

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

In the matter of an Appeal under Section 331 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.

Democratic Socialist Republic of Sri Lanka

**Court of Appeal Case No.  
CA/HCC/0017/2021**

**Complainant**

**High Court of Colombo  
Case No. HC/8162/2016**

V.

Erwin Gosset

**Accused**

AND NOW BETWEEN

Erwin Gosset

**Accused-Appellant**

V.

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

**Complainant-Respondent**

**BEFORE** : **K. PRIYANTHA FERNANDO, J. (P/CA)**  
**WICKUM A. KALUARACHCHI, J.**

**COUNSEL** : Nihara Randeniya for the Accused –  
Appellant.  
Wasantha Perera, Deputy Solicitor  
General for the Respondent.

**ARGUED ON** : 12.09.2022

**WRITTEN SUBMISSIONS**

**FILED ON** : 14.03.2022 by the Accused –  
Appellant.  
23.03.2022 by the Respondent.

**JUDGMENT ON** : 18.10.2022

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**K. PRIYANTHA FERNANDO, J.(P/CA)**

1. The accused appellant (hereinafter referred to as the appellant) was charged in the High Court of *Colombo* on count no. 1, for trafficking 11.5 grams of heroin, an offence punishable in terms of section 54A(b) of the Poisons Opium and Dangerous Drugs Ordinance. On count no. 2, for possession of the said amount of heroin, an offence punishable in terms of section 54A(d) of the Poisons Opium and Dangerous Drugs Ordinance. Upon conviction after trial, the accused appellant was sentenced to life imprisonment on both counts. Being aggrieved by the above conviction and the sentence, the appellant preferred the instant appeal on the following grounds.

- i. The learned trial Judge failed to consider that the prosecution version did not pass the test of probability.
- ii. The learned trial Judge erred in both facts and law when concluding that the prosecution proved the case beyond reasonable doubt.

- iii. The learned trial Judge did not evaluate the defence evidence from the correct perspective and rejected the same in a wrong premise.
2. The brief facts of the case as per the evidence of the prosecution are as follows;  
The Chief Inspector *Ansalam Silva* (PW1), has been serving in the *Colombo* crimes division. Upon receiving information from a private informant, he has organized the raid in question. The information had been that, a person would be coming near the bridge at *Leslie Ranagala Mawatha* carrying heroin. Accordingly, he has gone to the area in a van attached to their division along with the other police officers. They have stopped the vehicle near the air force official quarters, and had proceeded towards the bridge at *Leslie Ranagala Mawatha*. He has walked slowly while observing the area, as he wanted to mark the time. He has identified the suspect who was coming towards the bridge, according to the information he received. When the appellant came close to him, he has called him out, taken him to a side of the road and searched him. His officers, *Fonseka* and *Bandara* have been standing close to him. When he searched the appellant, he has felt that there was a parcel inside his underwear. Then, he has discovered a red coloured cellophane bag that contained heroin in his underwear.
3. All three grounds of appeal will be discussed together. The learned Counsel for the appellant submitted that, the evidence of the prosecution witnesses, that the raiding party waited for 30-40 minutes until the appellant arrived to the location is improbable. Further, it is the contention of the learned Counsel that, although the PW1 states that the appellant came from the direction of *Kaadar Waththa*, he has failed to mention this in his notes. The learned Counsel further submitted that, although the PW1 in his evidence stated that the heroin parcel was discovered in the

appellant's underwear, he has failed to state the precise place in which the heroin parcel was hidden in the underwear.

4. The learned Deputy Solicitor General for the respondent submitted that, it was evident that the raiding party parked their vehicle elsewhere and slowly walked close to the bridge at *Leslie Ranagala Mawatha* to avoid any person from identifying their vehicle. The learned Deputy Solicitor General further submitted that, the appellant in his statement from the dock has clearly admitted that he was arrested by the raiding party.
5. According to the dock statement of the appellant, he has admitted that, on the 19<sup>th</sup> of June 2015, the officer *Fonseka* (PW2) arrested him. It was his position that he was not in possession of any illegal substance. However, after he was arrested, according to the appellant, officer *Fonseka* heavily assaulted him and thereafter he was produced before a medical officer and obtained a medical report. Both the witnesses PW1 and PW2 have been consistent in their evidence with regard to the raid and the arrest of the appellant. They have clearly stated that the heroin was found inside the appellant's underwear. Therefore, not mentioning in their notes about the precise place inside the underwear in which the heroin was placed should not be a reason to discredit the witnesses. Further, not providing the underwear in court as a production is also not a reason to discredit the witnesses. Neither in cross examination nor in his statement from the dock has the appellant taken up the position that he was not wearing an underwear. Therefore, not providing the underwear in court shall not affect the credibility of prosecution witnesses.
6. The position taken up by the appellant was that, after the arrest he was heavily assaulted. It is evident that at the time the appellant was handed over to the

reserve police officer after arrest, there were no injuries on the appellant. However, the appellant has been produced before the Judicial Medical Officer on 25<sup>th</sup> June 2015, 6 days after the arrest. The appellant had been under detention orders. The Judicial Medical Officer, *Bimalika Weerathne* who testified in court, upon being called by the defence, has said that there were injuries on the appellant.

7. Therefore, it is obvious that the injuries of the appellant occurred after he was handed over to the reserve police officer, following his arrest by the raiding party, and while he was detained. Thus, the so called assault has no impact on the credibility of the evidence of the raiding party that the appellant was arrested while in possession of heroin. There is no evidence of any previous enmity between the officers of the raiding party and the appellant. The learned High Court Judge in his judgment has clearly and sufficiently considered the defence evidence at pages 26 and 27 of his judgment (pages 233 and 234 of the appeal brief). He has given good and sufficient reasons for rejecting the version of the defence. Hence, I find that there is no merit in the grounds of appeal urged by the appellant.

Appeal is dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**WICKUM A. KALUARACHCHI, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**