

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

*In the matter of an Appeal in terms of
section 331 (1) of the Code of Criminal
Procedure Act No. 15 of 1979.*

Court of Appeal No:

CA/HCC/0018/2021

The Democratic Socialist Republic of Sri
Lanka

COMPLAINANT

Vs.

High Court of Colombo

Case No: HC/4638/09

Ratnam Nadarajah

ACCUSED

AND NOW BETWEEN

Ratnam Nadarajah

ACCUSED-APPELLANT

Vs.

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

COMPLAINANT-RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.
Counsel : Anil Silva, P.C. with Amaan Bandara instructed by
M/S Tharmarajah Tharmaja for the Accused-
Appellant
: Udara Karunatilake, S.S.C. for the Respondent
Argued on : 29-02-2024
Written Submissions : 19-07-2022 (By the Accused-Appellant)
: 06-06-2022 (By the Complainant-Respondent)
Decided on : 10-06-2024

Sampath B. Abayakoon, J.

This is an appeal preferred by the accused-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of his conviction and the sentence dated 18-02-2021 by the learned High Court Judge of Colombo.

The appellant has been indicted before the High Court of Colombo for deceiving one Grace Nirmala Balachandran, with the promise of providing a house for her and obtaining Rs. 2,939,773.78/- and thereby committing the offence of cheating punishable in terms of section 403 of the Penal Code. The offence is said to have been committed on or about 01-04-2002.

When the indictment was initially read to the appellant, he has pleaded not guilty to the charge, and while the evidence of the earlier mentioned Nirmala Balachandaran (PW-01) was in progress, the prosecution has amended the sum mentioned in the indictment to read as Rs. 1,439,773.78/-.

The learned High Court Judge of Colombo, after finding the appellant guilty as charged and after considering the aggravating and mitigatory circumstances,

including the time period it has taken for the case to come to a conclusion and the age of the appellant, has decided that the appellant should not be punished with incarceration.

Accordingly, he has been sentenced to 2 years rigorous imprisonment suspended for a period of 10 years. In addition, he has been imposed a fine of Rs. 10,000/- with a default sentence of 6 months simple imprisonment.

Having considered the sum cheated and the fact that it has taken place in the year 2002, it has been decided to award Rs. 4,000,000/- as compensation to PW-01. It has been ordered that if the appellant fails to pay the said sum, it shall be recovered as a fine, and in default, he shall be sentenced to 2 years rigorous imprisonment.

The Facts in Brief

PW-01 Nirmala Balachandran has worked as a Secretary at University of Jaffna and was to retire in October 2002. Since she wanted to settle in Colombo after her retirement, she was on the lookout for a house in Colombo area. The appellant was a person well known to her and was a Bank Manager. She has come to know from the appellant that he is also looking for a land in Colombo and had been informed of an available land at Perera Lane, Dehiwala. It was a land of 10.08 perches and she had come to know that the appellant is planning to purchase the land together with a friend of him called Kaali. It has been informed to her that they are planning to build a twin house on the land because of the minimum land requirement restrictions when building a house in the Municipal Council area.

PW-01 has agreed to contribute to the building of the house and the appellant has agreed to transfer the ground floor of the house to her and for him to occupy the upper floor of one of the twin houses that were to be built on the land. The agreement between the PW-01, the appellant and the earlier mentioned Kaali had been for the said Kaali to own and occupy the other twin house that was to

be built on the land. Accordingly, the appellant has agreed to give the title to the ground floor of the house after it was built.

The land has been purchased in the names of the appellant and the earlier mentioned Kaali. All three of them has agreed on the house plan. The appellant has taken steps to build the house and PW-01 has contributed money from time to time to build the house. After the ground floor of the house was completed, PW-01 had come to occupy the house and the upper floor has been completed later. The appellant had been occupying the upper floor, whereas, the earlier mentioned Kaali occupied the other twin house.

Although the PW-01 has requested the appellant to write a deed giving title in her name for the ground floor, it has not been done and after a dispute between the appellant and the PW-01 over the payment of utility bills of the house, the PW-01 has been forced to leave the house she was occupying.

