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 No:
CA/HCC/0277/2023

Kandiah Thiyagarasa

High Court of Vavuniya
Case No: HCV/2875/2019

Accused-Appellant

vs.

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

Complainant-Respondent

BEFORE : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

COUNSEL : **U. R. De Silva, PC with Thilmi Atapattu, C. Weeramantry and Hansani Pathirana for the Appellant.**
Azard Navavi, ASG for the Respondent.

ARGUED ON : **08/09/2025**

DECIDED ON : **10/10/2025**

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JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted by the Attorney General in the High Court of Vavuniya 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 being in possession of and for the trafficking of 1,135 grams of Heroin (Diacetylmorphine) on the 09th of November 2017.

After the trial, the Appellant was found guilty on both counts and the learned High Court Judge of Vavuniya has sentenced him to death for each count on 12th of July 2023.

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 to argue this matter in his absence. During the argument he has been connected via Zoom platform from prison.

On behalf of the Appellant the following Grounds of Appeal were raised.

1. A raid was not conducted.
2. Improbability of the story presented by the Prosecution.
3. Chain of production had not been proved beyond a reasonable doubt.

Background of the case albeit briefly is as follows:

In this case, the raid was conducted upon the receipt of specific information by PW1. The raid was conducted by a team of police officers from the District Police Narcotics Bureau, Vavuniya headed by PW1. All members of the team had been named as witnesses in the indictment including the Government Analyst. The prosecution had called PW1, PW2, PW3, PW4, PW5 and PW6, the Government Analyst and closed the case. The prosecution had marked productions P1 to 23 and X-1 during the trial.

When the defence was called, the Appellant had made a dock statement and closed the case.

According to PW1, IP/Rajapaksha, when he was serving at the Vavuniya Police Station, on 09th November 2017, he had received an information from his personal informant that a person dressed in a white short-sleeve shirt and grey colour trousers carrying a travelling bag branded "NIKE" at the Vavuniya old bus stand is carrying Heroin. When he received this information, he was engaged in crime prevention duty in the area under the Vavuniya Police and had been travelling from Tekkawatte to Vavuniya in a cab. Immediately after receiving this information, PW1 had alerted his subordinate officers who were with him at that time. Within 10-15 minutes he and the other police officers had arrived at the bus stand, arrested the Appellant, and recovered a bag from him. From inside the bag, a parcel suspected to be containing Heroin was recovered. Thereafter, he and his team had gone to the Police Welfare Shop to weigh the production. The parcel had weighed 2.266 Kilograms. The production was entered in the production

register under PR No.2037/17 and had been handed over to the reserve police officer.

PW2, SI/Abeyratne had given evidence to corroborate the evidence of PW1.

In every criminal case the burden is on the prosecution to prove the case beyond a reasonable doubt against the accused person and this burden never shifts. Hence an accused person has no burden to prove his innocence unless he pleads a general or a special exception in the Penal Code.

In **Miller v. Minister of Pensions** (1947) 2 All E.R. 372 the court held that:

> *"…the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice".*

As the first and second grounds of the appeal are interconnected, the said grounds will be considered together in this appeal. Under the first ground of appeal the Appellant contends that the learned High Court Judge erred in law by failing to consider that both inter se and per se contradictions between the evidence provided by PW1 and PW2 which creates a reasonable doubt and thereby the conviction is unsafe and that under the second ground he further contends that the learned Trial Judge has failed to analyse the improbability of the prosecution version of the case and thereby the conviction is unsafe.

According to PW1, the information which led to the raid was received while he was engaging in crime prevention duty and was travelling from Tekkawatte to Vavuniya. After receiving the information all officers had gone to the bus stand for the raid. The relevant portion of the evidence is re-produced below:

Pages 135-136 of the brief.

ප්‍ර : එම තොරතුර මොකක්ද ?

උ : 2017.11.09 වන දින පැය 20.30 ට වවුනියාවේ දී මාගේ පුද්ගලික ඔත්තුකරුවෙකු දන්වා සිටියා සුදු පාට අත් කොට කමිසයකින් සහ අලු පාට කලිසමකින් සැරසුණු අඩි 6 ක පමණ පුද්ගලයෙක් කලු පාට උඩු රැවුලක් සහිතව NIKE බෑගයක් සහිතව වවුනියාව ලංගම බස් නැවතුම් පලේ වවුනියාව කොළඹ බස් නතර කරන ස්ථානයේ සිටිනවා කියලා.

