

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRILANKA

Kahandawa Arachchige Don Sisira

Accused-Appellant

Vs.

C.A. 272/2008

High Court Gampaha No. 267/06

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

Respondent

Before: : **SISIRA DE ABREW, J &
P.W.D.C. JAYATHILAKA, J**

Counsel : Sumith Senanayake with Damitha
Wickramarachchi for the Accused-Appellant.

Chethiya Gunasekera SSC for the State.

Argued &
Decided on : 08.03.2013.

Sisira de Abrew, J.

The accused-appellant who is on bail is present in Court. We had checked the identity of the accused-appellant with his driving license that has been handed over to the reception when he obtained a security pass. Accused-Appellant who is present in Court admits that the driving license No. GM-018846, is his driving license.

Heard both counsel in support of their respective cases. The accused-appellant in this case was convicted for the offence of criminal breach of trust in respect of Rs. 32,61,700/- The learned Trial Judge after trial sentenced the accused -appellant to a term of 03 years Rigorous Imprisonment and to pay a fine of Rs. 10,000/- carrying a default sentence of 06 months rigorous imprisonment. In addition to the said punishment the learned Trial Judge ordered the accused to pay the amount (Rs. 3,261,700/-) that is misappropriated from his mother, to his mother. Being aggrieved by the said conviction and the sentence the accused-appellant has appealed to this Court.

Facts of this case may be briefly summarized as follows:-

The accused-appellant's mother who purchased a lottery became the winner of the lottery. She, in trust, handed over the lottery to his son who is the accused-appellant in this case for the purpose of obtaining money from the Lotteries Board. The accused-appellant obtained Rs. 32,61,700/- from the Lotteries Board but did not hand over the said amount to his mother. Although mother requested the amount he did not return the amount.

However he handed over Rs. 100,000/- to his mother. After making several requests, she ultimately decided to lodge a

complaint at the police station. This was the summary of the evidence of the complainant Kekulawala Jeyawardena Arachchige Leelawathie. The accused-appellant too gave evidence in this case. He took up the position that he purchased this particular lottery and he became the winner. Thereafter he obtained money from the Lotterys Board. The learned High Court Judge however rejected his evidence. Although he takes up the position that he was the owner of the lottery, he admitted to one Anura Shantha who gave evidence that the winning lottery belonged to his mother. Vide page 325 of the brief.

Anura Shantha, on hearing that the accused-appellant ✓ had won a lottery, he came and requested the money that he had advanced to him on an earlier occasion. It is at this time the accused-appellant told Anura Shantha that the lottery belonged to his mother. This evidence of Anura Shantha was not challenged by the accused-appellant in the cross-examination. The evidence of the accused-appellant could be rejected on this point alone.

Accused-appellant's mother gave evidence in detail about the purchase of the lottery. She in fact named the person from whom the lottery was purchased.

The learned High Court Judge after considering both evidence of the prosecution of the defence decided to reject the evidence of the accused-appellant. The learned trial Judge who convicted the accused, was able to observe the demeanour and deportment of the witnesses. We note that the complainant Leelawathie too had given evidence before the judge who convicted the accused-appellant

Learned counsel for the accused-appellant at the hearing before us admitted that the complainant Leelawathie is now dead. Court of Appeal will not ^{lightly} disturb the finding of a trial Judge who had come to a conclusion after observing the demeanour of the witnesses. This view is supported by judgment of the Privy Council in ***Fraad vs Brown & Company Ltd. 20 NLR page 282*** wherein Privy Council states thus; “ *It is rare that a decision of a judge so express, so explicit, upon a point of fact purely, is over ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare, in questions of veracity so direct and so specific as these, a Court of Appeal will overrule a Judge of first instance.*” In ***Alwis Vs. Piyasena Fernando Lordship Chief Justice G.P.S. de Silva***

observes thus; “ *It is well established that the finding of primary facts by trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal*”

Applying the principle laid down in the above judicial literature, we refuse to intervene with the finding of the trial Judge who had observed the demeanour and deportment of the witnesses

The complaint made by the learned counsel for the accused-appellant before us was that the accused did not have fair trial as copies of the documents produced at the trial were not given to him. But we note that learned counsel who appeared for accused-appellant at the trial, had the opportunity of perusing these documents before the commencement of the trial and during the pendency of the trial.

We also note that most of the documents produced are documents relating to the accused-appellant’s accounts. When we consider all these matters we are unable to accept the contention of the learned counsel for the accused-appellant that the accused-appellant at the trial, did not have the opportunity of examining the documents produced by prosecution. We reject the said submissions.

We have gone through the evidence and the judgment of this case. We see no reasons to interfere with the judgment of the learned trial judge. For the above reasons, we affirm the conviction and the sentence imposed by the learned trial judge. We note that the accused-appellant has misappropriated his mother's money . Since the accused- appellant is on bail, we decide to place the accused-appellant in the custody of Prison .

We direct the Prison Authorities to take the accused into the Prison Custody and implement the sentence imposed by the learned High Court Judge from today.

The Registrar of this Court is directed to inform the Prison Authorities of the judgment of this Court.

The Prison Authorities are directed to produce the accused-appellant in the relevant High Court and obtain the necessary committal. Appeal of the accused-appellant is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

P.W. D.C. Jayathilaka, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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