

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

In the matter of an appeal in terms of Section  
331(3) 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-159/19**

*HC of Colombo Case No:*

*HC 7462/14*

Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

Mohammed Thaha Nurul Sifaya

**Accused**

**AND NOW BETWEEN**

Mohammed Thaha Nurul Sifaya

**Accused-Appellant**

**Vs.**

Hon. Attorney General

Attorney Generals Department

Colombo 12.

**Complainant-Respondent**

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

**Counsel:** Amila Palliyage with Sandeepani Wijesooriya and S. Udugampola for the  
Accused-Appellant  
Dilan Rathnayake SDSG for the Respondent

**Written** 04.08.2021(by the Accused-Appellant)

**Submissions:** 06.08.2021, 04.07.2023 (by the Respondent)

**On**

**Argued On:** 28.06.2023

**Decided On:** 29.08.2023

**Sasi Mahendran, J.**

The Accused Appellant (hereinafter referred to as the Accused) was charged and thereafter 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 5.77 g of Diacetylmorphine (heroin) on 22<sup>nd</sup> of August 2019 at the High Court of *Colombo*.

Prosecution led evidence from sixteen witnesses, marking productions P1 to P5, and concluded the trial. The Accused gave a dock statement. After the conclusion of the trial, the Learned High Court Judge pronounced the Accused guilty on both counts and sentenced her to life imprisonment for each count.

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

The Facts and circumstances are that:

PW1, *Chandana Mahendra Bandara*, the Police Inspector in charge of the raid, testified that on 23<sup>rd</sup> of December 2013, as part of his daily routine, he had gone with his team of officers to the location of *Orugodawatta Majeed Place* at 14:00. Upon arriving at

Majeed Place, they parked the van near a temple. PW1 proceeded on foot with the other officers for a short distance and entered *Sattamma Garden*, which was on the left-hand side.

Subsequently, he saw a woman in a yellow floral dress coming down the staircase of the apartment complex. After seeing PW1 she immediately turned away and started going up the stairway, this raised suspicion. PW1 then proceeded to apprehend the woman and handed her over to Lady Officer Anusha (PW10), who searched her and found a light pink coloured cellophane bag in her right pocket. She handed the bag over to PW1.

Upon examining the cellophane bag, he discovered a brown powder and, based on his expertise, identified it as heroin. After stating the allegations, the woman was arrested at 14:35. The cellophane bag was taken into his custody, and he then placed it in an envelope. They traveled to a pawn shop to weigh the substance; it weighed 20.340 grams. They returned to the CCD at 15:50. The production was duly sealed, and it was handed over to Reserve Duty Officer P.C. 47316 Jaynse (PW11) under production number 108/2013 (evidence marked as P2).

Further prosecution led evidence concerning the custody of the production by the officers who held reserve duty until the production reached the government analyst department on the 24th of December 2013. The Accused had given a dock statement.

The main objection taken by the defense was that the Learned Trial Judge had failed to consider the fact that the prosecution had not established a chain of inward journey.

We are mindful that our courts have insisted that there should be no doubt whether the parcel containing the substance had been forwarded to the Government Analyst without allowing room for any suspicion that it was tampered with or interfered with.

This issue was considered in the following cases.

In the case of **Perera v. The Attorney General (1998) 1 SLR 378**, His Lordship **J.A.N De Silva J(as he was)** held that;

*“It is a recognized principle that in a case of this nature, the prosecution must prove that the productions had been forwarded to the Analyst from proper custody, without allowing room for any suspicion that there had been no opportunity for tampering or interfering with the production till they reach the Analyst. Therefore it is correct to state that the most important journey is the inwards journey because the final Analyst report will be depend on that. The outward journey does not attract the same importance.”*

Also in the case of **Witharana Doli Nona vs. The Republic of Sri Lanka C.A. 19/99** – His Lordship Justice Sisira De Abrew remarked;

*“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 with. Prosecution must prove that the productions taken from the accused appellant was examined by the Government Analyst. To prove this, the prosecution must prove all the links of the chain from the time it was taken from the possession of the accused appellant to the Government Analyst's Department.”*

The above-said judgments were referred by His Lordship Malalgoda PC/J (P/CA) In CA 16/2010 Mariyanayagan Norbertsingam v. Attorney General, decided on 13.07.2015.

