

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

**In the matter of an appeal under and
in terms of Section 331 of the
Criminal Procedure Code Act No.
15 of 1979.**

The Attorney General of the Democratic
Socialist Republic of Sri Lanka.

Complainant

**Court of Appeal
Case No. CA 57-58/2006**

Vs,

1. Ahmed Abdulla Mohammad Ismail
2. Mohammad Saly Mohammad Siraj
3. Mohammad Siraj Mohammad
Milhan

Accused

And Now Between

1. Ahmed Abdulla Mohammad Ismail
[1st Accused]
2. Mohammad Siraj Mohammad
Milhan [3rd Accused]

Accused-Appellant

**High Court of Kalutara
Case No. HC 45/2001**

Vs,

The Attorney General of the Democratic
Socialist Republic of Sri Lanka

Complainant-Respondent

**Before : S. Devika de L. Tennekoon, J &
S. Thurairaja PC, J**

**Counsel : Nihara Randeniya for the Accused-Appellant
Ayesha Jinasena, SDSG for the Complainant-Respondent**

Judgment on : 12th January 2018

Judgment

S. Thurairaja PC J

Honourable Attorney General had preferred an Indictment against three accused persons namely, 1. Ahmed Abdulla Mohammad Ismail, 2. Mohammad Saly Mohammad Siraj and 3. Mohammad Siraj Mohammad Milhan at the High Court of Kalutara as follows;

- 1st Count - 454 of the Penal code against 1st Accused
- 2nd Count – 454 of the Penal Code against 1st Accused
- 3rd Count - 454 of the Penal Code against 2nd Accused
- 4th Count - 454 of the Penal Code against 2nd Accused
- 5th Count - 454 of the Penal Code against 3rd Accused
- 6th Count - 454 of the Penal Code against 3rd Accused
- 7th Count – 373 of the Penal Code against 1st and 2nd Accused
- 8th Count - 39 (d) of the Notaries Ord. against 1st Accused
- 9th Count - 39 (d) of the Notaries Ord. against 1st Accused
- 10th Count – 34 to be read with 31(3) of the Notaries Ord. against 1st Accused
- 11th Count - 454 be read with 459 of the Penal Code against 1st Accused
- 12th Count - 454 be read with 459 of the Penal Code against 1st Accused

During the trial the 2nd accused passed away and the indictment was amended and proceeded against the 1st and 3rd accused persons. After the trial the 1st accused was convicted on count numbers 1,2,8,9,10,11, and 12 and the 3rd accused was convicted on count number 5 and 6. They were sentenced as follows;

First Accused –

1st count – 4yrs Rigorous Imprisonment and fine of Rs. 5000/-

2 Count – 4yrs Rigorous Imprisonment and fine of Rs. 5000/-

8th Count - 3yrs Rigorous Imprisonment

9th Count - 3yrs Rigorous Imprisonment

10th Count - fine of Rs. 200/-

11th Count - 4yrs Rigorous Imprisonment and fine of Rs. 5000/-

12th Count - 4yrs Rigorous Imprisonment and fine of Rs. 5000/-

The learned trial Judge had ordered all these sentences to be implanted concurrently, accordingly the 1st accused is imposed of 4years rigorous imprisonment and a fine of Rs. 20200/- in default 4 years imprisonment.

Third Accused -

5th Count – 3yrs Rigorous Imprisonment and fine of Rs. 5000/-

6th Count - 4yrs Rigorous Imprisonment and fine of Rs. 5000/-

The Trial Judge had ordered both sentence to be implemented concurrently, accordingly the 3rd accused will be serving 3yrs RI and Rs. 10000/- in default 2yrs. Imprisonment.

Being aggrieved with the conviction and the sentence appellants appealed to the Court of Appeal and framed following grounds of appeal;

- I. Prosecution has not proved its case beyond reasonable doubt.
- II. The trial Judge failed to consider the evidence which was in favour of appellants
- III. The trial Judge has failed to evaluate the evidence given by the 1st accused appellant
- IV. Prosecution failed to call the EQD.

It will be appropriate to consider the facts of the case in brief.

The 1st accused appellant is an Attorney at Law and Public Notary. The Second Accused is a brother of the Complainant. 3rd Accused is the son of the 2nd accused. 1st accused and the 3rd accused sometimes will be referred to as the 1st appellant and 2nd appellant respectively.

As per the evidence the complainant is the youngest child in a family of 7 children, consists of 2 boys and 5 girls. She was unmarried and living in Colombo. She was gifted with a property by her parents, which had a house in 60 perches of land. She has a sister called Salmiya, she brought couple of proposals to complainant Fathima. The 2nd accused being an elder brother rejected all and showed no interest in giving her married.

On 19/02/1999 the second accused had come with a person called Rafeek and told Salmiya that a marriage been organised to the complainant Fathima and asked her to bring Fathima with her deed documents and also said that the other party had come there. When Salmiya and the complainant went there, the second accused forcibly took the deed and chased Salmiya away and locked down Fathima in a room. Salmiya promptly lodged a complaint at the Police station, there all parties were summoned and the Police reached a settlement by keeping the complainant at the house of the

2nd accused at Mutuwal, Colombo. Thereafter she was kept in the house of the 2nd accused incommunicado.

