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

In the matter of an Appeal made under  
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/ 0177/2018  
High Court of Colombo  
Case No. HC/7799/2015**

Ranasinghege Chandana Pradeep  
Perera

**Accused-Appellant**

**vs.**

The Hon. Attorney General  
Attorney General's Department  
Colombo-12

**Complainant-Respondent**

**BEFORE** : **Sampath B. Abayakoon, J.  
P. Kumararatnam, J.**

**COUNSEL** : **Neranja Jayasinghe for the Appellant.  
Janaka Bandara, DSG for the Respondent.**

**ARGUED ON** : **16/01/2023**

**DECIDED ON** : **09/02/2023**

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## **JUDGMENT**

### **P. Kumararatnam, J.**

The above-named Accused-Appellant (hereinafter referred as the Appellant) was indicted by the Attorney General under Sections 54(A) (b) and 54(A) (d) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for Trafficking and Possession of 2.30 grams of Heroin (Diacetylmorphine) on 18<sup>th</sup> January 2014 in the High Court of Colombo.

Following the trial, the Appellant was found guilty on both counts and the learned High Court Judge of Colombo has imposed a sentence of life imprisonment for both counts on 16<sup>th</sup> of November, 2018.

Being aggrieved by the aforesaid conviction and sentence the Appellant preferred this appeal to this court.

The learned Counsel for the Appellant informed this court that the Appellant has given consent for this matter to be argued in his absence due to the restrictions of the Covid 19 pandemic. During the argument he has been connected via Zoom platform from prison.

### **The Appellant has raised following appeal grounds in this case.**

1. The Learned High Court Judge has wrongly rejected the defence evidence and failed to give reasons for the rejection.
2. The Learned High Court Judge has shifted the burden of proof on to the accused.
3. The prosecution has failed to prove the chain of production beyond reasonable doubt.
4. The Learned High Court Judge has failed to consider the vital contradictions of prosecution witnesses.

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PW1/SI Wanniarachchi who was attached to Police Special Task Force, Kalubowila Camp, had received information from PW3 Sgt/14273 Mahesh that a person will be engaged in trafficking drugs at the Gangaramaya Road just passing the Werahera Junction in his three wheeler bearing No.WP-AAG/6290. He had received this information on 18/01/2014 at 15.00 hours and had reported the same to his superior officer and arranged the raid. Having selected 08 other officers, they had left the Camp around 15:30 hours after completing all formalities. First the team had reached Werahera Junction and stopped their vehicle bearing No.KH-1240 passing 100 meters towards Boralasgamuwa. While they were on surveillance, at about 16.45 hours the said three-wheeler had arrived there and stopped on the Gangaramaya road as per the information. When the person who was in the driving seat started calling somebody, the police team had surrounded the three-wheeler and PW1 after introducing himself to the said person had questioned whether he had any illegal substance in his custody.

After a body check, a cellophane bag was recovered from his trouser pocket. As the contents of the cellophane bag reacted for Heroin (Diacetylmorphine), the person who is the Appellant in this case was arrested immediately. Although his three-wheeler was checked, nothing had been found in it. After informing this to his superior officer, the team had proceeded to the Police Narcotics Bureau and arrived there at 18:15 hours. At the Police Narcotics Bureau, the weight of the substance was observed to be 14.40 grams and the production was sealed in front of the Appellant. After sealing, the production was handed over to PW9/Sgt 887 Ramanayake under production No.114/2014. The three-wheeler was entered under production No.115/2014.

PW3, PC 14273 Mahesh who was a member of the raiding team, was called to corroborate the evidence given by PW1.

After closing the case for the prosecution, as the evidence led by the prosecution warranted the presence of a case to be answered by the

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Appellant, the learned High Court Judge called for the defence. The Appellant gave a statement from the dock and called two witnesses including his wife in support of his case. Thereafter the prosecution had called witness PW13 in rebuttal.

In every criminal case the burden is on the prosecution to prove the case beyond reasonable doubt against the accused person. In a case of this nature the prosecution not only need to prove the case beyond reasonable doubt but also ensure, with cogent evidence that the Appellant had committed the offence.

In this case I consider it is prudent to address the appeal ground challenging the chain of production which is very vital aspect in drug related offences. In the third ground of appeal the Counsel contended that the prosecution has failed to prove the chain of production beyond reasonable doubt.

Proving the chain of production is a very important task for the prosecution in a drug related case. If investigating officers do not do their duty properly, the chain of production can be successfully challenged in the trial. This is because the prosecution always relies on evidence gathered by police officers in cases of this nature.