ප්‍ර : ඔබට මෙම තොරතුර ලබාදෙන අවස්ථාවේ ඔබ කොහෙද රාජකාරී කටයුතු කරමින් සිටියේ?

උ : මේ අවස්ථාවේ වැටලීම රාජකාරී වල නිරත වී සිටියා.

ප්‍ර : කොයි වගේ වැටලීම් රාජකාරියක් ද?

උ : කොට්ඨාශ දූෂණ මර්ධන අංශයේ ස්ථානාධිපතිතුමා වශයෙන් සේවය කරමින් විෂ මත්ද්‍රව්‍ය සම්බන්ධයෙන් වැටලීම් රාජකාරී වල යෙදි සිටියා.

ප්‍ර : ඔබට මෙම තොරතුර ලද පසුව මොකක්ද ගත්ත ක්‍රියා මාර්ගය?

උ : මෙම තොරතුර සම්බන්ධයෙන් සාක්කු සටහන් පොතේ සටහන් කර ගත්තා.

ප්‍ර : ඉන්පසුව ගත්ත ක්‍රියා මාර්ගය මොකක්ද?

උ : මෙම තොරතුර සම්බන්ධයෙන් මා සමඟ වැටලීම් රාජකාරී වල නිරත වී සිටි මාගෙ අනිත් නිලධාරීන්ට තොරතුර දැනුම් දුන්නා.

ප්‍ර : වෙනත් නිලධාරීන් කොහෙද වැටලීම් රාජකාරී යෙදී සිටියේ?

උ : ඒ අවස්ථාවේ මා සමඟ ඩබ්.පී.සී.ඊ. 9104 දරණ කැබ් රථයෙන් පො. සැ. 25138 පාලිත, පො. කො. 48265 වීරසිංහ, 48300 සමන්, 72469 අරුණ, 81935 ගුණතිලක යන නිලධාරීන් සමඟ පො. කො. 76145 මංජුල යන නිලධාරීන් සමඟ සංචාර රාජකාරී යෙදී සිටියා.

Under cross examination, PW1 had stated that he had departed from the police station after entering the departure entry on the entry record book at 8.30 p.m. The relevant portion is re-produced below:

Page 420 of the breief.

ප්‍ර : තමන්ට මේ විත්තිකරු සම්බන්ධයෙන් ලැබුණු තොරතුර කියටද ලැබුණේ?

උ : පැය 20.30 ට පමණ ලැබී තියෙන්නේ.

ඒ අනුව 20.30 ට පසුයි ඒ කියන තොරතුර සම්බන්ධයෙන් පිටවීම් සටහන් යොදා මේ වැටලීමට මා සහභාගී වෙන්නේ.

In the re-examination, PW1 had admitted that it was only due to an oversight that he had stated that he received the information while on crime prevention duty. The relevant portion is re-produced below:

Page 457 0f the brief.

ප්‍ර : ඔබේ 21.40 ට යොදන ලද සටහන්වල වැටලීම් සංචාරයේ යෙදී සිටියදී කියලා සඳහන්ව තිබීම සම්බන්ධයෙන් හරස් ප්‍රශ්න ඇහුවා?

උ : ඔව්.

ප්‍ර : එලෙස සටහන් කර තියෙනවාද ?

උ : වැටලීම් සංචාරයේදී කියලා සටහන් යොදා තියෙනවා.

ප්‍ර : ඔබට මෙම තොරතුරු පොලිස් ස්ථානයේදී ලැබුණු බව සඳහන් කරා ?

උ : ඔව් .

ප්‍ර : එසේ නම් ඔබ සංචාරයේ යෙදී සිටියදී තොරතුරු ලැබුණා කියලා සඳහන් කරේ ඇයි ?

උ : අතපසු වීමකින්.

PW2, under cross examination, had initially stated that the team had gone to the police station upon receiving the information by PW1. For this PW2 had not entered his notes in the police information book. But under further

cross examination, PW2 had admitted that they had gone to the bus stand directly while they were on crime prevention duty. The relevant portion is re-produced below:

Page 570 of the breief.

ප්‍ර : තමන්ගේ සටහන හොඳට බලන්න මොකක්ද කියලා තියෙන්නේ ? තමන් දැන් පිළිගත්ත පරිදි පොලිස් පරිශ්‍රයක් ගැන කියන්නේ නැතිව සංචාරයේ යෙදී සිටියදී බස් නැවතුම්පළට පැමිණියා කියලා තියෙන්නේ ?

උ : එහෙමයි. පැය 21.10 ට බස්ටෑන්ඩ් එකට පැමිණියා.

ප්‍ර : ඒ වෙලාවේ දී ඔය කැබ් රථය බස් නැවතුම් පලට ඇතුළු කලා කියලත් කියලා තියෙනවා ?

කැබ් රථය ලංගම බස් නැවතුම්පලට ඇතුල් කර 21.10 ට බස්ටෑන්ඩ් එකට පැමිණියා.

අපි පැමිණි කැබ් රථය බස් නැවතුම්පලට ඇතුල් කර නවතා ?

උ : ඔව්.

ප්‍ර : ඒක නවත්තලා ඉවරවෙලා ඒකෙන් තමන් බැහැලා ගිහිල්ලා ද.පො.ප. රාජපක්ෂ මහතා අසළට ගිහින් එතුමත් සමඟ කතා කරා කියලා තියෙනවා ? එහෙමද තියෙන්නේ ?

උ : ඔව්.

PW1 in his evidence-in-chief had stated that he recorded the statement of the Appellant while inside the police vehicle which was parked at the bus stand. He had also admitted that the distance to the Vavuniya Police from the bus stand is only 200 meters. The relevant portion is re-produced below:

Page 454 of the brief.

ප්‍ර : ඔබට විශේෂ හේතුවක් තිබුනාද චූදිතගේ ප්‍රකාශය බස්නැවතුම්පලේදී ජීප් රථයේ තබා සටහන් කිරීමට ?

උ : සැකකරුට වරද කියා දී අත්අඩංගුවට ගැනීමෙන් අනතුරුව සැකකරුගේ ප්‍රකාශය සටහන් කිරීම පමණයි සිදු කරේ.

But under cross examination, PW1 had stated that according to his notes recorded at 10.55 p.m., the Appellant's statement had been recorded at the

police station with the assistance of WPC Mariya Sri who assisted with the translation. The relevant portion is re-produced below:

Page 444 of the brief.

ප්‍ර : පී. ආර්. ගත කරලා ඒවා ඔක්කොම පාර්සල් කරලා තමන් සටහන් දාපු එකේ අන්තිමට තියෙන එක ටිකක් කියවන්න ?

22.55 ට පොලිසියට ඇවිත් දාපු සටහනේ මෙහෙම තියෙනවාද ?

භාෂා පරිවර්තක ලෙස පො.කො.මරිය ශ්‍රී යොදා ගනිමින් සැකකරුගේ ප්‍රකාශය ලබාගැනීමට පො.සැ. 25138 නිලධාරියාට උපදෙස් දුනිමි.

These inter se and per se contradictions are a clear demonstration that the prosecution story is not reliable.

The above highlighted portions of evidence of PW1 and PW2 cannot be considered as trivial contradictions. The *inter se* and *per se* contradictions highlighted pose a strong challenge to the prosecution version. They certainly attack the root of the matter in this case.

In the book **Sarkar on Evidence, 15th Edition** at page 112 states:

> *"Minor discrepancies are possible, even in the version of truthful witnesses and such minor discrepancies only add to the truthfulness of their evidence.* ***[Sidhan v. State of Kerela [1986] Cri LJ 470, 473(Kerala)].*** *But discrepancies in the statements of witnesses on material points should not be passed over, as they seriously affect the value of their testimony* ***(Brijlal v.Kunwar, 36A 187: 18CWN 649: A1914PC38).****The main thing to be seen in whether the inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. In the latter, however, no such*

benefit will be available to it. ***(Krishna Pillai Sree Kumar v. State of Kerala A [1981] SC 1237,1239).***"

In **The Attorney General v.Sandanam Pitchai Mary Theresa** [2011] 2 SLR 292 the court held that:

"Whilst internal contradictions or discrepancies would ordinarily affect the trustworthiness of the witness statement, it is well established that the Court must exercise its judgment on the nature of the inconsistency or contradiction and whether they are true material to the facts in issue".

In all drug detection cases the police detectives are expected to maintain impeccable records of all activities that which transpires concerning the case. When they are called upon by the prosecution to testify in court, they are allowed to use their notes to refresh their memory. Hence, their evidence cannot consist of any inter se or per se contradictions as they give systematic evidence regarding the particular incident as clearly recorded by themselves. If their evidence consists of inter se or per se contradictions which affects the root of the case, their credibility become questionable.

The learned High Court Judge in his judgment held that the evidence given by PW1 and PW2 does not contain any contradictions. This is a clear indication that the learned High Court had not considered and analysed the evidence given by PW1 and PW2 in a proper manner.

The probability test is a prerequisite in a criminal trial to prove the case beyond a reasonable doubt. In this case the conduct of PW1 is highly questionable which certainly does not pass the probability test.

In this case PW1and PW2 are the key witnesses who are also experienced police officers. Their evidence is not clear and not matched on material points as discussed above. Their evidence is tainted with such ambiguity and

uncertainty which definitely affects the root of the case. Hence, the appeal grounds advanced by the Appellant have very serious impact on the prosecution case.

According to PW1, the substance found in the possession of the Appellant was weighed using a scale used in the Police Welfare Shop. The parcel was weighed at 2,266 grams at first. Secondly, he had weighed the same from the Vavuniya Base Hospital. At that time the parcel had weighed about 2008 grams.

However, when the productions had been taken to the Government Analyst Department a notable difference had been noted in the weight of the parcel. According to the Government Analyst Report which had been marked as X1 in the High Court Trial, the weight of Heroin had been noted as 1,982 grams. This is 284 grams less than the original weight. Hence the Appellant argues that the weight difference could create a serious doubt in the prosecution case.

It is noted that the Heroin parcel was in the personal custody of PW1 until it reached the Government Analyst Department after it was entered in the PR Register.

In **Mahasarukkalige Chandani v. Attorney General** CA/213/2009 decided on 30/06/2016 His Lordship Justice Malalgoda held that:

> *"As observed by this court the inward journey of a production in a case where the charges are mainly based on the identity and the quantity of productions recovered from the custody of the suspect, the prosecution has a responsibility to establish this aspect of the case without leaving any gaps before the trial court. In this regard the seals said to have been placed on the production at the time the production was handed over to the reserve has a significance. The said seals have to be intact at every point of time the custody is changed and finally it should be observed by the person*

who breaks such seals in order to commence his investigation. If it can be established at least, that the said seals were observed by the receiving officer and the removing officer who removed the production from the police station as intact and by the Government Analyst that he observed the same seal intact, when parcel was opened, that could have been considered as sufficient for this court to conclude that the prosecution has established the inward journey to the satisfaction of court".

In the case **of Koushappis v. The State** of WA [2007] WASCA 26; (2007) 168 A Crim R 51 at para 85 the court held:

"*Whilst the safe custody of critical exhibits such as these ought to be readily proved by clear and specific evidence rather than being left to inference, having regard to the way the case was conducted on both sides, the evidence here was such in my view, as to allow the jury to be satisfied beyond reasonable doubt that the drugs that were analysed… were in fact those seized by police from the appellant's house";*

The judgments cited above clearly demonstrate how important the evidence relating to the chain of custody is in a drug related offence. Further, it provides clear directions as to how that evidence should be presented to the satisfaction of the trial court. Every piece of evidence needs a proper analysis to decide without any doubt where it came from and who had access to it without any deviation in routine practice.

At this stage the learned Additional Solicitor General in keeping with the highest tradition of the Attorney General's Department, conceded that the contradictions and the weight discrepancy would certainly affect the outcome of the case.

Taking all these circumstances into consideration, I am of the view that the conviction of the Appellant cannot be allowed to stand as the prosecution had failed in its duty to prove this case beyond a reasonable doubt. Hence, I set aside the conviction and sentence imposed by the learned High Court Judge of Vavuniya dated 12th July 2023 on the Appellant. Therefore, he is acquitted from this case.

Accordingly, the appeal is allowed.

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

JUDGE OF THE COURT OF APPEAL

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL