

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

An application made under and in terms of  
Section 331 of the Criminal Procedure  
Code of No. 15 of 1979.

The Democratic Socialist Republic of Sri  
Lanka

**Complainant**

**Court of Appeal Case No:**

**CA-HCC 11/14**

*HC of Ampara Case No:*

*HC1472/2011*

**Vs.**

Meragal Pedige Senarathne

**Accused**

**AND NOW BETWEEN**

Meragal Pedige Senarathne

**Accused-Appellant**

**Vs.**

Hon. Attorney General.

Attorney General's Department,

Colombo 12.

**Respondent**

**Before:**       **Menaka Wijesundera, J.**  
                  **B. Sasi Mahendran, J.**

**Counsel:**     Saliya Pieris, PC with Eshan De Zilva for the Accused-Appellant  
                  Dilan Rathnayake, SDSG for the Respondent

**Written**       10.12.2018(by the Accused-Appellant)

**Submissions:** 11.01.2021(by the Respondent)

**On**

**Argued On :** 17.05.2023

**Decided On :** 24.07.2023

**Sasi Mahendran, J.**

The Accused Appellant (hereinafter referred to as ‘the Accused’) was indicted in the High Court of Ampara on the following count;

That on or between the 1<sup>st</sup> of August 2005 and the 5<sup>th</sup> of September 2005, by producing, fraudulently or dishonestly, knowingly or has a reason to believe to be a forged document which is bearing No. 1012 to one Giripura Senerath Palihawadanage, Upali Abahayathilake who was the manager in the Peoples Bank in Ampara, thus committing an offence punishable under the terms of Section 459 of the Penal Code.

Prosecution led the witnesses of PW1, PW2, PW5, PW6, PW7, PW9, PW10 and PW11 and closed its case wherein marked productions from P1 to P13. The Accused also gave evidence. Both the Prosecution and the Defense made submissions. The learned Trial Judge by his judgement dated 18<sup>th</sup> of February 2014 convicted the Accused on the indictment and sentenced the Accused to a term of 5 years RI and a fine of Rs.25000/-.

Being aggrieved by the said conviction and sentence the Accused had preferred an appeal to this court and submitted the following grounds of appeal.

- a. That the learned trial judge has failed to determine that the PW3 namely Puwapilleyi Thawamani is an instrumental witness in proving the innocence of the Appellants;
- b. That the learned trial judge has not considered the version of the defense at all times;
- c. In any event, the sentence imposed on the appellant is excessive.

Before we analyse the evidence led at the trial it is pertinent to refer to the relevant section which describes the Using as genuine a forged document.

**Section 459 of the Penal Code:**

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.

**Withers J** in the case of **The Queen v Kapurala 2 NLR 330**, has described what are the elements to be proved in such a situation:

" A person is said to make a false document " who **dishonestly** or **fraudulently** makes, signs, seals, or executes " a document or part of a document, or makes any mark denoting the execution of a document, with the **intention** of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose " **authority he knows that it was not made, signed, sealed, "or executed, or at a time at which he knows that it was "not made, signed, sealed, or executed."**

(emphasis added)

With the above proposition in our mind, we have to consider whether the Prosecution had proved the case beyond reasonable doubt.

The facts and circumstances giving rise to this appeal are that:

According to PW1 Upali Abahayathilake the Manager of Peoples Bank Ampara, stated that the Accused had obtained a loan after submitting the allegedly forged document, evidence document marked as P1 according to the prosecution.

According to the evidence of PW1, he explained that this document Marked as P1 Financial Regulations No. 238(5) acts as a guarantee that monthly installment will be bank by the Accounts Department.

P1, the form consists of two copies which have to be duly filled by the relevant officials after placing the signature and rubber stamp seal of the Authorized officer which in the instant case is PW2 of the Accounting Department of the Police, as one copy has to be retained by them whereas the other copy is sent to the Bank, undertaking to send the deducted amount from the salary to the Bank.

However, in the instant case, Prosecution alleged that this document marked as P1 had not been duly completed by PW2.

After some time, it had come to their attention that the monthly installments were not sent to the Bank by the Authority in Concern. PW1 inquired about it with PW2 the Accountant. It was later revealed that the document marked as P1 was not signed by PW2, thereafter he had made a complaint to the police.

According to PW2 Arunavelam Ravindran who was the Accountant of the Police Department, he states that PW1 had contacted PW2 regarding the failure to send the monthly installments for the loan obtained by the Accused. Upon further scrutiny, PW2 discovered that there had been no such undertaking given by the Authority in Concern to the Bank that is to say that P1 was not issued by them. It is clearly revealed after seeing the photocopy, PW2 realized that it was not his signature nor his seal that was found on P1. PW2 goes on to deny that it was his signature and his seal that is found on P1 for the undertaking of a deduction of 40% from the Accused's salary.

