

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal against the
Judgment in case No. 3433/2014 of the
Provincial High Court, Kegalle.

Democratic Socialist Republic of Sri Lanka

Complainant

Vs

Madirama Withana Ralalage Senavirathne

Accused

Court of Appeal Case No:

CA/HCC/0025/2023

High Court of Kegalle Case

No: **3433/2014**

AND NOW BETWEEN

Madirama Withana Ralalage Senavirathne

Accused – Appellant

Vs

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

Complainant - Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Dr. Sunil Abeyratne with Buddhika Alagiyawanna for the Accused –
Appellant.
: Suharshi Herath, D.S.G. for the State.

Argued on : 05.02.2026

Decided on : 12.05.2026

Pradeep Hettiarachchi, J

Judgment

1. The Accused-Appellant (hereinafter referred to as the “Appellant”) was indicted on two counts before the High Court of Kegalle. The charges contained in the indictment are as follows:
 - a. On or about 25.12.2017, the Appellant sold a land named ‘Rasnekhena *alias* Denata Watte’ to Warshakoon Mudiyansele Bandula Kusum Kumara for Rs. 200,000/- and fraudulently or dishonestly induced him to pay Rs. 200,000/- to the Appellant at the time he had sold the same property to Hungampola Mudiyansele Milton by deed No. 2654 and thereby committed an offence punishable under Section 403 of the Penal Code.
 - b. During the same transaction, the Appellant has produced the deed of declaration No. 4653 knowingly, or there were reasons to believe the same as a fraudulent deed, as a genuine document to Ashoka Jayaweera, Notary Public, to prepare the deed No. 1503 and thereby committed an offence punishable under Section 459 read with Section 457 of the Penal Code.

2. At the trial before the High Court, the prosecution called seven witnesses, while the Appellant, W.S. Niranjan Senevirathne, and W.A. Wasana Dilrukshi Wadupitigoda testified for the defence.
3. At the conclusion of the trial, the Learned High Court Judge found the Appellant guilty on both charges and accordingly convicted him. The Appellant was sentenced to two years' simple imprisonment on the first count, together with a fine of Rs. 15,000.00, with a default sentence of eight months.
4. On the second count, the Appellant was sentenced to one year's rigorous imprisonment. Both terms of imprisonment were ordered to run concurrently.
5. Being aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal.

Background to the appeal:

6. The case against the Appellant is founded on Deed No. 1503, by which he transferred the contiguous lands known as Rasnekahena and Denata Watta to Bandula Kusum Kumara (PW3 of the indictment). The prosecution alleges that the Appellant had previously transferred the same property to H.M. Milton (PW1) under Deed No. 2654 and, therefore, committed an offence punishable under Section 403 of the Penal Code.
7. The first witness to testify was PW1, Milton. According to his evidence, he purchased the land in question from the Appellant by Deed No. 2654 dated 12.08.1994 for a consideration of Rs. 20,000/-. After a lapse of 10 to 12 years, PW3, Bandula Kusum Kumara, showed him Deed No. 1503 and informed him that the lot depicted in Plan No. 462 had been sold to him by the Appellant.
8. PW1's position was that the land sold to him by the Appellant had subsequently been sold to Bandula and thereafter to one Ranjan De Silva. It is to be noted that, as admitted by PW1, no consideration passed at the time of the execution of Deed No. 2654.

9. PW2, S.R.S. Bandara, signed as a witness to Deed No. 2654. According to his evidence, the Appellant informed him that, as there was no existing deed for the land, the said deed was being executed in favour of PW1 in order to create a title deed for the property.
10. PW3, Bandula Pushpakumara Warshakoon, purchased the land under Deed No. 1503 dated 25.12.2007, marked as P3. He testified that a sum of Rs. 500,000.00 was paid in the presence of the Notary Public.
11. However, upon being informed by PW1 that he was the owner of the land, PW3 re-transferred the property to the Appellant for the same consideration by Deed No. 1545, marked as P5.
12. PW3 was also a witness to Deed No. 4653 dated 22.10.2007, which is a deed of declaration whereby the Appellant declared himself to be the owner of the land by prescription. PW3 purchased the land under Deed No. 1503 dated 25.12.2007. According to his evidence, the Appellant was in possession of the land at the time of the said purchase.
13. PW4, Nissanka Karunarathne, is one of the attesting witnesses to Deed No. 1503 dated 25.12.2007, marked as P4.
14. PW5, Wasantha Ranjan de Silva, purchased the land from PW1, Milton, under Deed No. 462, marked as P2.
15. In this matter, the Appellant and PW1 are cousins. The land which is the subject of this case is a contiguous extent known as Rasanakhena *alias* Denata Watta. This land had previously been possessed by the Appellant following the death of his uncle; however, no deed had been executed in respect of the said property.
16. It is evident that the Appellant executed Transfer Deed No. 2654 in favour of PW1, which was attested on 12.08.1994, but continued to remain in possession of the land thereafter.