This has led to the PW-01 lodging a complaint to the police that she was deceived and cheated by the appellant, which has led to the indictment against him.

When giving evidence, she has marked the document P-01 indicating the money given by her to the appellant from time to time. She has stated that she gave more than Rs. 700,000/- at one time, and contributed money from time to time as mentioned in the document marked P-01.

It appears that the sum mentioned in the indictment originally has been calculated based on the document marked P-01. However, when giving evidence, PW-01 has stated that a sum of Rs. 1,500,000/- mentioned in the document marked P-01, although withdrawn, she opened two fixed deposits using the said sum and it was not given to the appellant for the construction of the house. This has led to the amendment of the indictment on 10-06-2013 by reducing Rs. 1.5 Million from the sum mentioned in the indictment as the amount cheated.

It has been her position that the money withdrawn from her account from time to time was given to the appellant and some of the monies were transferred directly to the appellant's account for the purpose of building the house.

When the PW-01 was cross-examined on behalf of the appellant, he has admitted having received Rs. 729,773/- from PW-01 in April 2002, but has claimed that Rs. 500,000/- out of the said sum was taken back by the PW-01.

Apart from that, the appellant has not directly denied that he and the PW-01 had an agreement in the manner described by her in evidence.

It has been suggested to the PW-01 that the balance sum of Rs. 229,773/- of the earlier mentioned sum was given to the appellant as an advance rent payment for her to occupy the house as a tenant, which has been denied by the PW-01.

The person identified by the PW-01 as Kaali was in fact Karsim Bava Harlim who has given evidence as PW-02 in the case. He has also been a bank employee who worked at the Kalmunai branch of People's Bank along with the appellant who was the Manager of the said branch. They were well known to each other over a period of time. He was also on the lookout for a land from Colombo to live after retirement and through the appellant, has come to know about a 10 perch land at Perera place, Dehiwala. The appellant has informed him that Grace Aunt (PW-01) whom he also knew would be investing to buy the property and to put up a house. Both of them had agreed to buy the property in common, and build a twin house to avoid the minimum buildable land requirement for the area.

Since it has been informed that PW-01 would be investing in the house, she has also been informed of this agreement for which she has agreed. Subsequently, the land has been purchased in the name of the appellant and PW-02.

According to him, the agreement between the appellant and the PW-01 had been to build the twin house and give the title of the ground floor to her, and the appellant to have the upper floor of his part of the twin house.

After getting the required approval for the building, the construction has commenced with the approval of the PW-01. It has been the PW-02 who has supervised the construction and invested for his share and spent the money provided by the PW-01 through the appellant for the construction of the house. He has given specific evidence to the effect that PW-01 spent her money on the construction of the house. From time to time when there were delays in providing money for the construction, the appellant has informed that he did not receive money from PW-01, as an excuse for such delays.

At one time, PW-01 has given Rs.50,000/- directly to PW-02 to be spent on the house. According to PW-02, both parties have spent Rs. 6,400,000/- for the construction of the twin house. It was his evidence that while the house was being built, PW-01 was also involved in selecting material etc., for the construction. PW-02 has given evidence to the effect that after the construction of the house, PW-01 as well as the appellant went into occupation of the ground floor of the twin house, which was allocated for them, as the upper floor had not been completed at that time.

The PW-02 has gone into occupation of the twin house belonging to him and subsequently has taken steps to obtain a separate deed for the twin house and the land covered by it.

After some time, he has come to know about the disputes between PW-01 and the appellant, and according to his evidence, on one occasion, PW-01 has come to his house and stayed with his family for 3-4 days because she could not stay in the house belonging to her, as a result of the disputes with the appellant. After the upper floor of the house was completed, the appellant's son who was a doctor, and his family had come to occupy the upper floor.

PW-02 has made several attempts to settle the dispute between PW-01 and the appellant because he knew very well that PW-01 has spent her own money towards the construction of the house. However, he has not been successful in his endeavour.

PW-03 has also been a retired bank official who has worked with the appellant and a very close friend of him. He had known that the appellant and PW-02 purchased a land in common in Dehiwala and had known very well that PW-01 Grace Balachandran has spent her own money to build the house situated on the said land. He has come to know through the appellant that PW-01 gave him money from time to time towards the building of the house and they had an agreement to give the ground floor to PW-01, and the appellant to occupy the upper floor after the construction.

