

**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 of 1979 read with
Article 139 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal Case No.:

CA HCC 0454/17

Vs.

High Court of Colombo Case No.:

HC 574/2001

1. Gnanaiah Jeyagaran

2. Pon Sinig Anbu Sing

Accused

AND NOW BETWEEN

Gnanaiah Jeyagaran

Accused-Appellant

Vs.

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

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Kaneel Maddumage with Praveen Premathilaka for the 1st
 Accused-Appellant.

Maheshika Silva, D.S.G. for the Respondent.

Argued on : 03.07.2025

Decided on: 31.07.2025

JUDGMENT

AMAL RANARAJA, J.

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Colombo* together with one other person in High Court case number HCC 574/2001.
2. The charges in the indictment are as follows;

Charge

That between May 01, 2000 and June 30, 2000, the 1st accused-appellant, deceived one Ratnadeshapriya Samaraweera, the manager of the People’s Bank branch in Ginthupitiya, and induced him to hand over certain property to the appellant, namely bills of lading bearing no. PONLBOM 70999283 and 70999284 and the invoices bearing no.s MS77 and MS78 dated May 07, 2000 by dishonestly asserting that the relevant order value of Rs.850,000 would be paid to the International

Division of People's Bank and thereby committed an offence punishable under section 5(2) of the Offences Against Public Property Act No.12 of 1982.

3. At the conclusion of the trial, the Learned High Court Judge has convicted the appellant of the 1st charge, acquitted the 2nd person named as the accused in the 2nd charge, and sentenced the appellant as follows;

For a term of 26 months simple imprisonment and also imposed a fine of Rs. 2,550,000 with a term of 3 years' simple imprisonment in default.

Case of the prosecution

4. The bank branch where PW01 served as a manager has received a set of documents related to a consignment of goods imported into *Sri Lanka* by a business entity named *Durga Agencies*, which have been sourced from a business entity in *India*.
5. On May 22,2000 the appellant has met with PW01, who, in accordance with the bank's standard procedure provided the bills of lading and the invoices, accompanied by a covering letter, addressed to the bank's international branch. This has been done on the appellant's assurance to ensure payment to the international branch before the goods were cleared.
6. However, although the consignment of goods had been subsequently cleared, it has been later discovered that the additional documents related to the payment made to the importer's bank had been forged.

As a result, it is alleged that the appellant engaged in deceptive practices against PW01, thus, committing an offence as outlined in the 1st charge in the indictment.

Case of the appellant

7. The appellant has maintained his innocence during the proceedings. He has asserted that he was manipulated by the person named as the 2nd accused in the indictment into participating in transactions that, on the surface appeared to be innocuous.
8. The crux of the appellant's argument lies in the assertion that he was misled and coerced into those dealings, which he believed to be legitimate exchanges with PW01.

Grounds of appeal

9. When the matter was taken up for argument, the Learned Counsel for the appellant urged the following grounds of appeal;
 - i. Whether the indictment is defective as the necessary ingredients of the offence of cheating are not contained in the charges of the indictment?
 - ii. Whether the prosecution has failed to prove the ingredient of damage or loss caused to the government in the offence of cheating?
 - iii. Whether the Learned High Court Judge has failed to consider PW01 is not a credible witness and his evidence should not be relied upon?
 - iv. Whether the Learned High Court Judge has failed to properly consider and evaluate the evidence of the defence?
 - v. Whether the Learned High Court Judge has misdirected himself by coming to erroneous or irrelevant conclusions/findings in the judgment and therefore whether the judgment is bad in law?

vi. Whether the sentence imposed on the appellant is excessive considering the circumstances of the appellant?

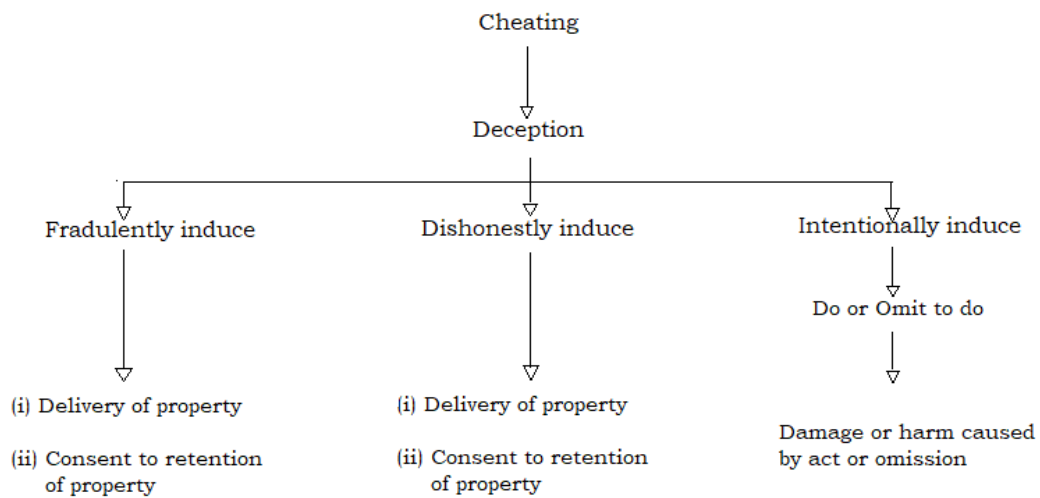
10. The offence of cheating is described as follows in the Penal Code;

Section 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, any such 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 to the Government is said to “cheat”.”

