

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

In an application for Special Leave to
Appeal under and in terms of Article
128 of the Constitution of Democratic
Socialist Republic of Sri Lanka.

SC/APPEAL/41/2022

SC SPL LA No. 215/2019

CA Appeal No: CA 12/2013

HC Colombo Case No: 4818/2009

Hon. Attorney General on behalf of
the Democratic Socialist Republic of
Sri Lanka.

Complainant

Vs.

Mohottige Ajith Anuruddha

Accused

AND BETWEEN

Mohottige Ajith Anuruddha

Accused-Appellant

Vs.

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

Complainant-Respondent

AND NOW BETWEEN

Mohottige Ajith Anuruddha
No: 312/68, Madampitiya Road,
Colombo 14.
(Presently at Welikada Remand Prison)

Accused-Appellant-Petitioner

Vs.

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

Complainant-Respondent

-Respondent

Before : Janak De Silva, J.
Dr. Sobhitha Rajakaruna, J.
Menaka Wijesundera, J.

Counsel : Rienzie Arseculeratne PC with Chamindri Arseculeratne
instructed by Premier Legal Consultants for the
Appellant.
Madhawa Tennakoon DSG for the Complainant-Respondent-
Respondent.

Written
Submissions : Latest written submissions on behalf of the Appellant on
the 10th April 2026.

Argued on : 27.01.2026

Decided on : 08.05.2026

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 9th of May 2019 of the Court of Appeal. The appellant in the instant matter had been indicted in the High Court of Colombo on two counts, and they are as follows.

- i) For being in unauthorized possession of 63.5 grams of heroin, an offence punishable under Section 54A(d) of the Poisons, Opium and Dangerous Drugs Act (hereafter referred to as POD)**
- ii) For illegally trafficking the above quantity of heroin, an offence punishable under Section 54A(b) of the POD Act.**

The appellant had been convicted on both counts and had been imposed with a life imprisonment in the High Court.

When this matter had been supported for leave before this court, leave had been granted on the following questions of law,

- i) Whether the Court of Appeal erred in law by applying the principle laid down in the case of **R v Wallwork 42 Cr. App. 153, CCA** that “*the lack of precision as to place in the particulars did not invalidate the indictment because the place of commission of offence was not material to the charge*” in considering the submission that the place of offence set out in the indictment namely “Madampitiya Road” is consistent with the defence taken.
- ii) Whether the Court of Appeal erred in fact by holding that Liyanage gained entry to my house through the rear entrance of the house, because there is no rear entrance according to the evidence of Liyanage and Liyanage in fact gained entry through a small window at the rear of the house by scaling a grill.
- iii) Whether the Court of Appeal erred in fact by holding that the changes affected to the mileage record in the out entry of Liyanage leaves no room to doubt regarding the place and the date material to my arrest

as I in my dock statement admitted being arrested in my house at Madampitiya Road without satisfying themselves as to whether I was arrested at the place and date material to the possession of heroin.

- iv) Whether the Court of Appeal erred in fact and in law by failing to consider the delay of 02 days from 09.04.2005 to 11.04.2005 for Liyanage to hand over the productions to the officer in charge of productions, Rajakaruna, casts a reasonable doubt on the case of the prosecution in the light of the fact that the Learned High Court Judge's refusal of an application made by the defence to direct witness Rajakaruna to bring the relevant books to Court and testify with regard to his availability or non-availability at the PNB on the 09th and 10th April 2005

And in addition, there had been another question of law framed and that is,

Did the Court of Appeal err in law by not holding that the prosecution has failed to prove the case beyond reasonable doubt?

The case for the prosecution had been that, upon an information received by the Police Narcotics Bureau (PNB), a raid had been organized on the date of the offence at 15.30 hours. The team had left to the location in question, at Madampitiya, at 3.40 p.m. from the PNB Fort. They had gone through the Reclamation Road, Kochchikade, Modara, Aluthmawatha, and Madampitiya Road towards the Muslim Mosque at Madampitiya. The evidence is that the group of officers had entered the house of the appellant through the back side of the house and had entered the living room through the kitchen.

Upon entering the living room, the officers had seen a person seated on a sofa and had been seen engaging in some activity. As soon as he had seen the officers, he had got excited and had thrown a parcel towards the door, which had been closed. The substance inside the parcel had been splashed all over the room and the officers had suspected it to be a narcotic substance. Therefore, they had immediately handcuffed him, and had taken him into custody. Thereafter, they had searched the entire house.

