

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

In the matter of an application for Revision in terms of Article 138 read together with Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/143/2014

H.C. Colombo case no. 3446/06

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

Petitioner

Vs.

Vidanagamage Palitha Kumara Chandrasena
Accused Respondent.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Varunika Hettige DSG for the Petitioner.
: Accused Respondent absent and unrepresented.

Argued on : 25.01.2017

Written submissions filed on : 28.02.2017

Decided on : 07.03.2017

L.T.B. Dehideniya J.

This is an application by the state to review the sentence imposed by the High Court.

Court issued notice on the Accused Respondent on several times under registered post but the Accused Respondent was absent and unrepresented. Since the notices not returned undelivered, it was presumed that the notices were duly served on the Accused Respondent.

The Accused Respondent together with another person who died subsequently, was indicted before the High Court of Colombo. The charges against the Accused Respondent are,

1. During the period between 4.3.2002 and 14.11.2002 the Accused Respondent committed the offence of conspiracy to commit cheating by agreeing to tender a forged deed to one Sarath Earl Wickramasinghe Gunasekara to sell a house and a plot of land located at no. 96, Stace Road, Grandpass in Colombo for Rs. 625,000/- an offence punishable under section 403 of the Penal Code read with section 102 and 113 B of the code.
2. That in the same time, place and the same cause of transaction the Accused Respondent committed the offence of using as a genuine a forged document by tendering a forged deed to the aforementioned Sarath Earl Wickramasinghe Gunasekara, an offence punishable under section 459 of the Penal Code.
4. That in the same time, place and the same cause of transaction the Accused Respondent committed cheating by causing aforementioned Sarath Earl Wickramasinghe Gunasekara to purchase aforementioned house and plot of land located at 96, Stace Road, Grandpass in Colombo for Rs. 625,000/- an offence punishable under section 403 of the Penal Code.

The brief background of the case is that the Accused Respondent is the brother of the prosecution witness (PW) no.1. Since the PW 1 was residing in USA, the Accused Respondent was entrusted to look after the land and the house. He prepared a forged deed to show that the house belonged to him and sold it.

After serving the indictment, the Accuse Respondent pleaded not guilty and the case proceeded to trial. On conclusion of the PW 1's evidence, the Accused Respondent pleaded guilty to the charges no. 1, 2 and 4. On his own plea he was convicted and sentenced as follows.

1. Charge 1. 6 months RI suspended for 5 years.

In addition Rs. 100,000/- to be paid to the PW 1 as compensation with a default term of 1 year.

2. Charge 2. 1 year RI suspended for 5 years.

In addition Rs. 300,000/- to be paid to the PW 3, Sarath Earl Wickramasinghe Gunasekara as compensation with a default term of 1 year.

3. Charge 4. 6 months RI suspended for 5 years.

The AG disagreed with this sentence and moved in revision to enhance the punishment. The learned DSG's contention is that the PW 1 will have to vindicate her title in a civil Court to get the forged deed canceled and it is a time consuming effort and will costly. Therefore she move that compensation awarded to the PW 1 to be re considered. Further the punishment for the offence in charge no. 4 carries a mandatory fine and the learned High Court Judge has not imposed a fine.

During the trial, a long and protracted discussion on the payment of compensation to the PW 3 has taken place and finally the Counsel for the Accused Respondent has informed that the PW 3 has agreed to accept Rs.

300,000/- as compensation from the Accused Respondent. The plea of guilt was tendered only after reaching this arraignment. The learned High Court Judge has ordered to pay Rs. 300,000/- as compensation to PW 3.

As per the learned DSG, PW 1 will have to vindicate her title in a civil suit. In such an action the fact that the deed holder, the PW 3, was paid compensation for the forgery that he was subjected to, will become a relevant fact. Therefore, I suppose that a case of that nature will not be time consuming as the learned DSG expects. As such the compensation awarded to the PW 1 cannot be said insufficient.

Charges no. 1 and 4 are for offences punishable under section 403 of the Penal code. This section contains a mandatory term of fine. The section reads thus;

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

In imposing a sentence the Court has to consider the conduct of the Accused Respondent in relation to the offence committed by him, such as, the facts that he has breached the trust placed on him by his own sister, the amount of planning put into commit the offence, and the time he has taken to plead guilty to the offence. He was benefited by committing this crime and enjoyed the fruits of the crime for a long time.

Considering these factors, I act in revision, alter the sentence imposed on charges 1 and 4 only by adding a fine of Rs. 25,000/- in addition to the punishment imposed by the learned High Court Judge on

charges 1 and 4. The other sentences imposed by the learned High Court Judge are affirmed.

Accordingly the sentences imposed on the Accused Respondent for the charges 1, 2 and 4 will be as follows.

Charge 1. 6 months RI suspended for 5 years.

Rs. 25,000/- fine in default 3 months simple imprisonment.

In addition Rs. 100,000/- to be paid to the PW 1 as compensation with a default term of 1 year.

Charge 2. 1 year RI suspended for 5 years.

In addition Rs. 300,000/- to be paid to the PW 3, Sarath Earl Wickramasinghe Gunasekara as compensation with a default term of 1 year.

Charge 4. 6 months RI suspended for 5 years.

Rs. 25,000/- fine in default 3 months simple imprisonment.

The learned High Court Judge is to consider whether it is necessary to grant time to pay the fine and make an appropriate order.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal