

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

**In the matter of an Appeal in terms of  
Section 320 of the Code of Criminal  
Procedure Act No. 16 of 1979.**

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

Court of Appeal  
**Case No. CA HCC 114/2022**

**Complainant**

Vs.

High Court of Colombo  
**Case No. HC/5802/11**

Thangavelu Nimalan

**Accused**

**AND NOW BETWEEN**

Thangavelu Nimalan

**Accused-Appellant**

Vs.

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

**Complainant-Respondent**

**Before:**     **B. Sasi Mahendran, J.**  
                  **Amal Ranaraja, J.**

**Counsel:**    Suranga Bandara for the Accused-Appellant.

                  Azard Navavi, A.S.G. for the Respondent.

**Argued on:**    13.02.2026

**Judgment on:** 20.03.2026

## **JUDGMENT**

**AMAL RANARAJA, J.**

1. The accused appellant (hereinafter referred to as the “appellant”) has been indicted in the High Court of Colombo in High Court case number HC/5802/11.

The charge in the indictment is as follows:

That on or about August 20, 2009, in *Ratmalana* in the district of *Colombo*, within the jurisdiction of this Court, the appellant possessed or had under his control, around 02 kilograms of high explosives “RDX”, and thereby committed an offence punishable in terms of Regulation 36(1) of the Emergency Regulations published in the Extraordinary Gazette of the Democratic Socialist Republic of Sri Lanka No. 1405/14 dated August 13, 2005, issued by the President under section 5 of the Public Security Ordinance.

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charge and sentenced him to a term of life imprisonment.
3. The appellant aggrieved by the conviction, disputed judgment, together with the sentencing order has preferred the instant appeal to this Court.

### **Case of the prosecution**

4. On August 20, 2009, PW01, *Chief Inspector of Police, Ruwan Prasanna Alwis* who was the Officer-in-Charge of the Terrorist Investigation Division at the time, has arrested an individual named '*Nadesan Kugadasan*' in the course of an investigation into terrorist activities.
5. During questioning he has disclosed information concerning the appellant, *Thangavelu Nimalan* alias *Selvam*. Based on the information, PW01 has contacted the appellant through *Kugadasan* and requested the appellant to be present near the People's Bank, Ratmalana.
6. At about 10.15 hours, PW01 together with a few other officers have arrived at the location. Once the appellant was identified by *Kugadasan*, he has been detained and taken into custody.
7. PW01 together with PW16 *Inspector Abdeen* have proceeded to question the appellant, during which he has revealed the whereabouts of his temporary residence in *Ratmalana*. The team has then proceeded to that location.
8. Upon reaching the residence, a statement from the appellant has been recorded by PW05, *PC 24047 Nishantha* on the instructions of PW01, where the appellant has, among other matters stated as follows:

“අධි බලැති පුපුරන ද්‍රව්‍ය, XXXXXX බෝම්බ උපකරණ XXXXXX දැනට පදිංචි මෙම නිවසේ මිදුලේ වල දමා තිබෙනවා. එම බඩු තිබෙන තැන පෙන්වන්න පුලුවන්.”

9. Such extract of the statement has been submitted as evidence in accordance with section 27 of the Evidence Ordinance No. 14 of 1895 and marked as exhibit පැ01. Thereafter, the appellant has directed the officers to the location of the items which were dug up near a wall in the garden.

10. A plastic bucket has been discovered containing items wrapped in polythene bags inside which there had been a white powder-like substance, which has later been identified to be “RDX” (an explosive substance) by PW14, Government Analyst, *Mr. Ariyananda Weliana*.

### **Grounds of appeal**

11. When the matter was taken up for argument, the learned Counsel for the appellant urged the following grounds of appeal:

- i. The learned High Court Judge failed to give due consideration to the procedure spelled in section 31 of the Criminal Procedure Code where it directs as to how an offensive weapon should be handed over after its seizure.
- ii. The learned High Court Judge has granted permission for the prosecution witness to amend the documentary evidence to align with his investigation notes in spite of the defense objection.
- iii. The learned High Court Judge was wrong in deciding that the inward journey of the production was established beyond a

reasonable doubt, as there were number of gaps in the nexus or the chain of production receipt by the witnesses.

