

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

In the matter of an Appeal  
Against an order of the High  
Court under Sec. 331 of the  
Code of Criminal Procedure Code Act  
No. 15 of 1979 and Section 19(B) of  
the High Courts of the Special  
Provisions Act No 19 of 1990

Samaraweera Arachchige Suresh  
Kumara

No 252 A1, Serpentine Road, Borella  
Colombo 8

**Accused**

**C. A. Case No. : 262/2013**

**H. C.Colombo Case No. : 4843/2009**

**Vs**

The Hon. Attorney General

Attorney General's Department,

Colombo 12.

**Complainant**

**And now**

Samaraweera Arachchige  
Suresh  
Kumara

Welikada Prisons

**Accused-Appellants**

**Vs**

The Hon. Attorney General  
Attorney General's Department,

Colombo 1.2

**Complainant Respondent**

**BEFORE** : L.T.B.Dehideniya, J &  
K. K. Wickramasinghe, J

**COUNSEL** : AAL Amila Palliyage for the Accused-Appellant.  
DSG Thusith Mudalige for the Attorney General.

**ARGUED ON** : 30<sup>th</sup> May 2017

**DECIDED ON** : 30<sup>th</sup> June 2017

**K. K. WICKRAMASINGHE, J.**

The accused appellant (hereinafter referred to as the accused) in this case was indicted in the High Court of Colombo on the charge for having possession of 2.4 grams of diacetylmorphine [heroin] on or about 11<sup>th</sup> August 2004 and committed an offence punishable under section 54 A (c) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by Poisons, Opium and Dangerous Drugs Amendment) Act No.13 of 1984.

After trial the learned high court Judge found the accused appellant guilty of the charge against him and imposed the death sentence.

Being aggrieved by the said judgement and the sentence the appellant has come before this court to bring down the sentence.

The learned counsel for the appellant does not wish to challenge the conviction and made submissions only with regard to bringing down the sentence imposed by the learned High Court Judge.

**Facts of the case:-**

According to Prosecution witnesses, after receiving information from a private informant that a person who was trafficking heroin was coming towards Serpentine Road from Sinna Dupatha, Borella had proceeded to arrest the suspect. At the time of arrest the appellant was in possession of 2.4.grams of heroin.

According to the relevant schedule of the Act, the Learned High Court Judge had the option of either imposing death penalty or life imprisonment.

As submitted by the learned counsel for the appellant, the appellant was a 24 year old at the time of arrest and he is a drug addict.

The Learned counsel for the respondent submitted that he has three previous convictions for possession of stolen goods, House breaking by night and theft, possession of 50 m. grams of heroin. Whereas the learned counsel for the appellant admitted all three previous convictions.

The appellant in the allocutus has made an unqualified admission that he did purchase heroin in this instance. Also mentioned that he committed theft in order to consume heroin and that he is addicted to heroin.

It is important to consider the judgement of **Periyambalam Vs Queen [74 NLR 515]** where it was held that what the accused person states in the allocutus is admissible in appeal. The learned counsel for the appellant was unable to submit a valid argument to justify why the death penalty should not be imposed on the accused.

This court is of the view that the appellant was possessing pure heroin of 2.4 grams is not a user quantity. If the appellant was a first time offender without any previous convictions, the Learned High Court Judge would have considered a lenient sentence. It is pertinent to note that the appellant has three previous convictions for finger printable offences. Therefore the appellant is a threat to the society.

Therefore, this court is of the view that the learned trial judge had come to the correct finding.

Considering above, we see no reason to interfere with the finding of the learned high court judge. Hence the conviction and the sentence affirmed.

Appeal is hereby dismissed.

Judge of the Court of Appeal

L.T.B.Dehiddeniya J.

I agree

Judge of the Court of Appeal