

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an Appeal in terms
of Section 331 of the Code of Criminal
Procedure Act No.15/1979 of the
Democratic Socialist Republic of Sri
Lanka.

C.A.No.182/2018

H.C. Homagama No. HC 07/2018

M.C.Homagama No.B 8989/2004

Bandaranayake Wanigasekera
Mudiyanse Ralahamilage Jayampathi
Aluvihare.

Accused-Appellant

Vs.

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

Complainant-Respondent

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

COUNSEL : The Accused-Appellant absent and not
represented.
A. Navavi D.S.G. for the respondent

ARGUED ON : 17th September, 2020

DECIDED ON : 16th November, 2020

ACHALA WENGAPPULI, J.

This is an appeal, preferred by the Appellant against his conviction and sentence imposed on him by the High Court of *Homagama*, in relation to a count of cheating, an offence punishable under Section 403 of the Penal Code. After his trial, which had been held *in absentia*, owing to the fact that the indictment could not be served on him after he was released on bail, the trial Court had found him guilty to the charge and imposed a seven-year term of imprisonment coupled with a fine of Rs. 100,000.00 and, in default of which, he was to serve additional two-year term of imprisonment.

It is evident from the appeal brief that the Appellant never appeared before the High Court and had multiple passports, which carried his photograph, as confirmed by his family members, but under different

names. However, the Appellant had retained a Counsel to defend him at the trial, which has proceeded in his absence.

At the initial stage of the instant appeal too, a Counsel sought to represent the Appellant, but subsequently withdrew since he could not secure a letter of authority from the Appellant to formalise his appearance. The Attorney-at-Law, who filed the Petition of Appeal on his behalf, had informed this Court that he had no further instructions from the Appellant. Hence, the Court proceeds to consider the appeal of the Appellant for its merits.

It appears from the Petition of Appeal, the main thrust on Appellant's challenge on his conviction is on the question of identity.

The prosecution case is the Appellant had cheated one *Ladduwahetti*, an employee of the pawning section of the *Homagama* branch of the *Hatton National Bank*, to hand over Rs. 73,373.00 to him after presenting a fake item of jewellery as security. The evidence of the witness *Ladduwahetti* was that a person, who presented himself as the *Bandaranayaka Wanigasekara Mudiyanse Ralahamilage Jayampathi Aluvihare* with the National Identity Card bearing No. 760792063V of No. 340, *Katuwana Road, Homagama*, on 05.01.2004, had pawned what appeared to be a gold chain weighing 82 grams. He was paid Rs. 73,373.00 by the Bank under pawn receipt No. 39125.

At a subsequent point of time, having noted a fake item of Jewellery that had been pawned under the same name, witness *Udaya kumar*, the Head of the pawning section of the *Hatton National Bank*, had alerted all its branches to check for similar items and the witness *Ladduwahetti* found an

item, similar to the one that had been found by witness *Udaya Kumara* had been pawned by the said person,

Due to the significant number of similar acts of cheating, the Bank complained to the CID and the Appellant was arrested at a lodging place with a forged passport.

The item of fake jewellery, that had been pawned to witness *Ladduwahetti* was analysed by the Gem and Jewellery Authority, which confirmed that it had only 22% gold content valued at Rs. 26,217.00 and the balance an alloy of a mixture of copper and silver.

Investigating officer, in his evidence stated that the Registration of Persons Department had confirmed that the National Identity Card bearing No. 760792063V had been issued to one *Bandaranayaka Wanigasekara Mudiyanse Ralahamilage Jayampathi Aluvihare*, who also had two other passports with different names. The Appellant's family members have identified the photograph of the travel documents as of their relation of that name who had since disappeared.

The trial Court had considered the available evidence on the question of identity and rightly concluded that the prosecution had proved the identity of the Appellant to the required degree of proof, before it proceeded to convict him.

Clearly the appeal of the Appellant is without any merit. The conviction and the sentence imposed on the Appellant is accordingly affirmed.

The appeal of the Appellant is therefore dismissed.

JUDGE OF THE COURT OF APPEAL

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE COURT OF APPEAL