- iv. The learned High Court Judge completely disregarded the fact that there was a question of identity of the production.
  - v. The learned High Court Judge has not taken into account whether the ingredients that constitute the requirement of the section 27 of the Evidence Ordinance have been satisfied.
  - vi. The learned High Court Judge has made a serious error by modifying an important piece of evidence to align it with the indictment.
  - vii. The learned High Court Judge erred in law by disregarding the evidence in the confession and relying on section 27 to minimize the damage to the prosecution case.
12. The learned Counsel for the appellant contended that the investigating officers have failed to deliver to court, the purported explosives seized from the appellant as per section 31 of the Criminal Procedure Code Act No. 15 of 1979.
13. Section 31 of the Code of Criminal Procedure Act No.15 of 1979 reads as follows:

*“The person making any arrest under this Code may take from the person arrested any offensive weapons or any instrument capable of being used for committing an offence which he has about his person and shall deliver all weapons and instruments so taken to the court or officer*

*before which or whom the person making the arrest is required by law to produce the person arrested.”*

14. Among the items seized from the appellant had been high explosives, specifically RDX and detonators. Given the inherent danger posed by these items, the investigating officers have deemed it necessary to diffuse the detonators prior to their presentation in court. This proactive action has been undertaken in the paramount interest of public safety and safety of all parties concerned.
15. The diffusing process necessarily requires a certain amount of time to complete. Upon the successful completion of this process, the explosives along with the diffused detonators and other pertinent material had been delivered to court securely. Any delay in the delivery of these productions to court have therefore been duly explained by the investigating officers, directly stemming from the time required for these essential safety procedures.
16. Furthermore, a rigid interpretation of the provision outlined in section 31 of the Code of Criminal Procedure Act No. 15 of 1979 would invariably conflict with the practical realities and urgent requirements inherent in conducting in a thorough criminal investigation. Specifically, when dealing with highly dangerous items, the immediate priority must always be public safety and the safety of all individuals involved in the judicial process. A strict adherence to a rapid “production” timeline without allowing for necessary time consuming process of safely diffusing such devices by trained experts would create an unacceptable risk of harm.
17. When explosives are seized during a criminal investigation, every movement of those items from the moment of discovery to the instance

an analyst begins testing must be meticulously recorded. This recorded path is known as the 'inward journey'. Establishing the inward journey is not merely an administrative formality, but an essential safeguard that preserves the integrity, legality and safety of such evidence.

18. In the present case, the explosives and the accompanying detonators have been seized by PW01, *Chief Inspector of Police, Alwis*. Upon completing the seizure, PW01 has proceeded to seal both the explosives and detonators before formally handing them over to *Sub Inspector of Police, Ratnayake (PW23)*. The parcels containing these items have been maintained in secure custody within the reserve until August 22, 2009. Following this date, PW23 functioning as the production officer for the relevant unit has assumed responsibility for the parcels and ensured its secure storage within the production room. Prior to the parcels being presented to the Magistrates Court, the detonators have been extracted for the purpose of diffusing.
19. Subsequently, the residual material from the detonators resealed and in conjunction with the sealed parcel containing the explosives, have been presented to the Magistrates Court. The items have thereafter been forwarded to the Government Analyst Department for comprehensive analysis. The officers responsible for the chain of custody of the parcels have made requisite entries and documented their involvement as per the standard procedure. This sequence of events and the integrity of the handling process have been corroborated by evidence presented thorough the narratives of PW01, PW10, PW14, PW17 and PW31.
20. The learned Counsel for the appellant has further contended that the learned High Court Judge has failed to evaluate the extract of the

statement made by the appellant and marked 01 in light of section 27 of the Evidence Ordinance and its requirements.

21. Section 27 of the Evidence Ordinance No. 14 of 1895 states as follows:

*(1) Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.*

22. E. R. S. R. Coomaraswamy in his book The Law of Evidence Volume 1 at page 442, outlines the requirements of section 27 of the Evidence Ordinance as follows:

*“The language of section 27 shows that the legislature has prescribed certain limitations in order to define the scope of the information provable against the accused. Viewed from another aspect, this means that the section requires the following essentials.*

- a. The information must have been received from a person accused of an offence, that is, the accused.*
- b. A fact must be deposed to as having been discovered in consequence of such information; that is, the information must be the cause of the discovery.*
- c. The accused must have been in the custody of a police officer at the time of the statement.*
- d. If these facts concur, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.”*

23. The case of *Ranasinghe v. Attorney General* [2007] 1 Sri L.R 218, Sisira de Abrew, J. stated as follows:

“...discovery in consequence of a section 27 statement only leads to the conclusion that the accused had the knowledge as to the weapon being kept at the place from which it was detected.”