The brown-coloured powder which had been thrown by the suspect had been scattered all over the floor. Five cellophane bags had been found near the door, close to the suspect. A small electronic weighing scale had also been found at the scene. There had been a bag wrapped in cellophane, with one side open, which had contained a powder, which they suspected to be a narcotic substance. The packages taken into custody from this place, which the officers had

suspected to have contain a substance similar to heroin, were seized, and the suspect had been identified to be Mohottige Ajith Anurudda. He had been arrested and taken into custody.

Apart from this suspect, there had been his mother, his wife, and a small child in the house. The officers at the scene had collected the powder scattered at the scene and had collected the parcel of cellophane that was lying on the ground. The team of officers had come back to the PNB office at 6.05 p.m., and the weighing and the sealing of packages had taken place thereafter.

According to the submissions made by the learned President's Counsel who appeared for the appellant, the particulars of the indictment regarding the place of offence, as described in count 1 and count 2, is Madampitiya road.

However, the particulars of the offence in relation to the detection that led to the trial had been to the effect that it was found in the house of the accused situated near the mosque alongside the Madampitiya road.

This submission had been considered by the Court of Appeal in view of the principle laid down in **R v Wallwork, 42 Cr. App. R 153, CCA**, which held that:

“The lack of precision as to place in the particulars did not invalidate the indictment because the place of the commission of the offence was not material to the charge”

It was further submitted by the learned President's Counsel that the narrative of the defence, that the heroin had been discovered at Madampitiya Road, is in accordance with the particulars of the charge which state that the parcel of heroin was found in Madampitiya Road. But as stated above, in view of the principle laid down in the above-mentioned case, it is my opinion that exact precision with regard to the place of incident is not material to the charge, hence I see no merit in the said submission.

Another point raised by the learned Presidents Counsel for the appellant was that the speedo-meter of the vehicle used in the conducting of the raid had been tampered with.

According to the evidence of PW1, the vehicle bearing No. HC 2317 had been used in the detection, and vehicle No. HC 2318 had been used to produce the appellant before the Magistrate of Maligakanda. With regard to the tampering of the running chart, the witness had explained the meter readings of the vehicles as per the IB extracts. The last digits of HC 2317 and the last two digits of HC 2318 had been tampered with and substituted by different numbers, which is

not clearly visible to the naked eye. The number in the copy of the IB extracts of vehicle no. HC 2317, obtained by the State Counsel, records the meter reading at the commencement of the journey as 44674, and the return journey reads the meter as 44688, which indicates the total distance travelled by HC 2317 is 14 kilometers.

The meter reading of vehicle HC 2318 cannot be seen clearly to the naked eye due to the substitution of the existing number. The witness had conceded the fact that, at the commencement of the journey the meter reading had been 44504, and at the end of the journey the meter reading had been 44510, but the prosecution had not given an explanation for this discrepancy.

The appellant, in his dock statement, had stated that he had been arrested while he had been in his house at Madampitiya Road. The appellant had further contended that, soon after his arrest, he had been taken to the PNB office in a Jeep and thereafter in the next day, he had been produced before the Maligakanda Magistrate. Therefore, the purpose of the submission of the learned President's Counsel was to bring the attention to the Court that the discrepancies in the above-mentioned vehicle meter readings, which had been involved in the raid conducted against the appellant, and which allegedly caused serious doubt as to the authenticity and truthfulness of the raid.

However, it has been very correctly pointed out by the learned judges of the Court of Appeal that it is a matter which should, in fact, cause serious concerns as with regard to departmental procedures. Nevertheless, taking into consideration the stand taken by the appellant in his dock statement, with regard to his place of arrest, it in fact corroborates the version of the prosecution and removes all possible doubts with regard to the place and date of the arrest of the appellant.

Therefore, I am of the view that the learned judges of the Court of Appeal had very correctly held that it has caused no serious doubt in the case for the prosecution.

The next ground urged by the learned President's Counsel was that, the judgment delivered by the learned High Court Judge was in contravention of **Section 203 of the Code of Criminal Procedure (No. 15 of 1979)**, which reads as follows:

When the cases for the prosecution and defence are concluded, the Judge shall forthwith or within ten days of the conclusion of the trial record a verdict of acquittal or conviction giving his reasons thereof, and

if the verdict is one of conviction pass sentence on the accused according to law.