PW2 admitted that whichever document is received must go through the Chief Clerk of the Superintendent's office which is PW3 namely Puwapilleyi Thawamani, who places the date stamp and a short signature and sends it to the accounting department. It is evident that the date stamp had been placed dated 26<sup>th</sup> of August 2005.

In the cross examination PW2 was shown the evidence document marked P4 by the counsel, PW2 states that this document was prepared by the subject officer and signed by the Chief Clerk.

**On Page 124 of the brief:**

ප්‍ර : මේ නඩුවේ ඔබ පැ.4 වශයෙන් ලේඛනයක් හඳුනා ගන්නා. මෙම සේනාරත්න නිලධාරියාගේ වැටුප් විස්තර කියලා?

උ : ඔව්.

ප්‍ර : ඒ ලේඛනය ඔබ විසින් සකස් කරපු එකක්ද?

උ : විෂය නිලධාරියා විසින් සකස් කරලා ප්‍රධාන ගෙවීම් ලිපිකරු විසින් අත්සන් දාලා තියෙනවා

Through this evidence, this court can form the opinion that this application had been submitted to his PW2's office, which had been duly acknowledged with a date stamp placed by PW3.

The Accused has given evidence from the evidence box. He indicated that after handing over the document marked as P1 to PW3 the Chief Clerk who was not called by the prosecution although she was named as a witness, had placed the date stamp and handed it over to the neighbouring officer. He had inquired from the officer whom we come to know as Devadasan when he will receive the completed form, Devadasan stated that he will receive it in 5 days.

Upon receiving the form, it was signed and sealed accordingly and he then handed it over to the bank.

However, it is vital to note that he states that he did not see who signed nor prepared the document.

When we consider the evidence of the Accused, he firmly states that he did indeed hand the form over to the Chief Clerk, it is pertinent to note that the Learned Trial Judge had failed to consider this piece of evidence.

**On Page 260 of the brief:**

විත්තිකරු විසින් තම සාක්ෂිය තහවුරු කිරීමට කිසිදු ලේඛනයක් හෝ වෙනත් සාක්ෂිකරුවෙක් ඉදිරිපත්කර නොමැති අතර, සාක්ෂි දුන් විලාසය, හැසිරීම් විලාසය, ඒකාකරිත්වය, වියහැකිභාවය, කරුණු දැනගැනීමට ඇති හැකියාව (Means of knowledge) යන සියලු පරීක්ෂණවලින් මෙම සාක්ෂිය අසමත් වන බව තීරණය කරමි.

The learned High Court judge has misdirected himself by shifting the burden to the Accused.

The burden of proof is always on the prosecution, this proposition was expressed in **Pantis v. The Attorney General 1998 2 SLR 148**, his Lordship **Wijeyaratne J** held:

“The burden of proof is always on the prosecution to prove all ingredients of the charge beyond reasonable doubt and there is no burden in our law for the accused to give any explanation (unless in certain cases where specific provision is made by law). In my view it is sufficient if the accused gives an explanation which satisfies the court or at least is sufficient **to create a reasonable doubt** as to his guilt.”

It should be kept in mind that the trial Judge was a trained judge who would have been aware of the fact that the burden of proof is always on the prosecution to prove a case beyond reasonable doubt. Therefore if a reasonable doubt was created in his mind, no doubt he would have given the benefit of that doubt to the accused and acquitted him on the charges.”

In the instant case, the Accused has stated that he has handed the document over to PW3, and also there is evidence to show that the said document had a date stamp, however, this factor was not considered by the learned High Court Judge.

We are mindful that there is no need for the Accused to prove his innocence. For the Accused to offer his evidence, only when a prima facie case has been made out by the prosecution. This was expressed by **Abbott, J.** in **Rex v. Burdett 1820 4 B & Ald 95, 120**:

“No person is to be required to explain or contradict until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction; but when such proof has been given, and the nature of the case is such as to admit of explanation or contradiction can human reason do otherwise than adopt the conclusion to which proof tends.”

The above dictum was followed by **His Lordship P.R.P.Perera,J** in the case of **Baddewithana v. The Attorney General 1990 1 SLR 275**.

With the above authority in mind, we are of the opinion that the most vital witness is said to be the person who received the document that is PW3 namely Puwapilleyi Thawamani. However, for some reason, the prosecution had not called her to provide her evidence. This lapse on the part of the prosecution has to be considered in light of the evidence provided by the Accused who has testified to affect that he had handed the document out to PW3. This in fact has been acknowledged by PW2 that there was a date stamp on the document marked P1.

Hence it is of our opinion, we can assess that the prosecution had failed to prove that the Accused had forged the document or whether he had any knowledge that it was not the signature of PW2 found in the document.

I am therefore of the opinion that in the absence of any item of evidence pertaining to the purpose of proving that the Accused himself made the forged document or whether he knew that the signature found on the document was forged. It would be unsafe to permit the conviction of the Accused on the charge of Section 459 of the Penal Code to stand.

Therefore, this court sets aside the conviction and the sentences imposed in this case and acquit the Accused. The Appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**