24. The learned High Court Judge in the disputed judgment has stated as follows:

“සාක්ෂි ආඥා පනතේ 27(1) වගන්තිය ප්‍රකාරව දේපල සොයා ගැනීමට අදාළ නෛතික තත්ත්වය ***Ariyasinghe & Others v Attorney General (G. C. Wickremasinghe Abduction Case) 2004 (2) Sri. L.R 357*** දරන අධිකරණ තීන්දුවේදී ගරු ගාමිණී අමරතුංග විනිසුරුතුමානන් පෙන්වා දී ඇත්තේ වූදිනයෙදුකට සාක්ෂි ආඥා පනතේ 27(1) වගන්තිය ප්‍රකාරව යම් දේපලක් සම්බන්ධයෙන් දැනීමක් ලැබීම තුන් ආකාරයකින් සිදු විය හැකි බවට වන අතර එනම්,

1. වූදින විසින්ම අදාළ දේපල සභවා තිබීමෙන්.
2. වෙනත් අයෙකු විසින් අදාළ දේපල සභවා තබනවා වූදින දැක තිබීමෙන්.
3. වෙනත් තැනැත්තෙකු විසින් අදාළ දේපල අදාළ ස්ථානයෙන් සභවනවා දුටු තැනැත්තෙකු විසින් වූදිනට ඒ සම්බන්ධයෙන් පවසා තිබීම.

යන ආකාර තුනෙන්ම වූදිනයෙකුට එවැනි දේපලක් සම්බන්ධයෙන් දැනීමක් (**knowledge**) තිබිය හැකි බව පෙන්වා දී ඇති අතර, මෙම නඩුවට අදාළව ඉදිරිපත් වී ඇති සාක්ෂි අනුව ඉහත කී 2 සහ 3 අවස්ථාවන් සම්බන්ධයෙන් නොව ඉහත කී පළවන අවස්ථාවේ සඳහන් පරිදි එනම් වූදින විසින්ම අදාළ දේපල අදාළ ස්ථානයේ සභවා තබා ඇති බවට පැහැදිලි සාක්ෂි මෙම අධිකරණය ඉදිරියේ ඉදිරිපත් වී ඇත. තවද අභියාචනාධිකරණය මගින් ***Samarappuli Baala Arachchige Piyadasa & Others v Attorney General CA 211/2010***, දරන නඩුවේදී 2018-1-16 දිනැති තීන්දුව මගින් ද සාක්ෂි ආඥා පනතේ 27(1) යටතේ දේපල සොයා ගැනීමට අදාළ නෛතික

තත්ත්වය සම්බන්ධයෙන් ගරු තුරේරාජා විනිසුරුතුමාගෙන් විසින් පෙන්වා දී ඇති **“When analyzing the law and the decided cases it is clear that if the accused had a knowledge of the production (fact), depending on the production, the place it is recovered the Court can presume the link between the accused and the production. Which will make the accused to offer an acceptable explanation for the link or the knowledge.”** යන කරුණු මා මෙම නඩුව සම්බන්ධයෙන්ද අදාළ කර ගන්නා අතර, ඒ අනුව මෙම නඩුවේදී සාක්ෂි ආඥා පනතේ 27(1) වගන්තිය ප්‍රකාරව සොයා ගෙන ඇති දේපල වන RDX අධි පුපුරන ද්‍රව්‍ය වල ස්වභාවය සහ එය භාහිරට නොපෙනෙන ආකාරයෙන් පොළවේ අඟල් 4ක් 5ක් ගැඹුරින් වල දමා තිබූ ආකාරය සැලකිල්ලට ගැනීමේදී වූදින සහ එකී නඩු භාණ්ඩ අතර මනා සම්බන්ධතාවයක් **(link)** තිබෙන බව යුක්ති සහගතව අනුමිතියකට එළබීමට කිසිදු නෛතික බාධාවක් නැත.”

[vide pages 80, 81 and 82 of the High Court Judgment]

25. The learned High Court Judge has therefore correctly applied the principles governing recovery under section 27 of the Evidence Ordinance to the facts of the case, thereby drawn legally permissible inferences.

26. Further, upon the close scrutiny of the narrative of PW01, it is apparent that, at the time of arrest, the appellant had been explained the allegation upon which he is being arrested. The testimony of PW01 pertaining to the arrest is as follows:

ප්‍ර: තංගෙවෙලු නිමලන් තැනැත්තා අත්අඩංගුවට ගන්නකොට ඔහුට තිබෙන චෝදනාව කියවලා දුන්නද?

උ: එහෙමයි ස්වාමීනී. අත්අඩංගුවට ගැනීමෙන් පසු මා දැන ගත්තා මෙම සැකකරුට හොඳට සිංහල භාෂාව පිළිබඳව නිපුණත්වයක් තිබෙන සැකකරුවෙකු බවත් නමුත් දමිළ

සැකකරුවෙකු බැවින් මා උ.පො.ප. ආබේදීන් ලවා දෙමළ බසින් මෙම සැකකරුට වරද කියා දුන්නා.

[vide page 177 of the Appeal Brief]

27. The learned Counsel for the appellant has also contended that the extract marked පැ01 of the statement of the appellant must be rendered inadmissible due to the discrepancies between the information provided and the items recovered as a result of such information. Especially, the appellant in his statement has disclosed information of explosives and other equipment.