17. Subsequently, Case No. 26402 was instituted by the police in the Aranayake Circuit Court under the Primary Courts Act in respect of the land in question. At the conclusion of the inquiry, by order dated 20.06.1995, the Primary Court restored possession of the land to the Appellant.
18. Thereafter, on 22.10.2007, the Appellant executed a deed of declaration claiming prescriptive title to the land, which was attested by Bandara Aluthwatta, Notary Public. Following the execution of the said deed of declaration, the Appellant sold the land to PW3, Bandula Kusum Kumara, under Deed No 1503.
19. Admittedly, no consideration passed at the time of the execution of Deed No. 2654. Although PW1 stated that the Appellant had borrowed money from him prior to the execution of the deed, no reference to such a transaction appears in the deed. PW1 further testified that the land was conveyed to him in place of the said loan; however, no such arrangement is reflected in the deed.
20. At present, the Appellant has instituted proceedings in the District Court of Kegalle against PW1 and PW5, seeking a declaration that Deed No. 2654 created a constructive trust.
21. It is also significant that PW1 was a respondent in Case No. 26402 and tendered an affidavit marked D3 in support of the Appellant. In that affidavit, PW1 stated that the Appellant was in possession of the land, notwithstanding that a transfer deed had been executed in his favour. More importantly, PW1 further stated that, since June 1991, he had been residing as a tenant in a house occupied by PW5.
22. It is also evident that, at the time PW1 sold the land to PW5 on 22.01.2008, he was aware that the Appellant had already sold the same land to PW3. Further, the evidence suggests that PW1 had no real knowledge of the land at the time Deed No. 2654 (P1) was executed. He did not even take steps to conduct a title search prior to the purported purchase.
23. In these circumstances, it may reasonably be inferred that PW1 did not intend to acquire the beneficial interest in the land under P1, nor did he genuinely intend to purchase the

property. This, in turn, lends support to the Appellant's contention that he did not intend to effect a true sale in favour of PW1 by Deed No. 2654 (P1), but rather executed it solely for the purpose of creating a title deed in order to regularize or strengthen the title to the property.

24. PW2, Samarawardhana Bandara, was one of the attesting witnesses to Deed No. 2654. According to his evidence, both the Appellant and PW1 are related to him.
25. It is evident from the testimony of PW2 that the Appellant executed Deed P1 for the purpose of creating a title deed in respect of the land, as no prior deed existed for the property possessed by the Appellant. PW2 further confirmed that no consideration was passed at the time of execution of the said deed.
26. This evidence lends further support to the Appellant's contention that he did not intend to divest himself of the beneficial interest in the land.
27. When PW1 informed PW3 that PW1 also claimed ownership of the property, PW3 re-transferred the property to the Appellant by Deed No. 1545 dated 05.02.2008, marked as P5.
28. PW3 admitted that the entire amount paid to the Appellant at the time of purchasing the land was refunded by the Appellant upon the execution of P5. Consequently, PW3 did not incur any financial loss.
29. It is also noteworthy that, in 1995, following the execution of the order in Case No. 26402, possession of the land was handed over to the Appellant, and since then, the Appellant has remained in possession. The order made in Case No. 26402 was not challenged in any higher forum by any of the parties to that case.
30. The first count in the indictment is that, having already sold the property in question to PW1, the Appellant subsequently induced PW3 to pay a sum of Rs. 200,000.00 by selling the said property to PW3, thereby committing an offence punishable under section 403 of the Penal Code.

31. The offence of cheating is defined in Section 398 of the Penal Code as follows:

“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 to the Government, is said to 'cheat'”

32. The component elements of the offence, as explained in the *“Offences Under the Penal Code”* by Prof. G.L. Peiris, are:

- 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 any property, or (iii) to do or omit to do anything which he would not otherwise 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 reason of the act or omission contemplated by element (c) (iii).