We are mindful of how the courts have scrutinized evidence placed by the prosecution with regard to chain of custody.

It should be noted that according to PW1, he conducted several raids on that day. Subsequently, he handed over productions 107/13 and 108/13 at two different times. While he specified that production no. 107/13 was handed over to the reserve at 13:40, he did not mention the time at which he handed over production no. 108/13. Nonetheless, he was explicit that production no. 107/13 was transferred at 13:40.

According to PW11, P.C. 47316 *Jaynse*, stated that he had reported to duty at 13:10, and he received the production 108/2013 from PW1 at 16:00.

On Page 160 of the brief;

ප්‍ර : සාක්ෂිකරු තමාට මේ පොලිස් පරීක්ෂක වන්දන විසින් මේ ආකාරයට ලබාදුන්න නඩු භාණ්ඩ තමා කොහේද ආරක්ෂා සහිතව ගබඩා කළේ?

උ : පැය 16.00 ට ලබා දුන් එම දේපල පැය 16. 09 ට නඩුබඩු කාමරය භාර නිලධාරියාට භාරදුන්නා.

Thereafter he handed the production 108/13 over to P.C. 39112 *Jayasinghe* (PW12) who was in charge of the production room at 16:09.

During his cross-examination, he stated that he was on duty from 13:10 to 21:30. According to him, PW1 had handed over production 107/13 to him at 13:50. We observe that the following questions were put to the witness to confuse him.

On Page 163 of the brief;

ප්‍ර : දැන් එම 107/13 වන්දන මහත්මයා තමුන්ට කියාද භාරදී තිබෙන්නේ?

උ : පැය 13.50 ට.

ප්‍ර : එතකොට 108/13 භාරදුන්නේ කියාද?

උ : පැය 16.00 ට.

ප්‍ර : පැය 16.0 ට තමයි මෙම 107/13 භාරදීලා කිව්වොත් නිවැරදිද?

උ : පැහැදිලි නැහැ.

ප්‍ර : දැන් 107/13 නඩු භාණ්ඩ භාරදී තිබෙන්නේ විනාඩි 10.00 කට පමණ කාලයකට පසුවද, 108/13 භාර දුන්නේ?

උ : නැහැ.

ප්‍ර : එතකොට පැය 108/13 භාර දුන්නේ කියාද?

උ : පැය 16.00 ට.

ප්‍ර : ඒ කියන්නේ පැය 2කුත් විනාඩි 10.00 කට පස්සේ?

උ : ඔව්.

PW12, P.C. 39112 *Jayasinghe*, was on duty from 8:00 to 17:00 and received the production from PW11. When questioned by the defense, PW12 became confused about the two productions, failing to specify to whom he had handed over production 108/13.

It is true that these are trained officers; however, we observe that the Counsel for the Accused attempted to sow confusion by introducing two different productions. Despite this, the officers were unequivocal regarding where, how, and what they had received.

PW15, P.S. 17037 Wijeratna, stated that he received the production from PW12 on December 24, 2013. He then handed over the production to the Government Analyst and received receipt no. CB. 6144/13.

According to PW16 Wajira Jayasekara, the Government Analyst, PW15 had transferred the production to the Government Analyst department.

Upon evaluating the evidence presented to the Learned Trial Judge, we find that he correctly analyzed the evidence concerning the chain of production. Further, we conclude that the prosecution has proved beyond a reasonable doubt that there was no opportunity for tampering with the production until it reached the Government Analyst. Therefore, we hold that no doubt has been cast on this basis.

We affirm that the prosecution has proven the charge against the Accused beyond a reasonable doubt. The evidence presented in court was consistent with regard to the charge, and the Accused's evidence did not cast any doubt against the prosecution's version. Accordingly, we affirm the conviction, and this appeal is dismissed

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**