

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

In the matter of an Appeal from the order and the sentence of the High Court of Colombo dated 13th January 2020 made in terms of Section 331(1) of the Code of Criminal Procedure Code Act No. 15 of 1979.

The Democratic Socialist Republic of Sri Lanka

Complainant

CA Case No: CA/HCC/01/2020

HC of Colombo Case No:

HC 17/2018

Vs.

Muniyandi Upul Chaminda

Accused

AND NOW BETWEEN

Muniyandi Upul Chaminda

Accused-Appellant

Vs.

Hon. Attorney General,

Attorney Generals' Department,

Colombo 12

Respondent

Before: **Menaka Wijesundera, J.**
B. Sasi Mahendran, J.

Counsel: Anuja Premaratna, PC with Imasha Senadeera for the Accused-
Appellant
Sudharshana De Silva, DSG for the Respondent

Written 05.08.2020 and 07.07.2023 (by the Accused-Appellant)

Submissions: 12.01.2022(by the Respondent)

On

Argued On: 13.06.2023

Decided On: 08.08.2023

Sasi Mahendran, J.

The Accused Appellant (hereinafter referred to as the Accused) was convicted under Section 54A(d) and 54A(b) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984 for being in possession and trafficking 13.23 g of Pure Diacetylmorphine (heroin) on the 13th of January 2020 at the High Court of Colombo.

The Prosecution introduced evidence from fourteen witnesses, marking productions P1 to P10, before concluding their presentation. The Accused submitted a

dock statement, and his mistress testified on his behalf. After the completion of the trial, the Learned High Court Judge pronounced the Accused guilty of both charges, sentencing him to death for each offense.

Being aggrieved by the aforesaid conviction and sentence, the Accused preferred this appeal to this Court.

The Following are the Grounds of Appeal set out in the written submission:

1. The learned High Court Judge has failed to consider the discrepancies in the production chain in favour of the Accused-Appellant.
2. The Learned High Court Judge has failed to consider and properly evaluate vital inter partes contradictions.
3. The Learned High Court Judge has erred in considering the probability of the case of the Prosecution.
4. The Learned High Court Judge has failed to consider and grant due weightage to the consistency of the defence of the Accused.
5. The Learned High Court Judge has erred in refusing to Act upon the defence version and rejecting in on a wrong and erroneous basis.

The Facts and circumstances are that:

According to PW1, Bandara *Basnayaka*, Officer in Charge of Crimes at the *Maligawatta* Police station, he received information at 8:15 pm on August 22, 2016. The information detailed an individual dressed in a blue shirt and trousers with black balloon pockets, wearing a gold chain, a gold bracelet, and a tattoo on his right arm above the elbow. This individual was expected to reach a house at *No.6 Kettaramma* Temple Rd, *Malligawatta*, carrying a parcel of heroin. He would arrive in a three-wheeler at the *Babapulla* bridge at *Kettarama*.

PW1 assigned a team of police officers to leave at 8:30 pm in a private van belonging to a friend of his and traveled to *Kettarama*. PW1 noted that the *Kettarama* temple was 450 meters away and described his route. They parked at the back gate of the *Kettarama* temple and waited. During the trial, he produced the road map used for this operation (marked as evidence P1). After waiting in the van for 20 minutes, PW1 saw a person matching the description from the information arriving at the bridge. Accompanied by S.I

Sudarshana (PW2) and P.S Ratnayaka (PW3), they approached the Accused and conducted a search.

During the search, PW1 detected a sizable lump near the upper region of the Accused's crotch. Upon lifting his shirt and investigating further, he discovered a package positioned at the lower section of his abdomen, tucked into the edge of the Accused's underpants.

PW1 clarified that this encounter took place near the *Babapulla* Bridge's lamp post, ensuring the suspect was clearly visible under ample lighting. PW1 retrieved an open (unknotted) pink grocery bag from the Accused. Inside, he found three other pink cellophane bags that were knotted. Upon inspecting the contents of these bags, PW1 discovered a brown powder, which he identified as heroin. He then resealed the bags to their original state and took them into his custody.

The Accused was arrested at 9:25 pm. PW1 then conducted a thorough search of the Accused again and found money amounting to 214,230 LKR hidden in a black tulip bag on the right side of the Accused's trousers. This was documented as PR 178/16 (marked as P3). When the Accused was handed over to the police reserve, the gold jewelry he was wearing at the time was taken into custody by PW1 (marked as P.R no. 130/16 or P2) and handed over to the reserve. Notably, these accessories matched the description of the information PW1 had received from the informant.

Further, PW1 stated that he and his team arrived at the Police Narcotics Bureau at 10:00 pm. Here, the cellophane bags were weighed on an electronic scale, registering a weight of 45.290 g. They then returned to the *Maligawatta* police station at 10:35 pm. PW1 placed all three pink bags inside a yellow envelope, temporarily sealing it with eight police seals in the presence of the Accused. These items were recorded in P.R 176/16 (marked as P4) and handed over to P.S 54092 *Chandratna* at 12:15 am on August 23, 2016.

During his cross-examination, PW1 clarified that he had transferred the heroin into a pink cellophane bag similar to the original, which he then weighed. PW1 noted that while he did not observe the tattoo on the Accused from the van, it became noticeable upon closer inspection. The informant had provided a specific address, '*No. 06, Beththarama Pansala Para, Maligawaththa, Colombo 10*', suggesting the Accused would arrive in a three-wheeler. However, the Accused was apprehended while walking on the bridge. It is

important to note that the main question posed by the defense was regarding the location from which the Accused was arrested. Upon reviewing PW1's testimony, it appears consistent with no evident contradictions.

PW2, *Praneeth Sudarshana*, a Police Inspector, testified that on August 22, 2016, PW1 relayed information about an individual with heroin at *Maligawatta Kettarama*. Upon reaching the *Kettarama* Temple, PW2 was directed to the *Babapulla* bridge. After a 20-minute wait, he joined PW1 and P.C 66357, which led to the discovery of the narcotics and the detention of the Accused.

PW2's account aligns with PW1's regarding the identification and apprehension of the Accused, the recovery of the pink bags and their contents, and the black tulip bag.

A critical observation from the witness statements is that the Accused primarily resisted and tried to evade the officers, without disputing the recovery of the illicit drugs from his possession.

Considering both pieces of evidence, we note that there are no marked contradictions, and they have remained consistent throughout.

The Accused's Version

Upon reviewing the Accused's dock statement, he claimed that his arrest occurred between 4:00 and 5:00 pm on the day in question at the residence of his wife (DW2). He stated that officers entered the premises and assaulted him while DW2 was in the washroom. By 7:00 pm, he was taken to a location in *Maligawatta* where vegetables were sold and questioned. He was handcuffed to a three-wheeler and had a phone conversation with someone named Manjula from the *Maligawatta* police, who hinted at punishment for causing Rajakaruna's transfer from the CCD. He was later taken to the Police Narcotics Bureau at 12:15 am and subsequently to the *Maligawatta* Police station.

DW2, *Anoja Gomes*, testified on behalf of her "alleged husband". She recollected that between 4:00 and 5:00 pm on the day in question, she heard noises resembling an attempted break-in. While she saw two men, she couldn't clearly recall the total number present. The Accused was on the porch while she was confined to the kitchen for two hours by two men claiming to be police officers, but they did not specify their department. They eventually left with her husband in handcuffs, and she was uncertain of his whereabouts.

When asked why she hadn't procured a bail sheet, she explained that she was the only one aware of the event and hadn't previously disclosed it.

During cross-examination, she stated that the Accused was arrested at *No.96/10 Seneviratnaerama Rd, Kollonawa*. However, she admitted that the address *No.06 Kettarama Temple Rd Malligawatta* was the residence of the Accused's mother. She later learned that her husband was taken to the *Malligawatta* Police Station. When questioned by the prosecution about her silence regarding the incident, she revealed her involvement in two ongoing drug cases.

The defense's main objection was that the Learned Trial Judge failed to consider whether the prosecution had established the chain of custody beyond reasonable doubt.

According to the chief investigating officer, PW1 *Basnayaka*, after arresting the Accused and seizing the production, they traveled to the PNB, weighed the production, and arrived at the *Malligawatta* station. They recorded the production in the book P.R 176/16 and handed it over to P.S 54092 *Chandratna* (PW10) at 12:15 am on August 23, 2016. PW10 reported that he received the production from PW1 and handed it over to P.S 21791 Ranaweera at 5:17 am on the same day. PW11, 21791 Leslie Ranaweera, stated that he received the production from PW10 and handed the Accused, along with the productions recorded in P.R 177/16 and P.R 178/16, to P.S 73182 Vijitha at 10:40 am. Furthermore, he stated that he handed P.R 176/16, the subject matter, to PW1 *Basnayaka* at 1:45 pm. According to the Government Analyst, PW13, she received the parcel from PW1 at 3:00 pm, observed that all seals were intact, and issued a receipt.

On Page 220 of the brief:

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උ : 2016.08.23 වන දින.

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උ : උ.පො.ප බස්නායක විසින්. ඔහුගේ පොලිස් හැඳුනුම්පත් අංකය 107044.

