

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

The Democratic Socialist Republic of Sri Lanka

Complainant

V.

**Court of Appeal Case No.**  
**HCC 238/2018**

Bandaranayaka Wanigasekara Mudiyanse Ralahamilage  
Jayampathi Aluwihare

**High Court of Colombo Case No.**  
**HC 6186/2012**

Accused

AND NOW

Bandaranayaka Wanigasekara Mudiyanse Ralahamilage  
Jayampathi Aluwihare

Accused Appellant

V.

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

Complainant Respondent

**BEFORE**

:     **ACHALA WENGAPPULI, J**  
      **K. PRIYANTHA FERNANDO, J**

**COUNSEL**

: R. Bary SSC for the Respondent.

**ARGUED ON**

: 19.06.2020

**JUDGMENT ON**

: 14.07.2020

**K. PRIYANTHA FERNANDO, J.**

01. Accused-Appellant (Appellant) was indicted in the High Court of Colombo for one count of cheating, punishable in terms of section 403 of the Penal Code. The trial proceeded in the absence of the Appellant in terms of section 241 of the Code of Criminal Procedure Act. However, the Appellant was represented by counsel in his absence at the trial.
02. According to the particulars of the offence as charged, the Appellant had alleged to have dishonestly induced an employee of the Hatton National Bank, Kotte, to pay him Rs. 127,628/- by pawning fake jewelry making false representations. After trial the learned High Court Judge found the Appellant guilty, and upon conviction he was sentenced to 7 years rigorous imprisonment. In addition, the Appellant was ordered to pay a fine of Rs. 30,000/- and also to pay Rs. 150,000/- to the Hatton National Bank. The Appellant seeks to set aside the judgment of the learned High Court Judge.
03. Notices issued on the Appellant were returned with the endorsement that the Appellant had left the given address. Counsel who filed the petition of appeal, upon notice by this Court has informed Court that he has no instructions from the Appellant to proceed with this appeal. Court decided to proceed to consider the merits of the appeal in terms of section 349(3) of the Code of Criminal Procedure Act.
04. Although the Respondent Attorney General was represented by a Senior State Counsel and a State Counsel, Respondent failed to assist Court by filing written submissions despite obtaining two days to file the same. Hence, Court will proceed to consider the merits of appeal with the available material which include the proceedings in the High Court including the judgment of the learned High Court Judge, and the petition of appeal.

05. The main ground of appeal urged by the Appellant in his petition of appeal is that the prosecution had failed to establish the identity of the Appellant as the Accused who pawned the articles in the bank.
06. The main witness to that effect had been the witness *Prasad Kalal Jagoda* (PW2), who had been the employee of the bank who accepted the relevant fake articles from the Appellant. The evidence to prove that the articles were fake was not challenged by the learned defence counsel in the High Court.
07. Learned High Court Judge has discussed this issue of identification of the Appellant at length and has carefully considered the same in his judgment. In pages 20, 21, 22, 23 and 24 of the judgment (pages 259-263 of the appeal brief), the learned Trial Judge has sufficiently dealt with this issue. He has carefully considered all the relevant evidence on this issue including the demeanour and deportment of the witness *Jagoda*. The learned High Court Judge has given good and sufficient reasons to rely on the witness *Jagoda* on identification of the Appellant and also the evidence of the other witnesses.
08. In case of *Fradd V. Brown & company Ltd. (20 N.L.R. Page 282)* Privy Council held;
- "It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in question of veracity, so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance...."*
09. I do not find any reason to interfere with the finding of the fact of identification of the Appellant (Accused), by the learned High Court Judge.

In the above premise, I find that the grounds of appeal urged by the Appellant in his petition of appeal are without merit.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**ACHALA WENGAPPULI, J**

I agree.

**JUDGE OF THE COURT OF APPEAL**