

**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.

Democratic Socialist Republic of Sri Lanka

**Complainant**

**Court of Appeal Case No:**

**CA/HCC/43/2022**

*HC of Colombo Case No:*

*HC 8253/16*

**Vs.**

Matara Mahavidana Patabedige Anoma Nelum  
Kanthi

**Accused**

**AND NOW BETWEEN**

Matara Mahavidana Patabedige Anoma Nelum  
Kanthi

**Accused-Appellant**

**Vs.**

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

**Respondent**

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

**Counsel:** Anuja Premaratne, PC with Ramith Dunusinghe and Vivindra Rathnayaka and Bandara Dissanayaka for the Accused-Appellant  
Maheshika Silva DSG for the State

**Written**

**Submissions:** 27.09.2022 (by the Accused-Appellant)

**On** 10.01.2023 (by the Respondent)

**Argued On:** 12.07.2023

**Decided On:** 06.09.2023

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**B. 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. She was found guilty of being in possession of and trafficking 5.77 g of Diacetylmorphine (heroin) by the High Court of Colombo on December 3, 2021.

The prosecution presented evidence from seventeen witnesses and marked productions P1 to P9 before closing their case. The Accused also made a dock statement. Upon the trial's conclusion, the Learned High Court Judge pronounced the Accused guilty on both counts. She was sentenced to 8 years of rigorous imprisonment and a fine of 250,000 LKR for each count, the sentences to run concurrently.

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

1. The Learned Trial Judge has failed to evaluate and take cognizance of the infirmity in the case of the Prosecution.

2. The Learned Trial Judge has failed to evaluate and take cognizance of the impossibility in the case for the Prosecution.
3. The Learned Trial Judge has failed to consider that the most important production has not been handed over to the police reserve nor produced court.
4. The learned Trial Judge has failed to consider the improbability of the mode of transport said to have been used in the raid.
5. The Learned Trial Judge has failed to evaluate and take cognizance of the infirmities of the case inwards chain of the production.

PW1, O.I.C *Prasad Dalpadadu*, stated that on August 1, 2013, he received information via mobile phone from a confidential informant. Leading a team of officers, he departed *Boralesgamuwa* Police Station at 1:35 p.m., arrived at the arrest location at 1:50 p.m., and waited for an hour. Upon spotting the Accused approaching *Viharamawatha*, they proceeded with the search and arrest. They returned to the police station at 4:00 p.m.

According to PW4, WPC *Dharshika*, she attempted to search the bag carried by the Accused. It took 15 minutes to realize that the Accused was tightly clutching the production in her palm. Notably, she was arrested while approaching the rear gate of the *Bellanwila* Temple, as observed by PW1. After the arrest, PW4 escorted the Accused to the Female Barracks at the police station to conduct a strip search.

This sequence of events raises questions about the necessity for the Accused to hold the production in her hand while walking openly in a commercial area.

Moreover, PW1 claimed it took an hour to return to the police station, while PW4 stated it took an hour and 40 minutes. Conversely, the initial journey to the arrest location took only 15 minutes. This disparity casts doubt on the actual location of the arrest. According to the Accused's dock statement, she was arrested at the Mount Lavinia Police Station.

PW1 stated that although sealing equipment was brought to the arrest scene, the production was not sealed during the arrest and remained in his custody. Upon returning to the police station, PW4 took the Accused for an additional search. During this period, the unsealed production remained in PW1's custody. It was only then sealed and placed in the production reserve. This time gap in custody, while the Accused was absent, raises valid concerns.

The prosecution's narrative also suffers from implausibility. According to PW1, the Accused was holding the production in her palm, despite carrying a handbag at the time. This leads one to question why someone carrying dangerous drugs would not place them in a handbag, especially when out in public. In my opinion, this evidence fails to satisfy the test of probability.

Furthermore, we note that important pages in the production registry, which should detail the handover of the production to the reserve, are missing.

We are mindful of the observation made by **His Lordship Sisira de Abrew, J** in the case of **Witharana Doli Nona v. The Republic of Sri Lanka, CA 19/99, decided on 20.01.2009;**

“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 time it was taken from the possession of the accused-appellant to the government analyst department. This view is supported by the judicial decision in *Perera v. Attorney General* (1998) 1 SLR 378 wherein His Lordship Justice J.A.N. de Silva at page 380 remarked thus: “It is a recognized principle that in a case of this nature, the prosecution must prove that the production had been forwarded to the Analyst from proper custody without allowing room for any suspicious that there had been no opportunity for tampering or interfering with the productions till they reach the Analyst.”

Therefore, the prosecution has failed to prove the chain of inward journey. We hold that the evidence presented before the Learned Trial Judge raises significant doubts concerning its reliability.

When considering the totality of the evidence, the presence of improbabilities, inter-part contradictions, and questions about missing pages collectively create reasonable doubt. Thus, we conclude that the prosecution has not proven its case beyond a reasonable doubt. Any doubts arising from these issues should be resolved in favor of the Accused.

For the aforementioned reasons, we set aside the conviction and sentence imposed by the High Court of Colombo on December 3, 2021. Accordingly, this appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**