However, it has been his position that although PW-01 provided money for the construction, he was unaware how much money was given, and when, and in what manner, although he knew that the house construction commenced in the year 2002.

The prosecution has called several bank officials to confirm the amounts withdrawn by PW-01 from her bank accounts and also to confirm monies transferred directly to the appellant's account from the account of PW-01.

At the conclusion of the prosecution case, and when the appellant was called upon for a defence, he has chosen to give evidence under oath. He has admitted that he served as an official of People's Bank and retired in 2003 after completing 40 years of service. According to him, he had known PW-01 from his youth, as both of them attended a shorthand and typing class in Jaffna.

Explaining the financial transactions he had with PW-01, he has stated that he purchased a land of 11 perches at Perera place Dehiwala as a common property with his friend who gave evidence as PW-02. He has admitted that they decided to build a twin house on the land as stated by PW-02 in his evidence.

It had been his position that after coming to know that he is building a house in Colombo, PW-01 inquired from him whether she could have a room of the house for rent and because of that, he provided a room and a portion of the ground floor for her to live after the completion of the constructions.

According to his version of events, PW-01 has come into occupation of a part of the ground floor in April 2003 and had stayed until 2007 August. He has admitted receiving a cheque for a value of Rs. 729,773/- and has claimed that PW-01 wanted Rs. 500,000/- of it back and for him to have Rs. 229,773/- as an advance rent payment for the house. In addition to the above, he has admitted having received another Rs.100,000/- as a direct bank transfer from PW-01 to his account, which he has claimed was given to him by PW-01 on the basis that she is in no need of that money.

He has claimed that apart from the above-admitted sum, nothing else was given to him. He has denied that he had an agreement with her to provide a part of the house as claimed by PW-01.

The Grounds of Appeal

At the hearing of this appeal, the learned President's Counsel urged the following grounds of appeal for the consideration of the Court.

1. The learned High Court Judge has not considered the matters favourable to the accused in his judgment.
2. The learned High Court Judge has not considered the *inter se* and *per se* contradictions of main witnesses.
3. The prosecution has not proved the case beyond reasonable doubt.
4. Without prejudice to the above grounds of appeal, the compensation ordered by the learned High Court Judge was contrary to law.

It was submitted by the learned President's Counsel that contrary to the claims made by the PW-01, she has given money to the appellant to build a house for herself, and the only money given by her was Rs. 229,773/- and Rs.100,000/- as admitted by the appellant.

It was his position that the evidence of PW-01 as to the alleged amounts given by her to the appellant was not cogent enough to be believed. The learned President's Counsel contended that the P W-01 was not telling the truth when

she stated that she came to know the appellant only in the year 2001, whereas it has been established that she knew the appellant over a long period of time, which has created a doubt over the evidence of PW-01.

It was his position that the letters marked V-01 and V-02 show that there was a close connection between PW-01 and the appellant's family which had not been considered by the learned High Court Judge in favour of the appellant. It was also pointed out by the learned President's Counsel that although PW-01 marked a document as P-01 to claim that the amounts mentioned in the document were given to the appellant, she herself has backtracked on that by admitting Rs. 1.5 Million mentioned in the list was not a sum given to the appellant.

It was his position that the evidence as to the sums alleged to have been given by her to the appellant lack credibility, which should have been held in favour of the appellant. It was pointed out that there was no written agreement in relation to the transaction claimed by PW-01, and she being a Secretary employed at a University cannot claim ignorance of her rights in this type of transactions.

It was his position that when taken as a whole, the evidence of PW-01 creates a reasonable doubt as to the truthfulness of her story, which should have been held in favour of the appellant. He contended that the reasoning given by the learned High Court Judge in his judgment justifying the discrepancies in PW-01's evidence cannot be accepted and not in accordance with the relevant provisions of law.

He submitted further that the evidence of PW-02 as to the matters connected with this transaction was contrary to that of PW-01 and as a result, there were several *inter se* and *per se* inconsistencies in relation to the evidence.

