not recorded and her house was not searched by PW 1 and PW 2. Not only that the accused-appellants wife's statement was also not recorded by the narcotic officers.

Pages 108 and 109 of the appeal brief is as follows;

ප්‍ර : මේ ගෙදර යතුර තිබුණේ ඉන්ද්‍රානි ගාවද?

උ : ඔව්.

ප්‍ර : ඉන්ද්‍රානිගෙන් කට උත්තරයක් ගත්තාද මත්ද්‍රව්‍ය කාර්යාංශයෙන්?

උ : නැත.

ප්‍ර : යතුර කොහෙද කියලා, ඒ පිළිබඳව මේ පුද්ගලයා දන්නේ කොහොමද?

උ : මම දන්නේ නැහැ.

ප්‍ර : ඉන්ද්‍රානිව මේ පුද්ගලයා ගාවට ගෙනත්, යතුරක් ගෙනත්, දොර අරවාගෙන සේරම කලත් ඒ සම්බන්ධව ඇයගෙන් කට උත්තරයක් අරගෙන නැහැ කියලා මම කියනවා.

උ : නැහැ.

ප්‍ර : මම යෝජනා කරනවා ඉන්ද්‍රානිව අත්අඩංගුවට අරගෙන ඊට පසුව කිසිම කට උත්තරයක් නොගෙන, මේ විත්තිකරුට ඇයගේ මත්ද්‍රව්‍ය ටික ආදේශ කරලා ඇයව මුදා හැරියා කියලා?

උ : උත්තරයක් නැත.

ප්‍ර : තමා පිළිගන්නවාද මේ විත්තිකරුගේ බිරිද විත්තිකරු සමඟ එදා සිටියා කියලා.

උ : ඔව්.

අධිකරණයට

ප්‍ර : විත්තිකරු අත්අඩංගුවට ගත්තේ ආදුරුප්පු වීදියේ නේද? කොතනද ඒ ගේ තියෙන්නේ?

උ : මම දන්නේ නැහැ විත්තිකරුගේ නිවස කොහේද තියෙන්නේ කියා.

නැවත ප්‍රශ්න

ප්‍ර : තමා කිව්වා විත්තිකරුත් එක්කල ඒ අවස්ථාවේදී ඔහුගේ බිරිද සිටියා කියා?

උ : ඔව්.

ප්‍ර : අධිකරණයට පැහැදිලි කරන්න ඇයි ඒ බිරිදගේ ප්‍රකාශයක් සටහන් කර නැත්තේ කියා?

උ : අවශ්‍ය උනේ නැහැ.

ප්‍ර : ඉන්ද්‍රානිගෙන්ද තමාල කට උත්තරයක් ගත්තේ නැත්තේ ඇයි?

උ : අවශ්‍ය උනේ නැහැ. අවශ්‍යයි කියා හිතුවේ නැහැ.

Inspector Dayananda (PW 1) could not even tell the trial court where the accused-appellant was arrested. He couldn't give any reasonable explanation why Indrani's house was not searched during the raid. Since the learned President's counsel has demonstrated that no answer was given by Inspector Dayananda (PW 1) to the suggestion made by the defence, that heroin was introduced by the officers of the Narcotic Bureau, to the accused-appellant, it created a doubt on the prosecution case.

It is interesting to note that the yardstick the learned High Court Judge applied weighed the credibility of the prosecution witnesses. The trial judge explained that the defence counsel failed to mark a single contradiction. This same yardstick was not applied to weigh the evidence of the defence case.

The learned High Court Judge concluded on page 282 of the appeal brief (page 38 of the judgement) that the prosecution has proved the case beyond a reasonable doubt. This was before considering the evidence of the accused-appellant. The trial Judge has analysed the evidence of the defence from page 285 of the appeal brief (page 41 of the judgement). The judgement reflects how the learned High Court Judge came to the conclusion before considering and analysing the defence case. This procedure is unexpected and I believe that the trial judge misdirected himself by convicting the accused-appellant before he had analysed the defence case. Further, this court finds that there is no sufficient evidence or credible evidence to establish that the accused-appellant had in possession of 4.64 grams of heroin on 16.03.2000.

The learned President's Counsel for the accused-appellant argued that the explanation given by the accused-appellant had not been considered by the learned High Court Judge. It reflects very clearly on pages 206, 214 and 286 of the appeal brief. The learned High Court Judge had misdirected himself on the question that has to be decided by the Court on the argument of the defence whether the accused-appellant was arrested by the officers of the Narcotic Bureau whilst in possession of 4.64 grams of heroin during the raid on 16.03.2000.

The grounds of appeal urged by the learned President's Counsel was the failure on the part of the learned Judge of the High Court to consider the improbabilities of the version of the prosecution. It is pertinent at this stage to consider the chain of events that had taken place on 16.03.2000 during the raid before the arrest of the accused person. The story of the prosecution is in many ways improbable. The evidence of the prosecution, if we take them as a whole, the testimony about the raid conducted does not inspire confidence.

The inbuilt improbabilities in the version of the prosecution which will go to show that no conviction could be possible even if the evidence of the witnesses are taken on their face value, warrant a court dealing with a criminal appeal not to shut its eyes particularly when the criminal proceedings set in motion against the appellant appear to be a probable cause of abuse of process of Court to put the appellant's liberty in jeopardy. Though the legal proposition points towards such evidence not strictly requiring corroboration, in the singular facts and circumstances of the present case, having regard to the quality of the version of the prosecution about the incident, it cannot be safely relied upon to sustain the conviction against the accused of multifaceted reasons.

Taking into consideration, all these circumstances, I am of the view that the conviction of the accused cannot be allowed to stand as the prosecution had failed to prove the case beyond all reasonable doubts. Accused-appellant is acquitted from all charges in the indictment.

The appeal is allowed and the conviction quashed.

Registrar is directed to send a copy of this judgement along with the original case record to the High Court of Colombo.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal

P.Kumararatnam J.

I agree.

Judge of the Court of Appeal