On Page 222 of the brief:

ප්‍ර : එම සන්දේශයෙහි ඔබ නඩු භාණ්ඩ ලැබුණු වෙලාව සටහන් කර තිබෙනවාද?

උ : ප.ව. 03.40 ලෙස සංදේශය නිකුත් කරපු වෙලාව සටහන් කර තිබෙනවා. ප.ව. 03.00 ට තමයි නඩු භාණ්ඩ භාරගෙන තිබෙන්නේ.

It should be noted that PW1 failed to mention in his testimony that he had received the production from PW11 and handed it over to the Government Analyst.

Our courts pay close attention to the chain of custody of evidence and the inward journey of production. The Prosecution must provide irrefutable evidence to prove the chain of custody beyond reasonable doubt. Although PW1 did not inform the court that he had received the evidence from PW11 and handed it over to the Government Analyst, both PW11 and the Government Analyst, an independent witness, have confirmed that PW1 was indeed the individual who handed over the evidence to the Government Analyst.

This position is further reinforced by the following evidence: according to PW11, the production was handed over to PW1 at 1:45 pm, and the Government Analyst stated that she received the production at 3:00 pm. Therefore, we do not find any doubt regarding the chain of custody. The defense filed further written objections on July 7, 2023, including:

- a) The unexplained van and the timing of the receipt of information and departure from the *Maligakanda* Police. Upon reviewing PW1's testimony, he stated that the van belonged to a friend and that the police station was a short distance away.
- b) The reason for going to the Police Narcotics Bureau (PNB)
- c) The actuality of the police officers actually go to the PNB.

The defense counsel noted that the police had a weighing scale when they left the station. It is important to note that PW1, who led the team, lacked experience with conducting raids; this was his first raid as a leader. We find no fault in PW1 going to the PNB, given his inexperience with using the weighing scale. The Accused himself admitted in his dock statement that he was taken to the PNB.

The Accused also claimed that the Learned High Court Judge failed to consider his version of events. The Accused's primary defense was that he was arrested at home, not at the location proposed in the prosecution's evidence. Upon careful scrutiny of his dock statement, he did not explicitly deny that anything was recovered from him. The information provided by the informant, which included details about the Accused's jewelry and tattoo, was found to be accurate when the Accused was arrested. According to PW1, they arrested the Accused based on this information, which also revealed the Accused's location. The evidence presented by PW1 and PW2 does not create any doubt about the place of arrest.

Both PW1 and PW2 consistently identified the place of arrest, and we do not find any discrepancies regarding the arrest location. Therefore, no doubt arises from the Accused's claims about the evidence of PW1 and PW2 regarding the place of arrest. It is important to remember that at the time of the Accused's arrest, he was found in possession of 45.290 g of brown powder, which contained 13.23 g of pure heroin.

We are mindful of the observation made by **W.L Ranjith Silva J** with regard to the evidence of the defense in the case of **Don. Shamantha Jude Anthony Jayamaha v. Attorney General, CA 303/2006, decided on 11.07.2012, His Lordship held that:**

“Whether the evidence of the defence or the dock statement is sufficient to create a doubt cannot be decided in a vacuum or in isolation because it needs to be considered in the totality of the evidence that is in the light of the evidence for the prosecution as well as the defence. it is wrong to assume that under no circumstances should the evidence of the prosecution be considered but the evidence for the prosecution should not be compared with the dock statement as it is against the fundamental principles of law and will amount to shifting the burden of proof. Yes I do admit that the dock statement should not be compared with the evidence for the prosecution but in deciding whether the dock statement is sufficient to create a doubt the judge must be mindful of the evidence for the prosecution. Finally having considered the case for the prosecution as well as the dock statement it is only then the learned Judge can decide whether or not the dock statement is sufficient to create a doubt in the case for the prosecution. One cannot isolate or disregard the prosecution case completely and consider only the dock statement in deciding whether the dock statement is sufficient to create a doubt provided it is so obvious that the dock statement is only a bear denial or is irrational

or palpably false, in which case it could be rejected without even considering the evidence for the prosecution.”

We hold that the evidence of the defense has not created any reasonable doubt in the prosecution’s case

On a perusal of the judgement of the learned trial judge, it is evident that the judge thoroughly considered all the material evidence presented at the trial by both parties. The evidence provided by the Accused was also scrutinized and carefully assessed by the learned trial judge. The learned trial judge further elaborated on the reasons for disbelieving the defence’s version of the case.

For the above said reasons I find that the Accused has failed to convince this court that the said conviction cannot be reached with the evidence led before the trial court, therefore this court dismisses the appeal and affirm the sentence and conviction.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE

JUDGE OF THE COURT OF APPEAL