It was also submitted that the compensation of Rs. 4 Million ordered by the learned High Court Judge was contrary to the provisions of Assistance to and Protection of Crime and Witnesses Act No.4 of 2015, as well as the provisions of the Code of Criminal Procedure Act No. 15 of 1979.

The position of the learned SSC was that the essential requirement of the charge was to prove that the PW-01 was deceived by the appellant to handover money with the promise of building a house for her in the manner stated in the evidence and the prosecution has proved that fact beyond reasonable doubt.

It was his position that the evidence of PW-01 needs to be looked at in relation to the evidence of PW-02 and PW-03, who has corroborated the evidence of PW-01, and there was no basis to conclude that they are partial witnesses against the appellant. It was submitted that the fact of PW-01 being hesitant to disclose details of her relationship with the appellant was not a reason to doubt her evidence. It was also submitted that any discrepancies in the evidence of PW-01 may have been due to the time factor it has taken in this case for her to give evidence, and not due to she was not telling the truth.

It was his position that the learned High Court Judge has considered all relevant facts and the legal requirements that needs to be established in a charge of this nature and had come to a correct finding which needs no disturbance.

Submitting that section 17(4) of the Code of Criminal Procedure Act provides for no restriction as to a sum that can be ordered by a High Court Judge as compensation to a victim of crime, it was his contention that the compensation had been correctly ordered.

Consideration of the Grounds of Appeal

I will now proceed to consider the grounds of appeal urged by the learned President's Counsel together as they are interrelated.

The appellant has been indicted for committing an offence punishable in terms of section 403 of the Penal Code, which refers to situations of cheating and dishonestly inducing a delivery of property.

For matters of clarity, I will now reproduce the relevant section 403 of the Penal Code which reads thus;

403. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may be extended to 7 years and shall also be liable to fine.

As correctly pointed out by the learned SSC, the essential ingredient that should be proved in a charge under section 403 is that the appellant cheated, and thereby dishonestly induced the PW-01 so deceived to deliver property to him.

The offence of cheating has been described in section 398 of the Penal Code, which reads;

398. Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, or damage or loss the government is said to cheat.

Professor G.L. Peiris in his book *Offences under the Penal Code of Ceylon* at **page 485** breaks down the component elements of the offence in the following manner for better understanding.

“The component elements of the offence are the following:

- (a) The deception of any person by the accused;
- (b) The carrying out of the deception fraudulently or dishonestly;
- (c) By means of the deception, inducing the person deceived

- i. To deliver any property to any person, or
 - ii. To consent that any person shall retain property,
or
 - iii. To do or omit to do anything which he would not
otherwise to do or omit;
- (d) The causing of loss or damage, or the likelihood of causing
loss or damage, of the kind envisaged, to the person
deceived or to the government by a reason of the act or
omission contemplated by element I (iii)."

It was observed in the case of **Carey Vs. de Silva (1887) 1 C.L.Rep. 49** that while deception may take one of these various forms, the Courts of Ceylon have insisted that a charge of cheating should contain a specific averment as to the means whereby the deception was achieved.

It was held in the case of **Silva (1933) II Times of Cey. 57** that, where the charge is based on limb (i), actual delivery of the property is an essential requirement to prove.

Professor G.L. Peiris, citing the English case of **Clucas (1949) 2 K.B. 266** in his book *Offences under the Penal Code of Ceylon* at page 493 has commented that;

"The final element which has to be noted in this connection is that there must be a clear causal nexus between the deception practiced by the accused and the complainant being induced to do one of the four things required by the definition of the offence. In other words, the complainant should have delivered property or done or refrained from some act because he was taken in by the accused's false representation and not for some other reason. The deception for which the accused was responsible should have been the effective reason for the complainant's acting as he did."

In the case of **Zahir Vs. Cooray (1941) 42 NLR 263** it was stated by **Howard, C.J.**;

“The offence of cheating is defined in section 398 of the Penal Code. In order to establish such an offence, it must be proved that the deceit induced the person deceived to do or omit to do something which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage to that person in body, mind, reputation, or property.”

In the indictment upon which the appellant was charged, it has been clearly stated that the means whereby the deception was achieved has been by fraudulently inducing the PW-01 with the promise of providing a house for her, and thereby inducing her to hand over money to the appellant.

I am of the view that what the prosecution should prove in order to establish the deceit is to establish the above-mentioned fact. It is my considered view that although a specific sum has been mentioned in the indictment, proving the said sum to the last digit is not an essential requirement in proving the charge against the appellant, having considered the facts and the circumstances unique to this case.

The essence of the evidence of PW-01 had been that she was induced to give various sums of money to the appellant believing that he would be giving the title to the ground floor of the house he was building together with PW-02, after its completion. It was her evidence that she gave various sums of money from time to time to the appellant for him to complete the house.

The evidence of PW-02 and 03 clearly establishes the fact that the appellant had used the money given to him from time to time by PW-01 to complete his portion of the house.

It is clear that the appellant has admitted to Rs. 729,773/- which has been given to him in a form a cheque and Rs.100,000/- sent directly to his account by the PW-01 because of the unshakable documentary evidence made available to the Court in that regard. I find no basis to accept his claim that out of the Rs.729,773/- received by him, Rs. 500,000/- was returned and the balance was

given to him as an advance rent payment for the house, which was not even built at that time.

The evidence of PW-02 and 03 has clearly proven that the possession of the ground floor of the house has been given to PW-01 because of her contribution towards the building of the house. It has also been established beyond reasonable doubt that the verbal agreement between the appellant and the PW-01 has been to give the title to the ground floor of the house to her once it was built, and it was the very reason why the PW-01 has come into the occupation of the ground floor. However, it is abundantly clear that the intention of the appellant had been not to give the title to PW-01 as agreed, but to evict her at an opportune moment after making use of her to build the house.

The circumstances under which the PW-01 has agreed to give money to the appellant rather than making an attempt to find and buy a house or a property on her own has to be considered in relation to the facts and circumstances at the time of these incidents.

PW-01 has been serving as a Secretary at the University of Jaffna over a long period of time and was to retire in October 2002. The ground realities existed at that time show that there was hardship of travelling, communication, or transfer of money due to the war situation existed at that time. The appellant being a person known to her and being a Bank Manager has come into contact with her, and after coming to know that he too is looking for a property, PW-01 may have believed that going along with the appellant must be the best solution for her intention to have a place to live once she retires from her service.

The evidence led in this action clearly shows that due to the deceit of her by the appellant, she has parted with the money she had with her believing that the appellant would keep his promise.

PW-02 being the other person together with whom the appellant purchased the land and the person who built the twin house on the land, had known from the very outset that the appellant was building the house for himself as well as PW-

01. He had known that the appellant was using the money sent by her to him for the building of the house. PW-02 had even known the agreement PW-01 had with the appellant. Even PW-03 who had been a very close friend of the appellant had known the same facts. There was no allegation against PW-02 or 03 that they concocted and narrated a false story against the appellant.

I find that apart from claiming that some money was given to him as an advanced rent, the appellant has not challenged the evidence of PW-01 or that of PW-02 or 03 at any material points, as to the allegation that PW-01 gave money to him expecting him to build and hand over the title to part of the house as claimed by her.

It is trite law that a position of an accused person when there is evidence against him to connect him to the charge must be put to the relevant witnesses when they come and give evidence before the Court and confront them in that regard.

In the case of **Sarwan Singh Vs. State of Punjab 2002 AIR Supreme Court iii 3652 at 36755,3656**, it was observed;

“It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted.” This case was cited with approval in the case of **Boby Mathew Vs. State of Karnataka 2004 3 Cri. L. J. 3003**

His Lordship Sisira de Abrew, J. stated in **Pilippu Mandige Nalaka Krishantha Kumara Thisera Vs. A.G CA 87/2005 decided on 17-05-2007** that;

“...I hold that whenever evidence given by a witness on a material point is not challenged in cross-examination, it has to be concluded that such evidence is not disputed and is accepted by the opponent subject of course to the qualification that the witness is a reliable witness.”

I am in no position to agree with the contention that the learned High Court Judge has not considered matters favourable to the accused or *inter se* and *per se* contradictions of the main witnesses in his judgment.

The learned President's Counsel submitted that the reluctance of PW-01 to come out with the relationship she had with the appellant should have been considered as a reason that dented the credibility of her evidence. It was also submitted that the discrepancies of the evidence of PW-01 as to the amounts alleged to have been given by her to the appellant, and especially her evidence that Rs. 1.5 Million had been withdrawn by her, has in fact been used to open a fixed deposit on her behalf and not given to the appellant should also have been considered as to the credibility of her evidence.

When taking the evidence as a whole, it is clear that the PW-01 and the appellant had known each other over a considerable period of time although the PW-01 has stated in her evidence that she came to know the appellant few years before she gave money to him. However, the position taken up by the appellant himself shows that their relationship had been established when both of them were young persons and studying in Jaffna. The letters marked V-01 and V-02 show that the PW-01 was in a close relationship with even the family members of the appellant, which may be the very reason why the PW-01 has trusted the appellant to the extent of parting with her money in the manner set out in the evidence. She being a female from a conservative society, her reluctance to admit certain facts as to her relationship with the appellant, in my view, is quite understandable under the circumstances. I do not see that as a reason to doubt her evidence.

The incidents relevant to this action have taken place in the year 2002 and the PW-01 has commenced her evidence in 2012, some 10 years after the actual events where PW-01 had been evicted from the house which she thought was belonged to her. It is clear from the evidence that after the eviction and being a retired person with little income to survive, she has been dependent on others to

find a place to live. Any discrepancies in her evidence have to be considered under those circumstances unless they are material discrepancies which go on to the core of the issue placed before the Court.

I do not find a reason to accept that there is any material *inter se* or *per se* contradictions among the evidence of the main witnesses of this matter in relation to the events that took place as a result of the transactions between the PW-01 and the appellant.

As I have considered before, PW-02 and 03 being close friends and persons who had no reason to give false evidence against the appellant, it is clear that if the intention of the PW-01 was to be a tenant under the appellant as claimed, they should have known that fact from the very outset of the events that led to this dispute.

I am of the view that the prosecution has approved the relevant ingredients as to the offence of cheating beyond reasonable doubt, and I find no reasons to interfere with the judgment of the learned High Court Judge.

The other ground of appeal urged by the learned President's Counsel was that the amount of compensation ordered was contrary to the law.

However, I do not find a basis for the argument as correctly pointed out by the learned SSC. In a case of this nature, a trial Judge when deciding to award compensation can act under the provisions of the section 17 of the Code of Criminal Procedure Act, or in a fit case, under the provisions of Assistance to and Protection of Crimes and Witnesses Act No. 4 of 2015. It is correct to say that a High Court Judge when ordering compensation in terms of Assistance to and Protection of Crimes and Witnesses Act No. 4 of 2015 can order compensation up to Rs. 1 Million. However, I do not find a limitation as such when ordering compensation by a High Court Judge in terms of section 17 of the Code of Criminal Procedure Act. The only limitation relates to a Magistrate when ordering compensation in terms of the said section.

The relevant section 17(4) of the Act reads as follows;

17(4). Whenever any person is convicted of any offence or where the Court holds the charge to be proved but proceeds to deal with the offender without convicting him, the Court may order the person convicted or against whom the Court holds the charge to be proved to pay within such time or in such installments as the Court may direct, such sum by way of compensation to any person affected by the offence as to the Court shall deem fit.

The sentencing order of the learned High Court Judge clearly shows that the appellant had been given a suspended sentence considering the time period that has taken the case to come to a conclusion, and his age. Similarly, the learned High Court Judge has considered the circumstances of PW-01 who lost her hard-earned money as a result of being deceived in the manner shown in evidence, and the time period taken. It has been decided to award compensation that fits the relevant facts and the circumstances. I am of the view that the compensation amount ordered was fair and reasonable, which needs no interference by this Court.

Accordingly, the appeal is dismissed for want of merit. It is directed that the suspended sentence imposed upon the appellant shall deem to have commenced against him from the date this judgment on appeal is pronounced to him by the learned High Court Judge of Colombo.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal