

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

Democratic Socialist Republic of Sri
Lanka

COMPLAINANT

Vs

Neetha Munasinghe

ACCUSED

C.A.Application No. 262/06

High Court Matara Case No. 100/97

AND NOW

Neetha Munasinghe

No. 88, Main Street

Deniyaya.

ACCUSED – APPELLANT

Vs

The Attorney General

Attorney General's Department

Colombo 12.

RESPONDENT

BEFORE : Deepali Wijesundera J.
L.U. Jayasuriya J.

COUNSEL : Dr. Ranjith Fernando for the
Accused – Appellant
Yasantha Kodagoda A.S.G, P.C.
for the Attorney General

ARGUED ON : 24th May, 2017

DECIDED ON : 23rd June, 2017

Deepali Wijesundera J.

The accused – appellant was charged under section 459 of the Penal Code for submitting as genuine a forged document to court and was convicted to two years RI and a fine of Rs. 50,000/= was also imposed.

The accused appellant lived on an estate owned by the Plantation Corporation on a lease agreement to harvest cinnamon and cardamoms on the estate. The appellant was ordered to vacate the estate and eviction proceedings had been filed in the Magistrates Court.

Section 459 of the Penal Code reads thus;

“whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.”

The Attorney-at-Law on behalf of the accused appellant had shown a document authorizing harvesting of Cardamons etc for ten years to court, which the Magistrate stated had unfilled blanks space therefore the court had returned the document to the Attorney-at-Law and rejected the document. The Magistrate had referred the document to the CID for investigation. This had been recorded by the Magistrate on 17th January 1996.

The Magistrate before whom the document was marked and produced has testified In the High Court that when he first saw the document there were unfilled blanks in the document. On a subsequent occasion the blanks have been filled. The said document was marked and produced in the High Court as P3 and the learned Magistrate has identified the said document.

Director of the Plantation Corporation giving evidence in the High Court has stated that the signature appearing in **P3** is questionable and that the signature may or may not be his. He (vide page 378 and 379 of the brief) also had stated that the agreement to harvest cinnamon and cardomons differ and that the date signed by him appears to be four months prior to the accused appellant signing it.

The learned counsel for the appellant submitted that the charges as per indictment related to an offence under section 459 of the Penal Code but on the evidence it is evident it should have been under section 452 of the Penal Code and that it is unsafe to convict a person under section 459 when it should have been under section 452.

A person is said to have made a false document who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document with the intention of causing it to be believed as a genuine document is guilty of dishonesty or fraudulently using a forged documents. The accused appellant had tendered **P3** to court knowing that the document was false.

The learned counsel for the appellant citing the judgments in **AG vs Karunaratne 78 NLR 413, AG vs Walgamage (1990) 2 SLR 212, AG**

vs Ananda (1995) 2 SLR 315 and AG vs Kumara (2003) 1 SLR 139
stated that since 21 years have lapsed from the date of commission of this offence and over 10 years since the conviction and considering the present age of the accused appellant and the nature of the offence to consider imposing a lesser sentence.

The learned High Court Judge has carefully analysed the evidence placed before him and come to a correct finding. For the afore stated reasons I see no reason to interfere with a well considered judgment. Since the accused appellant has produced a forged document to court I am not inclined to interfere with the sentence. Judgment and conviction dated 06/09/2006 of the High Court is affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I Agree

JUDGE OF THE COURT OF APPEAL