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

In the matter of an Appeal under Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the Supreme Court Rules 1990.

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

Complainant

Vs.

1. Indrani Gunasekara
2. Preethi Anton

Presently at Welikada Prison, Colombo

Accused

AND

1. Indrani Gunasekara
2. Preethi Anton

Presently at Welikada Prison, Colombo

Accused- Appellants

Vs.

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

Complainant- Respondent

SC Appeal No: 03/2024

SC/SPL/LA No: 435/2018

Court of Appeal No:
CA/219-220/2013

High Court Colombo:
HC/4887/2009

AND NOW BETWEEN

Preethi Anton
Presently at Welikada Prison,
Colombo

2nd Accused-Appellant-Appellant

Vs.

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

Complainant-Respondent-Respondent

2. Indrani Gunasekara
Presently at Welikada Prison
Colombo

1st Accused-Accused-Respondent

BEFORE:	**Hon. Yasantha Kodagoda, PC, J.** **Hon. K.Kumudini Wickremasinghe, J.** **Hon. Janak De Silva, J.**
COUNSEL:	Kapila Waidyaratne, PC with Akila Jayasundara and Akhila Mathishi instructed by Asela Muthumudalige for the 2nd Accused-Appellant-Appellant. Lakmali Karunanayake, ASG for the Complainant-Respondent-Respondent.
WRITTEN SUBMISSIONS:	By the 2nd Accused-Appellant-Appellant on 14.11.2025 and 22.01.2024.

By the Complainant-
Respondent-Respondent on 09.02.2026 and
15.12.2023

ARGUED ON: 15.10.2025

DECIDED ON: 17.03.2026

K. KUMUDINI WICKREMASINGHE, J.

This is an appeal from a judgment of the Court of Appeal, dated 08.11.2018 which upheld the judgment of the High Court of Colombo, case bearing No: HC/4887/2009 dated 05.11.2013.

The 2nd Accused (hereinafter referred to as the Appellant) was indicted together with the 1st Accused before the High Court of Colombo under the Poisons, Opium and Dangerous Drugs Act No. 13 of 1984 on two counts, namely possession and trafficking of 34.32 grams of diacetylmorphine (heroin) alleged to have occurred on or about 21.05.2000. The prosecution case was that upon receiving information of a suspected heroin transaction at a residence situated at Maligawa Road, Ethul Kotte, Inspector of Police Darshana, accompanied by several police officers, proceeded to the vicinity and conducted a surveillance operation. According to the prosecution, a motor cyclist arrived at the premises and was handed “something” by a person identified as Wasantha Senanayake alias “Wasa.” Thereafter, a woman emerged from the house, and the motor cyclist was said to have handed over a “parcel” to her.

Inspector Darshana testified that he entered the house, followed the woman to the kitchen area, and recovered from her possession a substance suspected to be heroin, which was subsequently confirmed by the Government Analyst to be heroin. The Appellant was identified as the motor cyclist, and it was alleged that a sum of Rs. 27,900/- was recovered from his possession at the time of arrest. No incriminating articles were recovered

from the third individual, Wasantha Senanayake, who was arrested at the scene but was not indicted and was later reported deceased.

At the trial, the prosecution called six witnesses. The Appellant and the 1st Accused made dock statements denying the allegations. The 1st Accused maintained that she was present at the house, which belonged to "Wasa," and was preparing Ayurvedic medicine at the time the police arrived. The Appellant asserted that he had gone to the house to collect a balance payment in respect of a prior sale of electronic items and denied possession of heroin or participation in trafficking. He further denied that any money had been recovered from him. By judgment dated 05.11.2013, the learned High Court Judge convicted both the 1st Accused and the Appellant on both counts and imposed the sentence of death.

Being aggrieved, the Appellant preferred an appeal to the Court of Appeal, which by judgment dated 08.11.2018 affirmed both conviction and sentence. The Appellant thereafter sought an appeal to this Court, contending, *inter alia*, that both the High Court and the Court of Appeal had failed to properly evaluate the evidence in accordance with established legal principles governing proof beyond reasonable doubt. The principal grievance advanced was that the prosecution had not established possession or trafficking by the Appellant, as the only direct evidence implicating him emanated from Inspector Darshana, whose testimony was alleged to be vague, inconsistent, and unsupported by independent corroboration. It was further contended that material contradictions existed among the prosecution witnesses regarding the arrest and the alleged recovery of money, and that the presence and role of Wasantha Senanayake, who was not indicted, created a significant lacuna in the prosecution case. The Appellant asserted that the Courts below had erred in concluding that the alleged "parcel" handed over was the same substance ultimately recovered from the 1st Accused, and in accepting that the prosecution witnesses consistently corroborated one another on the material facts.