In **Perera V. Attorney General [1998] 1 Sri.L.R 378** it was held:

*“the most important journey is the inward journey because the final analyst report will depend on that”.*

In **Witharana Doli Nona v.The Republic of Sri Lanka CA/19/99** His Lordship Justice de Abrew remarked thus;

*“It is a recognized principle that in drug related cases the prosecution must prove the chain relating to the inward journey. The purpose of this principle is to establish that the productions have not been tampered*

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*with. Prosecution must prove that the productions taken from the accused Appellant was examined by the Government Analyst”*

In the above cited judgments, the Court has highlighted the importance of proving the production evidence in a drug related trial.

In this case after the arrest the production which was recovered from the Appellant was held by PW1 until the party went to the Police Narcotics Bureau for weighing. First a white sheet was weighted and the weight showed 3.28 grams. Thereafter the substance was put on the white paper and weighed again. It showed 17.300 grams. After deducting the paper weight, the net weight showed 14.40 grams. This had been properly sealed and handed over to PW9. The relevant portion is re-produced below:

(Pages 60-61 of the brief.)

ප්‍ර : ක්‍රෝමීන් පරීක්ෂණය සිදු කලාට පස්සේ මෙම ද්‍රව්‍ය කිරුබැලීමට පියවර ගන්නා ද?

උ : එහෙමයි.

ප්‍ර : කොයි ආකාරයටද කිරු බැලුවේ?

උ : උප සේවක පොලිස් සැරයන් 887 රාමනායක නිලධාරියාගේ සහය ඇතිව පොලිස් මන්දුව්‍ය නාශක කාර්යාංශයේ ඉලෙක්ට්‍රොනික තරාදිය අනුව පළමුව සුදු කඩදාසියක් ගෙන කිරු බැලුවා. එහි ග්‍රෑම් 3 යි මිලි ග්‍රෑම් 28 ක් ලෙස සටහන් වුණා. ඉන් අනතුරුව අන්අඩංගුවට ගන්නා ලද හෙරෝයින් ප්‍රමාණය එම සුදු කඩදාසියට යොදා නැවත කිරු බැලීමට ලක් කලා. එහිදී ග්‍රෑම් 17යි මිලිග්‍රෑම් 300 ක් ලෙස සටහන් වුණා.

ප්‍ර : එතකොට ඒ අනුව ඔබ ඒ හෙරෝයින් ප්‍රමාණයේ බර කියද කියලා සොයාගන්නා ද?

උ : එහෙමයි. ග්‍රෑම් 14 යි මිලිග්‍රෑම් 40 ක් ලෙස සඳහන් වුණා.

ප්‍ර : සාක්ෂිකරු එම නඩු භාණ්ඩ කිරු බැලීමෙන් පසුව ඒවා මුදා කරන්න පියවර ගන්නා ද?

උ : එහෙමයි.

According to PW12, the Government Analyst when she weighed the production the weight showed as 16.3 grams, this is 1.9 grams in excess to the weight noted at the Police Narcotics Bureau. The Government Analyst

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further said that the weighing machine used by them is accurate as it is being checked every day before weighing. The relevant portion is re-produced below:

(Page 161 of the brief.)

උ : ආවරණ ලිපියේ නඩු භාණ්ඩවල බර සඳහන් කරලා තිබුණේ ග්‍රෑම් 14 යි, මිලිග්‍රෑම් 40ක් ලෙස. නමුත් මා විසින් බර කිරා බැලීමේ දී ග්‍රෑම් 16.3 ක් තිබුණු බව සටහනක් මගින් සඳහන් කළා.

ප්‍ර : ඔබතුමියට ගරු අධිකරණයට පැහැදිලි කරන්න පුළුවන් ද රස පරීක්ෂක දෙපාර්තමේන්තුවේ දී කිරා බැලීමේ දී සහ පොලිස් මන්ද්‍රව්‍ය කාර්යාංශයේ දී කිරා බැලීමේ දී දුම්රු පැහැ ද්‍රව්‍යවල යම් වෙනසක් ඇති වෙන්න හැකියාවක් තිබෙනවාද, ඒ කුමක් නිසාද කියලා?

උ : මා විසින් කිරන ලද බර නිවැරදි බරක් ලෙස ප්‍රකාශ කරන්න පුළුවන්. බර කිරීමේ යන්ත්‍රය දිනපතා ක්‍රමාංකනය කිරීමක් සිදු කරනවා. ඒ වගේම මාස හයකට වරක් ප්‍රමිති ආයතනය මගින් එය ක්‍රමාංකනය කිරීමක් සිදු කරනවා. ඒ නිසා මා විසින් ඉදිරිපත් කර ඇති බර නිවැරදි බර ලෙස ප්‍රකාශ කරන්න පුළුවන්.

As this is a significant weight discrepancy, the Government Analyst had noted this in the Government Analyst Report which had been marked as P9 in the trial.

This discrepancy cannot occur in this case as the initial weighing had been done at the Police Narcotics Bureau which is a specialist unit in the Police Department to deal with narcotics. This unit is equipped with sophisticated weighing machines and other equipment.

It is very important to consider at this stage whether the above-mentioned discrepancy in handling productions in drug related matters cause any reasonable doubt over the prosecution case as claimed by the Appellant. To consider this issue it is very important to discuss our Higher Court's approach with regard to handling evidence pertaining to productions in drug related matters.

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In **Faiza Hanoon Yoosuf v. Attorney General CA/121/2002** it was held that:

*“..... The prosecution must prove that, what was subjected to analysis is exactly the same substance that was detected in that particular case. In this regard the inward journey of the production plays a dominant role and is most significant”.*

As this weight discrepancy is a substantial fact, the prosecution had not put relevant questions either to PW1 or to the Government Analyst to explain the reason. Considering the pure Heroin detected in this case, this weight discrepancy is very significant one which certainly have impact on the outcome of the net result of the Government Analyst.

In the case of **Mohamed Nimnaz V. Attorney General CA/95/94** held:

*“A criminal case has to be proved beyond reasonable doubt. Although we take serious view in regard to offences in relation to drugs, we are of the view that the prosecutor should not be given a second chance to fill the gaps of badly handled prosecutions....”*

As the weight discrepancy is not properly addressed in this case, I conclude this ground of appeal has merit.

Next, I proceed to consider the second ground of appeal of the Appellant. In the second ground of appeal the Appellant contends that The Learned High Court Judge has shifted the burden of proof on to the accused.

In all criminal cases the burden always rests upon the shoulder of the prosecution to prove the case beyond reasonable doubt. The Appellant is not required to prove his innocence but if he decides to plead a general or special exception of the Penal Code, then the Appellant has a duty of establishing that the case of the Appellant comes within such exceptions. This burden is imposed under Section 105 of the Evidence Ordinance.

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In **H.M. Mahinda Herath v. The Attorney General CA/21/2003** in Appellate Court Judgments (Unreported) 2005 at page 35-39 the court held that:

*“Where it was held that in a criminal case burden is always on the prosecution to prove the charge levelled against the accused beyond reasonable doubt. The trial judge must always bear in mind that the accused is presumed to be innocent until the charge against the accused is proved beyond reasonable grounds”.*

In the judgment Learned High Court Judge has states as follows:

(Page 285 of the brief.)

තවද මෙම නඩුවේ දී පොදුවේ යෝජනා කර ඇත්තේ, මෙම සැකකරුව අත් අඩංගුවට ගෙන ඇත්තේ 2014.01.16 වෙනි දින විත්තිකරුගේ නිවසේ දී බවටය. නමුත් ඒ බව විත්තිය විසින් කිසිදු සාක්ෂියක් ඔප්පු කර නොමැත.

The learned Counsel for the Appellant referring to the above-mentioned portion of the judgment submits that the learned High Court Judge has cast an extra burden on the Appellant to prove his innocence which is alien to the standard of proof in criminal case. He further submits that this is a clear misdirection which certainly vitiates the conviction of the Appellant.

The wording of the above cited portion of the judgment very clearly demonstrates, that the learned High Court Judge had reversed the burden of proof on the Appellant which is not in accordance with the basic rules of criminal prosecution. Hence, this ground of appeal also has merit.

As the above considered grounds of appeal have merit and it certainly affect the outcome of the case, I consider it is not necessary to address the remaining grounds of appeal.

Considering the grounds of appeal advanced by the Appellant, the learned Trial Judge should have considered the weight discrepancy in favour of the Appellant. Further, reversing the burden of proof on the Appellant is a clear

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misdirection which certainly vitiate the conviction. As the evidence presented by the Appellant creates a reasonable doubt over the prosecution case, I set aside the conviction and the sentence imposed by the learned High Court Judge of Colombo dated 16/11/2018 on the Appellant. Therefore, he is acquitted from both charges.

Accordingly, the appeal is allowed.

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

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**