33. As explained in the aforesaid authority, the distinguishing character of the offence of cheating resides in the element of depriving a person of his property by deception. The essence of deception, in this context, was explained in the case of ***Wijerama (1937) 17 G.L. Rec. 160***, which held that *“To deceive is to cause to believe what is false.”*

34. *“The governing principle, then, is that the Accused is liable for cheating only if, at the time of making the promise, he does not intend to keep it,”* as explained in a long line of cases.

35. In the case of ***Silva vs. Kangany (1929) 10 G.L.R. 32***, held that;

“The respective complainants had delivered property in consequence of the deception, so that the first limb of the definition was manifestly applicable. Yet the conclusion was reached that the prosecution was not entitled to succeed without proof of detriment sustained by the complainant or by the Government.”

36. Section 403 reads:

“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 extend to seven years, and shall also be liable to fine.”

37. Thus, in order to sustain a charge under Section 403, the presence of dishonest intention of the Accused is of paramount importance. The word dishonestly is defined in Section 22 of the Penal Code as follows:

“Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly.'”

38. It is in evidence that PW1 was never in possession of the land in question, even after the execution of Deed No. 2654 dated 12.08.1994, marked as P1, in his favour. More importantly, PW1 himself admitted, in his affidavit tendered in the proceedings under the Primary Courts Act, that the Appellant remained in possession of the said land even after the execution of Deed No. 2654 (P1).

39. Another significant fact is that PW3, Bandula Warshakoon, the vendee under Deed No. 1503, was also an attesting witness to Deed of Declaration No. 4653, by which the Appellant declared that he had acquired prescriptive title to the land in question.

40. Thus, PW3 was well aware that the Appellant claimed title to the land by prescription. The fact that PW1 was never in possession of the land, even after the execution of P1, further strengthens the Appellant’s claim of prescriptive title.

41. The surrounding circumstances, in particular the conduct of PW1, indicate that he had no intention of asserting title to the land. Accordingly, the execution of Deed No. 1503 did not result in any unlawful loss or gain to any party.
42. Further, the Appellant re-transferred the property to PW3 by Deed No. 1545 dated 05.02.2008 for the same consideration, and, as admitted by PW3, he suffered no loss as a result of the execution of Deed No. 1503.
43. Also, there is no evidence that any other person has suffered loss due to the execution of deed No 1503. Therefore, the first count against the Appellant would inevitably fail.
44. The second count in the indictment is that the Appellant presented Deed of Declaration No. 4653, alleged to be a forged document, as a genuine document to Ashoka Jayaweera, Notary Public, for the purpose of preparing Deed No. 1503, thereby committing an offence punishable under section 459 read with section 457 of the Penal Code.
45. In this regard, it is pertinent to examine the definition of “forgery” as contemplated in section 452 of the Penal Code.

Section 452 reads:

“Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to the Government, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.”

Section 453 reads:

“A person is said to make a false document-

Firstly- who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed, by or by the authority of a person by whom or by

whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

Secondly- who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him he does not, know the contents of the document or the nature of the alteration.”

46. Accordingly, the requisite intention on the part of the Accused must be clearly established. This principle was further emphasized by the following authorities.

47. In the case of ***Toussaint vs. Menika (1937) 16 G.L. Rec. 261***, held as follows;

“An indictment alleging forgery must contain a specific averment in regard to the intention of the person accused of forgery.”

48. In the case of ***Periyatamby (1902) 5 N.L.R. 338***, held as follows;

“The charge of forgery must fail, since no damage or injury was intended to be caused to any person or to the public, nor was there intent to commit a fraud.”

49. It is to be noted that the Appellant’s conduct in the present case does not fall within any of the aforesaid limbs. The elements of acting “dishonestly” or “fraudulently” are not established in relation to the preparation of Deed No. 4653, as the Appellant has provided a sufficient explanation as to why the said deed of declaration was executed.

50. The Appellant's evidence in this regard, when considered together with the evidence of PW1, clearly demonstrates the absence of any dishonest or fraudulent conduct on the part of the Appellant.
51. Where the prosecution has failed to establish that Deed of Declaration No. 4653 is a forged document, the charge under section 457 must necessarily fail. The evidence adduced by the prosecution does not satisfy the essential ingredients stipulated in sections 453 or 457 of the Penal Code.
52. For the reasons set out above, I am of the view that the prosecution has failed to establish the charges against the Appellant beyond a reasonable doubt. The conviction entered, and the sentence imposed by the Learned High Court Judge cannot therefore stand. Accordingly, the appeal is allowed. The conviction and sentence are hereby set aside, and the Appellant is acquitted of all charges.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree,

Judge of the Court of Appeal