On 01/03/1999, the complainant was taken by the second and third accused to the house of the 1st Accused at Beruwala. There she was asked to sign 6 blank forms, when she asked why and what are those, she was told that for her to stay at Kimbula-ela, Colombo, she had to register herself with the police for that purpose she had to sign those documents. She was told that the 3rd accused will also sign documents and he too signed some documents. Being convinced with the explanation Fathima signed those unfilled documents. Thereafter she was taken to the house of 2nd accused at Colombo.

On the 16th March 1999, the 2nd accused had informed the complainant that her property is now written in his name. On the following day i.e. 17th she managed to call her sister Salmiya and told her the situation. The second accused then gave her Rs. 100/-, and her National Identity card and chased her away. Complainant then called her sister and cried and told that she wants to commit suicide. Salmiya consoled her sister Fathima and told her that she will send the father to bring her to back. Thereafter they lodged a complaint at the Police Station of Aluthgama. It was referred to the SCIB of Kalutara, who conducted the investigations.

The trial held before the High Court of Kalutara and it was heavily contested by the accused persons. The Prosecution case in brief is that the 2nd and 3rd accused persons prepared fraudulent deeds and transferred the property of the complainant Fathima. The 1st Accused being a Notary Public colluded with the 2nd and 3rd accused persons and made the transactions. The defence version is that the complainant voluntarily and wilfully placed her signature and transferred the property to 2nd and 3rd Accused persons. Therefore, no offence committed.

State called six witnesses to prove the case for the prosecution. Three of them were lay witnesses and the balance were officials. When the defence was called, 1st accused gave evidence under oath and the 3rd accused made a dock statement.

The Complainant Mohamed Saly Siththi Fathima gave evidence and narrated the facts stated above. There are no material contradictions or omissions marked by the defence.

The next witness was Mohamed Saly Siththi Salmiya, she is the sister of the complainant and the 2nd accused. Her evidence corroborates the evidence of the complainant on salient points. It is worthy to note that her evidence was not contradicted on any material points.

Ms. Dharshika Mallika Beatrice Abeywardana, Additional Registrar of Lands was the next witness called by the prosecution. She gave evidence and submitted that the 1st accused had submitted deeds bearing numbers 2147 and 2148. It is her evidence that the 1st accused had attested those deeds and they were properly registered.

Police Investigator Sankaran Rajendran was the next witness called by the prosecution. He told the court about the investigation and recovery of documents.

Mohamed Ismail Mohamed Rafeek was called by the prosecution. Initially he was reluctant in giving evidence hence the State treated him as an adverse witness, subsequently he filled an affidavit and gave evidence that he did so because he was influenced by the 1st accused. His evidence further corroborated the case for the prosecution.

When the State Counsel closed the case for the Prosecution the trial Judge called for the defence of the accused persons. The 1st accused appellant opted to give evidence

under oaths and the 3rd accused appellant made a statement from the dock. Both denied their involvement and submitted that the complainant voluntarily signed the deeds.

When the 1st accused gave evidence and said on the day in question he was appearing at the District Court of Kalutara, appearing in couple of cases, the State not only suggested that fact is wrong but also called the Registrar of the District Court Ms. Wanninayake Mudiyanseelage Heenamma Kumarihami to give evidence. There, the witness submitted evidential proof that those cases were not taken up on that date and there is no record to show that this accused was in courts on that date.

Considering the evidence and comprehensive reasons given by the learned trial judge, we find that the learned High Judge was satisfied that the prosecution had proved the case beyond reasonable doubt. Independently when we peruse the evidence, we are of the view that the prosecution had proved the necessary ingredients of the charges levelled under section 454,459 of the Penal Code and also 39 (d), 34 to be read with 31(3) of the notaries Ordinance.

The learned counsel for the accused appellants submitted that the Prosecution had failed to call the Government Examiner of Questioned Documents (EQD), hence they failed to prove the case beyond reasonable doubt. Considering the submissions made by the learned Senior Deputy Solicitor General (SDSG), and the evidence of this case, we find that there is no question of *TESTING* or *EXAMINING* a document. In this case parties agreed that it was their signature, the only question is that it was not signed for the purpose stated in the document in question. Further perusing the deeds in dispute anyone could see the way those are typed. Especially the typing at the place where the signatures are placed. It is so obvious to any person to come to a conclusion that these documents were filled after obtaining the signatures. We are convinced with

the submission of the SDSG that there was no necessity to refer these documents to the EQD.

Considering all available materials especially the reasons given by the learned trial Judge, we agree with the findings of the learned judge of the High Court that the Prosecution had proved the case beyond reasonable doubt. We find no merit in the grounds of appeal and dismiss the appeal.

Regarding the Sentence we find the learned trial Judge was very reasonable in evaluating the facts of the case and imposing adequate sentence. We have no reason to interfere with the said sentence.

After carefully considering all arguments, and evidence before us, we dismiss the appeal and affirm the conviction and sentence.

APPEAL DISMISSED

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J
I agree,

JUDGE OF THE COURT OF APPEAL