This court by order dated 12.12.2023 granted Leave to Appeal on the following questions of law:

1. **Whether the Court of Appeal erred in law and in fact and the Lordships misdirected themselves in deciding that the prosecution had proved this case beyond reasonable doubt.**

2. **Whether the Court of Appeal erred in law and in fact, in determining the culpability of the Petitioner as proved beyond reasonable doubt when considering the evidence pertaining to the person named and referred in evidence as Wasantha Senanayake also known as "Wasa", who is not included in the indictment as a witness or as an accused.**

3. **Whether the Court of Appeal and their Lordships erred in law and in fact, in determining that the witness IP Dharshana's evidence is sufficient to convict the Petitioner, whereas the Lordships had disregarded the *inter se* and *per se* contradictions of the witnesses.**

4. **Whether the Court of Appeal and the Learned Trial Judge erred in law and in fact and their Lordships failed to judicially evaluate the evidence of all witnesses, placed against the Petitioner in an indictment which provide for a capital punishment and thereby caused the miscarriage of justice, in convicting and sentencing him for capital punishment.**

5. **Did the Court of Appeal and the Learned Trial Judge erred in law when it rejected the Petitioners defense of right based on incorrect and wrongful assumptions or misconceptions.**

My analysis hereafter will be confined to examining the aforesaid questions of law based on which leave was granted.

Inasmuch as each of the questions of law upon which leave to appeal has been granted is inextricably connected to the principles governing the law of evidence, in particular, the assessment of testimonial accuracy, credibility, reliability, and the proper application of the standard of proof, it is both appropriate and conducive to clarity that they be considered together. A fragmented analysis would inevitably result in repetition, as the same evidentiary principles underpin and inform each ground advanced by the Appellant. Accordingly, in order to avoid unnecessary duplication and to ensure a coherent and structured determination, I shall address the questions of law collectively, while dealing with their distinct aspects where necessary within that unified framework. Namely:

1. **Whether the Court of Appeal erred in law and in fact and the Lordships misdirected themselves in deciding that the prosecution had proved this case beyond reasonable doubt.**

2. **Whether the Court of Appeal erred in law and in fact, in determining the culpability of the Petitioner as proved beyond reasonable doubt when considering the evidence pertaining to the person named and referred in evidence as Wasantha Senanayake also known as "Wasa", who is not included in the indictment as a witness or as an accused.**

3. **Whether the Court of Appeal and their Lordships erred in law and in fact, in determining that the witness IP Dharshana's evidence is sufficient to convict the Petitioner, whereas the Lordships had disregarded the *inter se* and *per se* contradictions of the witnesses.**

4. **Whether the Court of Appeal and the Learned Trial Judge erred in law and in fact and their Lordships failed to judicially evaluate the evidence of all witnesses, placed against the Petitioner in an indictment which provide for a capital punishment and thereby**

caused the miscarriage of justice, in convicting and sentencing him for capital punishment.

5. **Did the Court of Appeal and the Learned Trial Judge erred in law when it rejected the Petitioners defense of right based on incorrect and wrongful assumptions or misconceptions.**

It was the Appellants contention that the Prosecution had failed to prove beyond reasonable doubt that the alleged parcel or item said to have been in the possession of the Appellant was identified or established in evidence, or that the parcel allegedly recovered from the 1st Accused was the same item purportedly handed over. The Appellant had emphasised that the sole eyewitness to the main incident, Kariyawasam Senadeerage Darshana (PW 01 – IP Darshana), had merely stated that the Appellant handed over "something," without describing its size, colour, shape, wrapping, texture, appearance, or contents, and without making any contemporaneous note of what he had allegedly observed. The Appellant contended that such vague and deficient evidence was incapable of establishing possession, trafficking, or any legally sustainable nexus between the alleged handover and the subsequent recovery. Accordingly, the Appellant had maintained that the Prosecution had failed to discharge the burden of proof required in law.

Secondly, the Appellant contended that the conclusion of the Court of Appeal affirming culpability was unsustainable in law and fact, particularly in view of the Prosecution's reliance on the alleged involvement of "Wasantha Senanayake alias Wasa." According to the Prosecution narrative, this individual had actively participated in the incident, had handed an object to the Appellant, and had even been arrested and produced before the Magistrate at the commencement of investigations. However, he had neither been indicted nor called as a witness, nor even referred to in the indictment. The Appellant had contended that this omission rendered the Prosecution narrative incomplete and legally defective, thereby creating substantial and reasonable doubt.