“අධි බලැති පුපුරන ද්‍රව්‍ය, xxxxxxx බෝම්බ උපකරණ xxxxxxx දැනට පදිංචි මෙම නිවසේ මිදුලේ වල දමා තිබෙනවා. එම බඩු තිබෙන තැන පෙන්වන්න පුලුවන්.”

28. This Court finds no discrepancy as contended by the learned Counsel for the appellant, therefore such argument must fail.

29. Regulation 36(1) published in the Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary No. 1405/14 dated Saturday, August 13, 2005, made by the President under section 5 of the Public Security Ordinance (Chapter 40) is as follows:

*“Any person who, without lawful authority or reasonable excuse, the proof whereof shall lie on such person, transports, causes the transport of, or has in his possession or under his control, any gun, explosive, offensive weapons or offensive substance shall be guilty of an offence.”*

30. “Control over explosives” in legal sense refers to having the power, authority and ability to manage, direct, use or dispose of the explosives. In this instance, high explosives RDX, even if the appellant

did not have immediate direct physical possession of them. It is a broader legal concept than possession and often encompasses constructive possession, meaning the person knows of the explosives and has the power and intent to exercise authority over them, such as having access to the location, the explosives are stored/hidden.

31. The prosecution can establish a person's control over explosives by proving conscious and exclusive possession or if the items were not on his person, that he had the ability to direct the use, storage or disposal of the explosives. This is typically achieved through circumstantial evidence proving knowledge and access.

“මෙම නඩුවට අදාළ RDX අධි පුපුරන ද්‍රව්‍ය අඩංගු පුපුරන ද්‍රව්‍ය කුට්ටි දෙක පැ.සා.01 එවකට ප්‍ර.පො.ප. ප්‍රසන්න අල්විස් යන සාක්ෂිකරු විසින් සොයා ගෙන ඇත්තේ සාක්ෂි ආඥා පනතේ 27(1) වගන්තිය ප්‍රකාරව වූදින විසින් පැ.සා.05 පො.කො. 24047 නිශාන්ත යන නිලධාරියා විසින් සටහන් කර ඇති ප්‍රකාශයෙහි උපුටාගත් උදාහරණ වන පැ.1 දරන උදාහරණ කොටස ප්‍රකාරව වන අතර එමගින් වූදිනට එම පැ.1 උදාහරණ කොටසින් හෙලි වන්නා වූ භාණ්ඩ සම්බන්ධයෙන් මනා දැනීමක් තිබෙන බව සනාථ වන අතර, එය හුදෙක් දැනීම (**mere knowledge**) පමණක්ද එසේ නොමැති නම් එම භාණ්ඩ සම්බන්ධයෙන් හුදු දැනීමකට වඩා එහා ගිය පාලනයක් (**Control**) එම නඩු භාණ්ඩ සම්බන්ධයෙන් වූදිනට පැවතියේද යන්න අදාළ දේපල සොයා ගත් අවස්ථානුගත පසුබිම සහ සොයා ගත් ස්ථානය, එය සොයා ගන්නා ලද අවස්ථාව වන විට එය භාහිරව නොපෙනෙන ආකාරයෙන් තබා තිබූ ආකාරය සහ එලෙස සොයා ගත් දේපලෙහි ස්වභාවය යනාදී සියලු කරුණු එක්ව ගෙන සලකා බැලිය යුතු අතර, මා ඉදිරියේ ඉදිරිපත් වූ මෙම නඩුවේ සියලු කරුණු වලට අනුව පැමිණිල්ලෙන් ඉදිරිපත් කරන ලද RDX අඩංගු අධි පුපුරන ද්‍රව්‍ය කිලෝ ග්‍රෑම් 2 කට ආසන්න ප්‍රමාණයක් මෙම නඩුවේ වූදින විසින්ම තම පාලනය යටතේ තබා ගැනීම සිදු කර ඇති බව මෙම නඩුවේ පැමිණිල්ලෙන් ඉදිරිපත් කරන ලද සාක්ෂි මගින් කිසිදු සැකයකින් තොරව ඔප්පු කර ඇති බව මාගේ නිගමනයයි.”

[vide page 80 of the High Court Judgment]

32. Having meticulously evaluated the appellant's knowledge of and access to the explosives, the learned High Court Judge has thereafter concluded that the prosecution has successfully established the appellant's control over them. This conclusion, it is noted, is founded on reasoning that is not perverse.

33. In those circumstances, I am not inclined to interfere with the conviction, disputed judgment together with the sentencing order and I proceed to affirm the same. I dismiss the appeal and make no order regarding costs.

*Appeal dismissed.*

34. The Registrar of this Court is directed to send this judgment to the *High Court in Colombo* for compliance.

**Judge of the Court of Appeal**

**B. SASI MAHENDRAN, J.**

I agree

**Judge of the Court of Appeal**