11. Cheating at common law was a misdemeanour and punishable with imprisonment and fine. Hawkins defines cheating as *“deceitful practices in defrauding or endeavouring to defraud another of his own right by means of some artful device contrary to the plain rule of common honesty”*. [vide Smith and Hogan - Criminal Law 10th edition (2003) at pages 568 to 569].

12. The section deals with three types of cheating;



13. The allegation against the appellant is that he deceived a manager of a particular bank based on a dishonest assertion. Following this deception, the appellant allegedly, induced the manager to deliver two bills of lading and invoices, marked 37-1 to 37-4 which pertained to a consignment of goods intended for a business entity named *Durga Agencies*.

14. In this context, the offence committed by the appellant falls under the 2nd limb of the offence described in section 398 of the Penal Code. Therefore, it is unnecessary to establish that any damage or harm resulted from the actions of the appellant.

15. The bills of lading and the invoices marked 37-1 to 37-4 pertained to a consignment of goods imported into *Sri Lanka* by a business entity registered in the country, and sourced from a business entity registered in *India*. These documents marked 37-1 to 37-4 have been submitted to the importer's bank, managed by PW01, by the exporter's bank, with the stipulation that they be released to the importer only upon the settlement of the specified sum and the remittance of the funds to the exporter's bank in settlement of the exporter's dues.

16. The appellant has met with PW01 on May 22, 2000. In accordance with the standard procedures of the bank, PW01 has provided the documents marked 37-1 to 37-4 to the appellant accompanied by a covering letter addressed to the manager of the international branch of the bank. This has been done based on the appellant's undertaking to ensure payment to this specific branch of the bank before the consignment of goods could be cleared. However, although the consignment was subsequently cleared, it has been later discovered that the additional documents concerning the payment made to the importer's bank by the importer have been forged.
17. By undertaking to make the necessary payments to the international branch of the bank, the appellant has induced a belief in PW01 that a commitment has been made, which was subsequently breached in substantial terms.
18. Consequently, the appellant has engaged in deceptive practices against PW01 and also intended to cause wrongful gain to the business entity involved in importing the consignment of goods.
19. In *AG vs. Wijerama* [1937] 17 CLR 160 it has been held that deception is causing to believe what is false.
20. Despite the fact that the appellant as the sole proprietor of *Durga Agencies* had opened a bank account around the time of the incident outlined in the charges, it is important to note that he had frequently visited the particular branch of the bank managed by PW01. During these visits, the appellant has represented other customers of the bank, attending to various banking matters. As a result of his regular presence, he has become a familiar face at the branch, establishing a rapport with the bank's staff, particularly with PW01.
21. Given this established trust, the appellant has been viewed as a reliable and well known individual by the bank officers. This familiarity has contributed to

a sense of temptation on the part of PW01, potentially influencing his decisions and actions regarding the appellant. Therefore, it is reasonable to consider the likelihood that the actions described by PW01 were influenced by this established relationship.

22.The defence has not successfully demonstrated any animosity between PW01 and the appellant. Furthermore, the appellant has failed to identify any material contradictions in PW01's testimony. Additionally, the appellant has not provided any specific reasons to challenge the credibility of PW01's account. Given these circumstances, the argument presented on behalf of the appellant asserting that PW01 is an unreliable witness lacks merit.

23.The Learned High Court Judge has meticulously evaluated the evidence presented by the appellant along with the testimonies of other witnesses called to support the appellant's case. In conducting this evaluation, the Learned High Court Judge has approached the matter holistically rather than dissecting evidence in a piecemeal fashion. This comprehensive analysis has allowed for an in depth understanding of the case as a whole, ensuring that the context and the interrelationships of the evidence were considered.

24.Moreover, the Learned High Court Judge has provided clear and cogent reasons for any conclusions drawn, particularly for the decision not to rely on specific pieces of evidence. By articulating these reasons, the Learned High Court Judge has demonstrated a commitment to transparency and fairness, allowing for an informed assessment of the credibility and relevance of each witness's testimony.

25.Furthermore, the sentence imposed by the Learned High Court Judge is in line with the provisions of section 5(2) of the Offences Against Public Property Act No.12 of 1982, with the fine being three times the amount related to the offence committed.

26. Due to the reasons stated above, I am not inclined to interfere with the conviction and the disputed judgment together with the sentencing order. I dismiss the appeal. I make no order regarding costs.

Appeal dismissed.

27. The Registrar of this Court is directed to send this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree,

Judge of the Court of Appeal