Therefore, according to the above section, the verdict must be recorded within 10 days of the conclusion of the trial.

The learned President's Counsel submitted that the trial had been concluded on 19.08.2010 and the judgement had been delivered on 22.01.2013, after a lapse of over one year, which he contended was unfair by the appellant.

However, as observed by the learned judges of the Court of Appeal at page 09 of their judgment, due to the transfer of the presiding judge, his successor had requested the Hon. Chief Justice to nominate him to continue with the case. Therefore, the said judge had been nominated, and he had concluded the case on 24.02.2012. Therefore, it is quite obvious, as observed by the learned judges of the Court of Appeal, that administrative defects in the judiciary had caused a delay in delivering the judgment. Upon consideration of the above section, it has been laid down in our legal precedence, that the above quoted section is only directory and not mandatory.

The case of ***Singha Ranatunga v The State; (2001) 2 SLR 172*** held that, ***'despite the large volume of evidence to be considered, the trial Judge with commendable speed has delivered, his verdict giving reasons. Provisions of Section 203 CPC are directory and not mandatory. This is a procedural objection that has been imposed on the court and its non-compliance would not affect the individual's rights unless such compliance occasions a failure of justice.'***

The reply given by the learned Deputy Solicitor General, who appeared for the respondent, is that the initial proceedings of this case had been held inside the Welikada Prison, and later only it had been transferred to High Court No.07 in Hulftsdorp. He had pointed out that, according to page 567 of the appeal brief, it had been the counsel for the defence who had made the application that the same judge should continue hearing the case (19.08.2010)

Therefore, it is my opinion, as observed by the learned judges of the Court of Appeal, that this has caused no injustice to the appellant, and therefore the said ground of appeal is therefore rejected.

Another contention put forward by the learned President's Counsel was that certain proceedings in the brief are not available but I observe that, and so has the judges of the Court of Appeal, that the numbering of the appeal brief as with

regard to the proceedings appear to be correct, and both sides possess the same brief. Therefore, there is no prejudice caused to either party.

Therefore, in view of the above grounds raised by the learned President's Counsel, I see no ground to conclude that the findings of the Appellate Court judges should be reversed.

Lastly, the learned Presidents Counsel for the appellant contended that the prosecution has not proved its case beyond a reasonable doubt.

It is a well-established principle that when a party levels a criminal allegation against a person, the party levelling the said allegation has to prove it beyond a reasonable doubt but, proving a case beyond reasonable doubt. But proving a case beyond a reasonable doubt does not mean that it must eliminate all possible doubts as stated in the case of *Miller v Minister of Pensions (1947) 2 All E.R. 372* where the court held that:

“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 a reasonable doubt, but nothing short of that will suffice”.

Therefore, in view of the material stated above I find that the prosecution had proved its case beyond a reasonable doubt especially in view of the charges that has been levelled against the appellant.

The appellant has been indicted for exclusive possession and trafficking of heroin and in view of the evidence led at the trial the prosecution has led evidence to prove that the alleged substance at the time of detection was in the exclusive possession of the appellant and no one else and also taking in to consideration the evidence of the activities the appellant had been engaged in at the time of the detection also proves that the he was engaged in the offence of trafficking of the heroin taken into custody.

I also like to state at this stage that the findings of a trial judge should not be reversed unless for a very good reason because the trial judges have the priceless opportunity of observing the demeanor and the deportment of the witnesses which the appellate courts do not have, and this has been held so in our legal precedence many times.

At this point I like to draw my attention to the case of ***Alwis vs Piyasena Fernando 1993 1SLR 112*** where it has been held by Justice G.P.S. De Silva that “it is well established that findings of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed on appeal”.

In the case of *De Silva and others vs Seneviratne and another 1981 2 SLR 07* it has been held by Justice Ranasinghe that “where the trial judges’ findings on questions of fact are based upon the credibility of witnesses, on the footing of the trial judge’s perception of such evidence, then such findings are entitled to great weight and the utmost consideration...”.

Hence, in the matter at hand, I observe as stated above that all the witnesses of the prosecution have been subjected to lengthy cross-examination but the trial judge has observed that there is no serious doubt in the case for the prosecution to set aside such evidence.

As such, I answer all the questions of law stated above in the negative and dismiss the instant appeal, while affirming the judgment of the Court of Appeal and dismiss the instant appeal.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT