

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

Court of Appeal Case No : CA HC/197/2009

Padmadasa Nimal Subasinghe

Petitioner

Vs.

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

Respondents

C.A. 197/2009

H.C. Colombo Case No: 205/99

Before : S. Devika de L Tennekoon, J. &
S. Thurairaja, P.C. J.

Counsel : Faiz Musthapa PC. with Shantha Jayawardena for the
Accused-Appellant.

Dilan Rathnayake DSG. for the respondent.

Argued &

Decided on : 17.01.2017

S. Thurairaja, P.C. J.

Heard submissions of the President's Counsel.

President's Counsel submits that the Accused-Appellant was indicted under Section 102 and 456 of the Penal Code. Considering the facts of the case it is alleged that the accused-appellant had prepared a forged documents and got property transferred on the strength of that deed. On the

date of execution the executant was dead. Therefore it is the stance of the prosecution that this couldn't have been executed on the said date. The Notary who had executed the deed gave evidence and said that an unknown person had come and executed on that date, which is mentioned in the deed. Considering available material the learned President's Counsel submits that it was executed a year ago and the notary has registered it later. The deed was not sent for EQD and the accused-appellant had given evidence in Court and called witnesses to the effect that this deed was signed very much before the date mentioned in the deed. Further the witness also submits that the deceased, the executant is known to the Notary even he had attended the funeral of the executant. Therefore the Notary claiming unknown person could not be accepted.

President's Counsel also submits that in this case the conviction cannot stand because the accused-appellant has created reasonable doubts. The learned Deputy Solicitor General maintaining the highest traditions of the Attorney General's Department and submits that he is unable to support the conviction because the available evidence, if it is evaluated on a balance of probability can be weighed in favour of the prosecution but this is a criminal case and a standard of proof is beyond reasonable doubt. Considering the material submitted by the Accused-Appellant at the trial, he submits that there is a reasonable doubt created in this case. Therefore he is not supporting the conviction. Considering the submissions of both

counsels this Court allows the appeal and quashes the conviction and sentence dated 29.01.2009 and acquits the Accused-Appellant.

Registrar is hereby directed to return the case record to the Registrar of the High Court of Colombo forthwith.

JUDGE OF THE COURT OF APPEAL

S. Devika de L Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-