Thirdly, the Appellant had challenged the alleged recovery of money and the circumstances of arrest, pointing to material contradictions between the evidence of PW 01 – IP Darshana, PW 04 – Anura Somasiri, and PW 02 – Upali Jayaweera. It had been highlighted that PW 04 had claimed to have recovered the money and handed it to PW 01, whereas PW 01 had stated that he himself effected the recovery. Further inconsistencies had arisen regarding the place and manner of arrest. The Appellant had argued that these contradictions went to the root of the Prosecution case and undermined the reliability of the purported corroboration relied upon by the Court of Appeal.

The Appellant had further contended that both the Learned Trial Judge and Their Lordships of the Court of Appeal had failed to apply the heightened scrutiny required in a case where the offence was punishable by death. It had been contended that the Courts below had misdirected themselves by invoking the general principle that a conviction may rest upon the evidence of a single witness, without examining whether the particular testimony of PW 01 – IP Darshana satisfied the requisite standard of cogency, clarity, and reliability. The gravamen of the appeal, it had been stressed, was not the abstract permissibility of single-witness testimony, but the insufficiency and internal inconsistency of the evidence actually led.

Additionally, the Appellant had submitted that the Courts below had misapprehended the dock statement. While the Trial Judge had concluded that the Appellant had not denied the recovery of money, the dock statement had expressly denied possession of any money or incriminating item. It had been contended that this factual misapprehension materially affected the evaluation of the defence and resulted in prejudice. The Appellant had also maintained that the issue of allocutus did not arise for determination in the present appeal, as it had not been raised previously nor formed part of the questions upon which Special Leave had been granted.

The Complainant-Respondent-Respondent (hereinafter referred to as the Respondent) contended that the prosecution evidence, particularly that of

Inspector of Police Darshana, clearly established the essential ingredients of the offences charged. Acting upon prior information that a heroin transaction was to take place at a specified address, Inspector Darshana organised a surveillance operation. From a vantage point approximately ten metres away, he observed the Appellant arrive on a motorcycle, the 1st Accused emerge from the house, and thereafter a parcel being exchanged. The Inspector testified that the Appellant handed over a parcel to the 1st Accused, whom he immediately followed into the house. He observed her attempting to conceal the parcel in the kitchen, whereupon he seized it. The substance recovered was later confirmed by the Government Analyst to contain 34.32 grams of heroin. A sum of Rs. 27,900/- was recovered from the Appellant at the scene. The Respondent submitted that this chain of events, viewed in light of the prior information received and the conduct observed, irresistibly pointed to an ongoing narcotics transaction and fully established possession and trafficking.

With regard to the complaint that Wasantha Senanayake alias “Wasa” had not been indicted, the Respondent submitted that no prejudice had been occasioned to the Appellant. The issue had not been raised at the trial or before the Court of Appeal. The defence had proceeded on the footing that Wasantha was deceased, and the Appellant himself referred to his death in his dock statement. The omission to indict Wasantha, in those circumstances, did not undermine the prosecution case nor vitiate the proceedings.

On the question whether the parcel recovered from the 1st Accused was the same parcel handed over by the Appellant, the Respondent relied on the clear and consistent testimony of Inspector Darshana. The Inspector stated that he saw the Appellant hand over a parcel; that he immediately signalled the raid; that he followed the 1st Accused directly into the house; and that he seized from her the very parcel she had just carried inside. The Respondent maintained that there was no evidentiary gap or inconsistency in this narrative and that the Courts below were entitled to accept that the parcel recovered was the same as that handed over moments earlier.

The Respondent further contended that the conviction did not depend upon impermissible or weak corroboration. It was emphasised that in narcotics prosecutions, corroboration of police testimony was not a legal necessity if, upon careful scrutiny, the trial judge found such evidence credible and reliable. The evidence of Inspector Darshana, it was submitted, remained unshaken in cross-examination and was supported in material particulars by the other officers who participated in the raid. Any alleged contradictions were minor and did not go to the root of the prosecution case.

The suggestion that the heroin had been introduced by the police was described as wholly improbable and unsupported by evidence. The Inspector had categorically denied such an allegation, and no foundation had been laid for it in cross-examination. Equally, the contention regarding the logistics of transporting the suspects was said to be speculative and immaterial, particularly as the Appellant himself had not disputed being arrested at the premises and taken into police custody.

A substantial part of the Respondent's argument addressed the infirmities in the Appellant's dock statement. It was submitted that the Appellant had merely asserted false implication without offering any plausible motive for such fabrication or having taken any steps to complain against the alleged misconduct. Moreover, the Appellant's explanation was said to be internally inconsistent: he initially claimed to have visited the house to recover money relating to the sale of electronic items and to have had nothing in his hand; yet in his allocutus he stated that he had gone to purchase beef liver at the request of Wasantha. These contradictory positions, the Respondent argued, gravely undermined his credibility. Reliance was placed on authority to the effect that admissions made in allocutus formed part of the evidence and could not be disregarded, and that belated defences not put to prosecution witnesses carried no evidentiary weight. The Respondent further submitted that where incriminating evidence was adduced, the failure of an accused to furnish a reasonable explanation entitled the court to draw adverse inferences.

The first and most fundamental question concerns the application of the criminal standard of proof. The submission of learned Counsel for the Appellant is that the Court of Appeal misdirected itself in affirming that the prosecution had discharged its burden beyond reasonable doubt. Such a contention requires this Court to revisit not merely the evidentiary facts but the doctrinal content of the standard itself.

It is trite law that the burden of proof rests throughout upon the prosecution and never shifts. The presumption of innocence is not an abstract principle but a substantive protection which obliges the prosecution to establish each essential ingredient of the offence with that degree of certainty which the law characterises as proof beyond reasonable doubt. In ***Miller v. Minister of Pensions*** **(1947) 2 All E.R. 372** 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"

In the case of ***Sivathasan v Honourable Attorney General*** **[2021] 2 Sri.L.R. 290 at pp. 304, 305, 313 by His Lordship Yasantha Kodagoda PC, J,** the nature, effect and the impact of 'reasonable doubt' has been explained in the following manner:-

> *"As regards the standard of proof to be satisfied in a criminal case, there is no doubt that the prosecution must prove its case beyond reasonable doubt. However, one must take a realistic and pragmatic view of what can be*

reasonably expected of a prosecution. It is important in my view to bear in mind that a prosecution cannot be expected to prove its case to a degree of mathematical accuracy or scientific certainty. The degree of accuracy and certainty that a prosecution can be reasonably expected to satisfy is much less. That is quite natural, as prosecutions have to rely primarily on human testimony, which is subject to inherent frailties associated with human observations, memory, recollection, and verbal articulation through oral testimony....

A reasonable doubt is a real or actual and a substantial doubt, as opposed to an imaginary or flimsy doubt that may arise in the mind of the decider of facts (judge or the jury, as the case may be), following an objective consideration of all the attendant facts and circumstances. It is a doubt founded on logical and substantial reasoning (well-founded) which a normal prudent person with not less than average intelligence and learnedness in men, matters and worldly affairs would naturally and inevitably develop in his mind following a comprehensive, objective, independent, impartial and neutral consideration of the totality of the evidence and associated attendant circumstances. It is a doubt that makes the case for the prosecution significantly less probable to have occurred than in the manner purported to have occurred.

A reasonable doubt is not the type of doubt that arises due to incorrect, abnormal or unreasonable comprehension of testimonies and other material which amount to evidence presented at the trial, or due to irrational fear, inappropriate sympathy, or unjustifiable mercy. It is not a doubt that develops in the mind of an imbecile, indecisive or timid persons, or in a weak or vacillating mind. A shadow of a doubt, an imaginary doubt, a vague doubt or a speculative

or trivial doubt should not be confused with a reasonable doubt. A reasonable doubt is not a doubt that a partisan individual with vested interests would entertain in his mind, or a doubt that such a person would advocate that purportedly exists."

In the same above mentioned judgement by Justice Yasantha Kodagoda his Lordship has referred to **Marcus Stone in Proof of Fact in Criminal Trials (Published by W. Green & Son, 1984 at page 354)**, has explained what proof beyond reasonable doubt is in the following manner:

"The tribunal of fact could not convict unless it was actually convinced of guilt to that extent it must believe in the reality of guilt. A mere Mechanical comparison of probabilities, however strong this might point to guilt, would not be enough. The criterion is human and not mathematical it is a judgement that the facts are established.

The phrase beyond reasonable doubt is the essential verbal formulation which has been devised by law to express the necessary standard of belief for criminal conviction. Attempts improve on or to elaborate on that formulation are discouraged by appeal courts. The phrase appears to be as precise as any other words which could be substituted for its proof facts in court inevitably falls short of absolute certainty."

The jurisprudence thus recognises that the criminal standard is neither metaphysical nor absolute. It does not demand elimination of speculative possibilities; it demands the exclusion of rational doubt arising upon a fair and comprehensive assessment of the evidence. A doubt which is fanciful, remote, or unsupported by evidentiary foundation does not attain the dignity of a reasonable doubt in law.

In the specific context of narcotics prosecutions, this Court in ***Attorney General v Pujith Senadhi Bandara Jayasundara*** **SC/TAB Appeal No.**

05/2023 (Judgment dated 9th June 2025) has clarified the evidentiary structure required to sustain a conviction:

> *"What is necessary is for each of the above-mentioned six (6) requirements to be established through the testimony of credible witnesses whose testimony is trustworthy. A comforting factor for a trial court (which would not be essential, should the primary evidence be reliable and cogent), would be the existence of some form of reliable corroborative evidence. The making of accurate, contemporary and detailed notes and other official entries and corroborative human testimony, photographs or videography would serve this purpose. In the final analysis of the evidential integrity of the chain of evidence relating to the productions, it would be necessary for the court to pay due regard to the position of the defence which may be manifest by the lines of cross-examination of prosecution witnesses, suggestions made to prosecution witnesses and evidence presented by the defence."*

The present case must therefore be analysed by reference to whether the prosecution established an unbroken and reliable evidentiary chain linking observation, seizure, and forensic confirmation. The evidence of IP Darshana established that the Appellant arrived at the *locus in quo*, engaged in an exchange of a parcel with the 1st Accused, and that this was followed by immediate intervention without temporal interruption. The parcel observed being exchanged was recovered almost contemporaneously. It was sealed, produced before court, and subjected to analysis by the Government Analyst, whose report confirmed that it contained 34.32 grams of heroin.

The Appellant's principal criticism is that the parcel was initially described in evidence as "something." This submission, when examined in legal perspective, misconceives the nature of evidentiary identification. Identity of an object may be established either by descriptive particularity or by continuity of custody. The law does not insist upon instantaneous linguistic precision if continuity and integrity of seizure eliminate the possibility of

substitution. The evidentiary record discloses no hiatus between the observed exchange and the seizure. There is no suggestion of tampering, delay, or intervening opportunity for alteration.

A reasonable doubt must arise from evidentiary deficiency, not from conjectural abstraction. When the chain of custody is intact, when the recovery is immediate, and when the forensic analysis confirms the nature of the substance, the law does not require the court to speculate upon hypothetical alternatives.

The Court of Appeal correctly directed itself to the totality of the evidence and did not isolate trivial matters from their evidentiary context. There is no misdirection in its articulation or application of the standard of proof. On the contrary, its conclusion is firmly anchored in established principle. The prosecution proved each essential element of the offence with that degree of certainty required by law.

The second question concerns the legal consequence of the prosecution's failure to indict or call as a witness the person referred to in evidence as Wasantha Senanayake alias "Wasa." The Appellant contends that this omission renders the prosecution narrative incomplete and thereby creates a reasonable doubt.

The law does not require the prosecution to indict every person mentioned in evidence nor to call every individual who may have knowledge of the transaction. The prosecutorial discretion in selecting charges and witnesses is subject only to the overriding requirement of fairness and absence of prejudice. The decisive inquiry is whether the omission creates a material lacuna in proof of the essential ingredients of the offence.

The offence charged required proof that the Appellant was knowingly in possession of and engaged in trafficking a prohibited narcotic substance. The prosecution's case was established through direct observation of the exchange and immediate recovery of heroin from the recipient of that exchange. The culpability of the Appellant was individual and self-contained

within those acts. The law does not condition individual criminal liability upon proof of the entire commercial hierarchy underlying a transaction.

Furthermore, the defence itself referred to Wasantha as deceased. The law cannot require the indictment of a deceased person. Nor can it attribute evidentiary prejudice to the non-calling of a witness who is unavailable by reason of death. To treat such absence as fatal would elevate procedural form over substantive justice.

The essential elements of the offence were proved without reliance upon Wasantha's testimony or indictment. There is no missing evidentiary link. The omission neither undermines the integrity of the prosecution case nor creates a rational doubt as to the Appellant's conduct.

The Court of Appeal was therefore correct in concluding that no prejudice arose and that the conviction is not vitiated by the non-indictment or non-calling of the said individual.

The third question invites consideration of the weight accorded to the testimony of a single witness and the legal effect of inter se and per se contradictions.

Section 134 of the Evidence Ordinance unequivocally provides that no particular number of witnesses shall be required for proof of any fact. The principle was succinctly stated in ***Sumansena v. Attorney General*** **[1999] 3 Sri L.R. 137**:

> *"Evidence must not be counted but weighed."*

The jurisprudence has consistently recognised that a conviction may lawfully rest upon the evidence of a single witness if that evidence is credible and reliable. In ***R. v. H.C.*** **[2009 ONCA 56]**, the distinction between credibility and reliability was expressed in these terms:

> *"Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages*

consideration of the witness's ability to accurately observe, recall and recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence"

Thus, the judicial task involves assessing both the truthfulness of the witness and his capacity to accurately observe, recall, and recount.

IP Darshana testified that he observed the transaction from approximately ten metres away. His vantage point, proximity, and immediate intervention were all matters explored in cross-examination. No material impairment of observation was demonstrated. The recovery followed immediately upon observation. The forensic evidence corroborated the nature of the substance recovered.

The alleged contradictions among prosecution witnesses concern peripheral details, particularly relating to the handling of money. The jurisprudence recognises that minor inconsistencies are natural in human testimony. Uniformity in trivial detail may be indicative of contrivance rather than truth. What the law guards against are contradictions which strike at the substratum of the prosecution case.

In the case of the ***State of Uttar Pradesh vs. M. K. Anthony AIR 1985 SC 48*** held that*;*

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view of the deficiencies, draw-backs and infirmities pointed out in evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it

unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. … Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals…"

The core facts here of exchange, pursuit, seizure, sealing, forensic confirmation, remain unshaken. The Trial Judge, who had the advantage of observing demeanour, expressly evaluated the contradictions and found them immaterial. The Court of Appeal independently reviewed that assessment.

An appellate court does not substitute its own impressions unless there is demonstrable misdirection or perversity. No such misdirection is shown. The conviction resting substantially upon the testimony of IP Darshana is therefore consistent with both statute and precedent.

The fourth question of law compels this Court to consider whether, in a prosecution carrying the ultimate penalty of capital punishment, the Trial Court and the Court of Appeal discharged the enhanced judicial responsibility imposed by the gravity and irreversibility of the sentence. It is beyond controversy that capital cases occupy a distinct position within criminal jurisprudence. The imposition of the death penalty, by its very nature, demands not merely correctness but demonstrable certainty that the conviction rests upon sound evidentiary and legal foundations. The standard of proof remains proof beyond reasonable doubt; however, the judicial vigilance required in testing whether that standard has been satisfied is necessarily exacting.

It is essential to clarify at the outset that "heightened scrutiny" does not signify the introduction of a novel evidentiary threshold, nor does it mandate proof beyond a standard higher than that which the law already prescribes. Rather, it requires the Court to subject the entirety of the evidentiary record to a disciplined and searching analysis, ensuring that no assumption substitutes for proof, no inference is drawn without evidentiary foundation, and no material contradiction is left unresolved. The scrutiny is qualitative in its depth, not quantitative in its standard.

In the present case, the record reveals that the Learned Trial Judge did not approach the matter perfunctorily or mechanically. The judgment demonstrates a sequential evaluation of the prosecution witnesses, including careful consideration of cross-examination, the internal consistency of testimony, and the corroborative value of the forensic evidence. The chain of custody of the narcotic substance was not accepted at face value but examined link by link, with attention directed to seizure, sealing, production, and analysis. The dock statement of the Appellant was not dismissed summarily but expressly weighed against the prosecution case.

The Court of Appeal, in turn, did not confine itself to a superficial endorsement of the trial court's conclusions. It re-examined the evidentiary matrix, addressed the alleged contradictions, and articulated reasons for affirming the findings of fact. It is well established that an appellate court must exercise caution before disturbing concurrent findings of fact unless satisfied that such findings are unsupported by evidence, vitiated by misdirection, or manifestly unreasonable.

The principle enunciated in ***Onassis v. Vergottis*** **[1968] 2 Lloyd's Report 403** is of enduring relevance. There it was observed that a trial judge possesses a *"very great advantage"* in having seen and heard the witnesses and having experienced the *"truer atmosphere of the trial."* The appellate function is therefore corrective, not substitutive. It intervenes only where the judgment cannot reasonably stand. In a capital case, this principle assumes

particular importance, for heightened scrutiny does not equate to appellate re-trial; it requires the appellate court to ensure that the evidentiary appreciation was rational, comprehensive, and legally directed.

The Appellant has not demonstrated that the Trial Judge misdirected himself as to the burden or standard of proof, nor that he overlooked material evidence, nor that he drew impermissible inferences. The gravity of the sentence, while demanding solemnity and care, does not authorise this Court to create doubt where the evidence discloses none. The ultimate question is whether, after the most careful and anxious review, a reasonable doubt remains. Upon examination of the record in its entirety, and in light of the settled principles governing appellate intervention, no such doubt emerges.

Accordingly, it cannot be said that the Courts below failed to exercise the heightened scrutiny demanded in a capital prosecution. On the contrary, the judgments reflect a structured, reasoned, and disciplined evaluation consistent with the solemn responsibility imposed by the law.

The fifth question concerns the legal propriety of the rejection of the Appellant's defence and, in particular, the manner in which the learned trial Judge evaluated the dock statement. The principles governing the evidentiary value of a dock statement are well settled in our jurisprudence. In ***Gunasiri and two others v. Republic of Sri Lanka*** **2009 (1) Sri L.R. 39**, it was authoritatively held:

> *"If the dock statement is believed it must be acted upon. If it creates a reasonable doubt the defence must succeed."*

This formulation affirms that although a dock statement is unsworn, it nevertheless constitutes evidence which must be judicially evaluated. It is not to be disregarded merely because the accused has chosen not to testify on oath; rather, its probative force depends upon the weight to be attached to it upon a consideration of the totality of the evidence.

The approach to such evaluation was further elucidated in ***Sarath v. Attorney General*** **(2006) 3 Sri L.R. 96**. The Court emphasized that a dock statement cannot be considered in isolation. The trial judge, being fully apprised of the prosecution case, must assess the dock statement alongside the prosecution's narrative and the entirety of the evidence adduced at trial. The credibility and weight of a dock statement can only be properly assessed by examining how it aligns with, explains, or contradicts the prosecution evidence. Thus, the acceptance or rejection of a dock statement requires a holistic evaluation of the case as a whole, and not a compartmentalised or fragmented analysis.

In ***Rupasinghe v. Attorney General*** **(1986) 2 Sri L.R. 329**, the Court of Appeal examined both the probative value of the dock statement and the infirmities inherent in it. The Court took into account the appellant's failure to mention the exculpatory version at the earliest opportunity. However, it was made clear that the appellant's silence during the investigative stage could not be treated as corroboration of the evidence against him, nor could an inference of guilt be drawn solely from such silence. This decision underscores that while omissions and inconsistencies may affect weight, they do not, without more, justify the wholesale rejection of a dock statement.

The classical exposition of the evidentiary character of a dock statement is found in ***The Queen v. Kularatne*** **[1968] 71 NLR 529**, where it was observed that such a statement must be regarded as evidence "subject to the infirmity that the accused had deliberately refrained from giving sworn testimony." The identified infirmity does not render the statement inadmissible; rather, it affects the weight to be attached to it. The Court must therefore exercise caution, but not prejudice, in its evaluation.

Similarly, in ***Ehelepola v. Officer In Charge, Police Station, Kandy and Another*** **(1998) 1 Sri L.R. 295**, the Supreme Court held that the Magistrate had misdirected himself in stating that the dock statement had no evidentiary value. The Court reaffirmed that an unsworn statement from the

dock must be considered as evidence, albeit subject to the infirmity that the accused refrained from giving sworn testimony, and that if such a statement is believed, it must be acted upon.

Judicial scrutiny of dock statements also extends to testing their truthfulness and consistency against the surrounding circumstances. In ***Ehelepola v. Officer In Charge, Police Station, Kandy and Another***, it was further observed that where the dock statement constitutes the sole version put forward by the accused, the trial court is obliged to examine it carefully in light of the prosecution evidence. If, upon such scrutiny, the statement is found to be false or inherently improbable, the accused may be held not to have discharged the evidential burden resting upon him in respect of any defence advanced.

The cumulative effect of these authorities, read together with the observations of this Court in ***MMK Dissanayake v Director General, Commission to Investigate Bribery and Corruption and the Attorney General*** **(SC APPEAL No 160/2017, decided on 21st November 2023)**, establishes a number of settled principles governing the judicial evaluation of dock statements in criminal trials.

First, a dock statement, though unsworn, constitutes evidence and must therefore be judicially evaluated by the court. As observed by His Lordship Yasantha Kodagoda PC in the aforesaid decision, an accused person in a criminal trial enjoys an unfettered entitlement to choose the manner in which he elects to present his defence. His Lordship stated that *"An Accused does have an entitlement at a criminal trial to choose (i) to remain silent, (ii) to give evidence under oath from the witness box, (iii) to make an unsworn statement from the Dock…"*. The making of a dock statement is therefore a recognised procedural entitlement within the framework of criminal justice and cannot be disregarded merely because it is unsworn.

Second, a dock statement must not be considered in isolation but must be assessed in conjunction with the entirety of the prosecution case and the totality of the evidence placed before court. The judicial function requires

the trier of fact to determine whether the contents of the dock statement meaningfully address the incriminating circumstances established by the prosecution and whether, when viewed against the evidentiary matrix as a whole, the statement carries the ring of truth.

Third, the infirmity arising from the absence of oath affects the weight to be attached to the statement rather than its admissibility. In this regard, His Lordship Yasantha Kodagoda PC emphasised that while a dock statement must indeed be treated as evidence, *"the evidential weight that may be attached to a Dock Statement is much less than the weight that may be attached to evidence given under an oath or affirmation."* This diminished evidentiary value arises from the fact that the statement is not subject to cross-examination and is not made under the solemn obligation of oath.

Fourth, if upon careful judicial scrutiny the dock statement is believed, it must be acted upon by the court. Even where the court does not wholly accept the contents of the statement, if it raises a reasonable doubt in relation to the prosecution case, the accused becomes entitled to the benefit of that doubt and must be acquitted. The decisive inquiry remains whether the prosecution has discharged its burden of proving guilt beyond reasonable doubt.

Fifth, the silence of an accused person at the investigative stage or his election not to testify at the trial on oath cannot, by itself, justify the drawing of an adverse inference of guilt. As underscored in the judgment of His Lordship Yasantha Kodagoda PC, the accused enjoys *"an unfettered right to remain silent"*, and the exercise of that right forms an integral component of the safeguards inherent in a fair criminal process. Indeed, there can be circumstances under which adverse inference can be drawn.

Sixth, notwithstanding the foregoing safeguards, the trial court retains the authority, and indeed the duty, to reject a dock statement where, upon careful scrutiny, it is found to be false, inconsistent with established facts, or inherently improbable.

In adopting a pragmatic approach to the administration of criminal justice, His Lordship Yasantha Kodagoda PC observed that when an accused elects to make a dock statement rather than give sworn testimony, the court is entitled to consider the circumstances underlying that choice, including the possible *"unwillingness to take an oath or affirmation… unwillingness to face cross-examination… [or] to prevent the contents of the Dock Statement being compared and contrasted during cross-examination with other… admissible statements"* and arrive at necessary inferences. Consequently, while a dock statement must be treated as evidence, the trier of fact is entitled to assess the credibility of the accused and its testimonial trustworthiness with due caution and attach to it only such evidential weight as it deserves in the circumstances of the case.

The judicial task, therefore, must be undertaken in light of the foregoing principles. The court is first required to consider whether the maker of the dock statement (the accused) has credibility, second, determine whether the dock statement possesses sufficient testimonial trustworthiness when evaluated against the totality of the evidence placed before it. Thirdly, even where the court does not wholly accept the contents of the statement, it must determine whether the statement nevertheless raises a reasonable doubt in relation to the prosecution case. The decisive inquiry remains whether the prosecution has discharged its burden of proving the guilt of the accused beyond reasonable doubt. In that context, the rejection of a dock statement or a defence advanced therein would amount to legal error, where such rejection is founded upon speculation, a misapprehension of the evidence, or a misdirection in law. Where, however, the trial court has carefully evaluated the statement in the context of the entire evidentiary record and has given cogent reasons for rejecting it as improbable, inconsistent, or lacking in credibility and/or testimonial trustworthiness, an appellate court would be slow to interfere with such a determination.

In the present case, the Appellant denied culpability. However, the denial was not accompanied by a coherent alternative narrative capable of displacing the prosecution evidence. The prosecution case rested upon

direct observation of an exchange, immediate interception, recovery of heroin, and forensic confirmation. The dock statement did not provide a plausible explanation reconciling these objective facts with innocence. It did not address the observed exchange in a manner consistent with the evidence; nor did it account for the temporal proximity between that exchange and the seizure.

Of particular significance is the principle that where a defence intends to rely upon a particular version of events, fairness and procedural integrity require that such version be put to prosecution witnesses in cross-examination. This is not a mere technicality; it ensures that witnesses have the opportunity to respond and that the court may assess the competing narratives in a structured evidentiary framework. In the absence of such confrontation, a dock statement introduced for the first time at the conclusion of the prosecution case inevitably carries diminished weight.

The Learned Trial Judge did not reject the defence on assumption. He measured it against the objective evidence and found it lacking in persuasive force. He did not reverse the burden of proof; he did not demand corroboration of the dock statement as a condition of acceptance. Rather, he assessed whether, in light of the entire record, the statement created a reasonable doubt. He concluded that it did not.

The Court of Appeal reviewed that assessment and found no misdirection. The rejection of the defence was not predicated upon misconception but upon rational evidentiary comparison. The dock statement, when juxtaposed with the prosecution evidence and considered in light of its unsworn character and the absence of prior confrontation in cross-examination, did not generate a doubt which a reasonable tribunal, properly directed, would entertain.

In these circumstances, it cannot be said that the defence was rejected on incorrect assumptions or wrongful legal premises. The evaluation accords with the principles articulated in *the* jurisprudence of this court and the conclusion reached is legally sustainable.

In appellate adjudication, conclusions must be reasoned, not asserted. When the totality of the evidence is evaluated in light of settled principles governing burden of proof, credibility assessment, prosecutorial discretion, appellate deference, and the consideration of dock statements, it becomes manifest that the Court of Appeal neither misdirected itself in law nor erred in fact.

There exists no material contradiction undermining the substratum of the prosecution case, no lacuna arising from the omission relating to Wasantha, no failure of heightened scrutiny, and no improper rejection of the defence.

Accordingly, each of the five questions of law on which leave has been granted are answered in the negative. The conviction and sentence of the High Court of Colombo and the Judgment of the Court of Appeal are hereby affirmed.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda PC, J.
I agree.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.
I agree.

JUDGE OF THE SUPREME COURT