

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

In the matter of an Appeal in terms of Section  
14 of the Judicature Act read with Section 331  
(1) of the Code of Criminal Procedure Act No  
15 of 1979.

Democratic Socialist Republic of Sri Lanka

**Complainant**

**Court of Appeal Case No: HCC 274/15**

High Court of Ampara

Case No: HC / AMP/1496/2012

1. Herath Mudiyansele Kudagedara  
Vipula Bandara Herath
2. Rathnayaka Mudiyansele Thuppitiye  
Gedara Dayawathie

**Accused**

**AND NOW BETWEEN**

Rathnayaka Mudiyansele Thuppitiye

Gedara Dayawathie alias Rathnayake

Mudiyansele Thuppitiye Gedara

Sandeepa Dayaseelie

**2<sup>nd</sup> Accused – Appellant**

**Vs.**

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

**Complainant – Respondent**

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

**Counsel:** Saliya Pieris PC, with Thanuka Madhawa Nandasiri with Hiruni  
Chandrasekara for the Accused-Appellant  
Anoop de Silva DSG, for the State

**Written**

**Submission:** 09.09.2019 (by the 2<sup>nd</sup> Accused-Appellant )

**On:** 15.02.2019 (by the Respondent)

**Argued On:** 29.01.2026

**Judgment On:** 30.03.2026

### **JUDGEMENT**

**B. Sasi Mahendran, J.**

The 2<sup>nd</sup> Accused–Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Ampara together with Herath Mudiyanseelage Kudagedara Vipula Bandara Herath (hereinafter referred to as “the 1<sup>st</sup> Accused”) under Section 388 read with Section 389 of the Penal Code, and Section 5(1) of the Public Properties Act No. 12 of 1982 for misappropriation of Rs. 398,341/-.

At the trial, the prosecution presented evidence through six witnesses and marking productions P1-P9 and thereafter closed its case. The 1<sup>st</sup> Accused and the Appellant in their defence, made dock statements.

At the conclusion of the trial, by judgment dated 4th September 2015, the learned High Court Judge found the appellant and 1<sup>st</sup> Accused guilty on the charges. For the appellant, Laermed High Court Judge imposed a sentence of five years' rigorous imprisonment together with a fine amounting to three times the sum of Rs. 1,195,023/-. In default of payment of the fine, the appellant was ordered to undergo a further term of two years' simple imprisonment. Other accused was

Being dissatisfied with both the conviction and the sentence imposed by the Learned High Court Judge, the Appellant preferred an appeal before this Court, articulating the following grounds in support of her challenge. It must further be observed that the other accused did not prefer to file an appeal before this Court.

1. The Learned High Court Judge has failed to consider that the prosecution has failed to establish their case beyond reasonable doubt.
2. The Learned High court Judge has failed to consider that the prosecution has failed to establish that the Appellant has a criminal intention to commit the offence which she has been convicted.
3. The Learned High Court Judge has failed to properly evaluate the dock statement of the Appellant

**The facts and circumstances of this case are as follows,**

PW01, Anura Somawansha, an auditor attached to the Samurdhi Authority, testified that, acting on the directions of the Chief Internal Auditor, he conducted an audit in relation to the currency shortage at the Sandun Pura Samurdhi Bank, Dehiaththakandiya. The witness stated that he prepared an Audit Report dated 28th June 2006, covering the period from 22nd October 1998 to 22nd June 2001. This report, marked as P1, was based on the Daily Income and Expenditure Records maintained by the Bank. PW 1 explained that the cash at hand at the end of each day was required to be kept in the safety locker until the following day, when it would be recorded as the cash at hand at the beginning of that day.

Upon examining the Daily Income and Expenditure Record for the period 26.04.2001 to 25.06.2001, it was revealed that although a sum of Rs. 531,697/- had been indicated as the cash at hand at the end of 30.04.2001, the said amount had not been recorded as the cash at hand at the beginning of 02.05.2001. From that point onwards, no balancing of

accounts had taken place, and no balance was calculated until 22.06.2001. According to his calculation the total cash in hand as at 22.06.2001 amounted to Rs. 402,226.50, which was marked as P1A. The witness has stated that no transactions were carried out after 22.06.2001, as the bank society had been sealed. When the safety locker was opened on 26.07.2001, only a sum of Rs. 3,885.50 was physically available, thereby disclosing a shortage amounting to Rs. 398,341/-. It should be noted that on 25th June 2001, the appellant lodged a complaint with the police regarding a robbery involving Rs. 215,106.50 in the Sandun Pura Samurdhi Bank. The relevant dates are significant: 22nd June 2001 fell on a Friday, while the 23rd and 24th were weekend days during which banks were not in operation.

The witness further specified that Samurdhi Bank Societies operate in accordance with the operational manuals issued by the Director General. According to the evidence of witness by virtue of Manual No. 12, marked as P4, the internal management of the Bank Society is vested in the Manager and Assistant Manager. In the instant case the manager is the Appellant and the Assistant manager is the 1<sup>st</sup> Accused. He also stated that, under the operational manuals, it is mandatory to balance the daily income and expenditure, and to prepare a cash certificate reflecting the cash at hand. It is furthermore required to ascertain whether the cash in hand, as reflected in the common ledger, is physically available in the safety locker. The witness further explained that the preparation of the cash certificate was the responsibility of the cashier, which was then required to be examined and signed by the Manager or Assistant Manager of the Bank Society. In the instant case the cashier, A.G. Wasantha, has pleaded guilty.

As per the testimony of PW01, it is the responsibility of the manager to ensure that the cash in hand remains within the prescribed limit and the appellant, in her capacity as manager, made a request to the Samurdhi Authority on 23rd December 2000 to increase the limit of Rs. 200,000/-. According to the witness, as set out in P7, the one key to the safety locker was required to be in the custody of the Manager or Assistant Manager, while the second key was to remain with the cashier. The duplicate key was kept under seal at the office of the Divisional Secretary. The number lock, however, was known only to the Appellant and the 1<sup>st</sup> Accused. He further stated that if the manager gives the first key to the assistant manager, the handover must be done in writing. It is noted that the audit report marked as P1 was not challenged by the defense.

**During cross-examination, the witness stated that he prepared the Audit Report marked as P1 by relying on the relevant documents. I note that during the cross examination, both accused and the appellant did not challenge how the witness found the shortage of money.**

PW 12, D.M. Jayaweera, testified that he served as the cashier of the Sadunpura Samurdhi Bank under the supervision of the 1st Accused and the Appellant until 30.07.1999. He stated that he managed the balances by tallying daily expenses, and that the manager together with the assistant manager certified the reconciliation along with the safety locker. He further explained that the one key to the locker was held either by the 1st Accused or the Appellant, while the second key was in the custody of the cashier. On 14.06.2001, the witness resumed duties as the bookkeeper of the Sadunpura Samurdhi Bank. His responsibility was to verify that daily expenses and income corresponded with the cash balance in hand, while the manager and assistant manager were tasked with reconciling the book balance with the cashier's balance.

Upon recommencing work, the witness observed that the cash book had not been reconciled. When this was brought to the attention of the Appellant, she instructed him to reconcile the accounts by recording the previous transactions. Accordingly, he sought assistance from an officer attached to the Dehiattakandiya office. The witness further testified that the 1st Accused instructed him to obtain a new cash book and record the transactions therein. Acting upon this instruction, the witness utilized a new cash book. In addition, the appellant requested the 1st accused to assume responsibility if any problem arise from the course of action undertaken.

On 22nd June 2001, while the witness was on his way home, he observed the 1st Accused rushing out and climbing onto a lorry. The witness questioned him as to whether he was not closing the doors. In response, the 1st Accused threw the keys to the witness, who then closed the doors and took the key home. On the following day the 1st Accused came to the witness's residence and collected the key. It should be borne in mind that the keys referred to in the testimony were not the safety locker keys, but rather the keys belonging to the bank premises.

On 25.06.2025 when the bank was opened, it was revealed that the locker containing the vault had been broken into. Furthermore, it was discovered that the keys to the safety locker were missing.

The witness further stated that, out of suspicion, the 1st Accused had searched for the Appellant, who then opened the safety locker using keys in her possession. When the prosecution questioned how she was able to open the locker if both keys were missing, the witness explained that there are two keys, numbered 01 and 02, which are held by the මහ සංගමය, while one key remains in the custody of the Appellant. He further testified that, at the relevant time, both keys were in the possession of the Appellant, even though the cashier's key was missing.

The witness further testified that there were no signs of damage to the premises or to the locker. He stated that the password to the safety locker was known both to the 1st Accused and to the Appellant. The witness added that he came to know the locker had been broken into when the 1st Accused informed him of the incident.

PW 4, IP Seneviratne, who was the OIC of the Dehiaththakandiya Police Station, testified that a complaint was lodged by the Appellant on 25th June 2001 at 12:30 p.m. regarding the theft of Rs. 215,106.50 from the Sandun Pura Samurdhi Bank Society. The witness thereafter visited the scene of the crime accompanied by four officers, the Appellant, the 1st Accused, and the cashier A.G. Wasantha. He observed that there were no signs of the door to the room containing the safety locker having been forced open, nor were there any other indications of a break-in. Within that room, the witness noted the presence of five tables. The Appellant informed him that the key to the safety locker had been kept inside the drawer of the first table in the room, and upon inquiry, the witness learned that this table belonged to the 1st Accused.

The witness stated that there were no signs indicating that the safety locker or the table had been opened by force. And the appellant had both keys to the safety locker, where he found the safety locker empty. Subsequently, the witness arrested the Appellant, the 1st Accused, and the cashier. He then took custody of two keys to the safety locker from the possession of the Appellant, along with further productions from the Appellant, the 1st Accused, and the cashier under PR 188/2001.

Upon the conclusion of the prosecution's case, both the 1st Accused and the Appellant gave Dock Statements. The 1st Accused maintained that he was innocent and that the evidence presented by the prosecution was incorrect. The Appellant contended that no operational manual had been served on her regarding banking functions or the maintenance of the safety locker. She stated that she had carried out her duties in accordance with the instructions vested in her by the Headquarters Manager. The

Appellant further asserted that she had been burdened with a large volume of work and, as a result, did not have sufficient time to supervise the functions of the Bank Society, concentrating instead on her assigned field duties. She also stated that following the incident she was transferred to the Divisional Secretary's Office, and after five years, her employment was terminated. The Appellant concluded her statement by maintaining that she was not guilty and was innocent of the charges.

Upon conclusion of the trial, the learned High Court Judge, in evaluating the evidence, made the following findings

1. both keys were in the possession of the Appellant
2. the password to the safety locker was known only to the 1st Accused and the Appellant.
3. The complaint was made with the intention of concealing the misappropriation of money.

Upon analyzing the evidence, I note that the principal allegation against the 1st accused and the appellant along with the cashier, A.G. Wasantha who had already pleaded guilty, was that they had committed offences under Section 388 read with Section 389 of the Penal Code, and Section 5(1) of the Public Properties Act No. 12 of 1982. After considering the evidence presented, the learned High Court Judge convicted the appellant on the first count.

The money in question had been kept in the safety locker, to which only the 1st accused, the appellant, and the cashier, A.G. Wasantha had access. It is noteworthy that the appellant herself lodged the complaint to PW4 regarding the theft of Rs. 215,106.50. At the time, the appellant was serving as the bank's manager, while the 1st accused was the assistant manager. Both individuals possessed knowledge of the secret password to the safety locker.

According to PW1, the shortage of money amounted to Rs. 398,341/- and I note that this amount was not challenged by any of the accused. The cashier managed the daily balances by reconciling expenses, and the manager, together with the assistant manager, certified the reconciliation along with the safety locker records. PW4 testified that on 25th June 2001, at 12:30 p.m., the appellant reported the theft of Rs. 215,106.50 from the Sandun Pura Samurdhi Bank Society. There were no signs of forced entry into the safety

locker, the room, or the table. Both accused persons opened the locker in the presence of witnesses, and it was found to be empty.

The audit report marked as P1 confirmed the shortage of Rs. 398,341/-, and this was not challenged by the appellant. PW12 further stated that the 1st accused threw certain keys to him, but the evidence established that these were not the safety locker keys, but rather the keys of the bank doors.

The central issue before us is how the appellant came to lodge a complaint with the police regarding the alleged theft of money. It remains unclear how she formed the opinion that such a specific sum was missing, as this was not explained in her dock statement. Both the appellant and the 1st accused had exclusive control over the safety locker, being in possession of the keys and knowledge of the password. Without their involvement, the locker could not have been opened.

According to PW4, the appellant made a false statement that the bank had been robbed, in order to conceal the theft undertaken by herself and others. It is true that the books were not properly maintained, but when PW12 raised concerns in this regard, no action was taken by either accused.

The defense put forward by the appellant was that she had been burdened with a considerable volume of work and, as a result, did not have sufficient time to properly supervise the functions of the Bank Society. Consequently, many of the responsibilities were delegated to the 1st accused. It is not in dispute that, during the relevant period, the appellant held the position of manager, the 1st accused served as the assistant manager.

According to the evidence presented by the prosecution, it was the responsibility of the appellant, as manager, to monitor every aspect of the Bank's operations, and she was accountable for the proper discharge of its functions. It should further be noted that, in her capacity as manager, the appellant made a request to the Samurdhi Authority on 23rd December 2000 to increase the cash reservation limit of Rs. 200,000/-. Moreover, when PW4 informed the appellant regarding the incomplete maintenance of the books and urged her to take steps to investigate the omission, no action was taken by her.

The evidence further establishes that these three individuals had exclusive control over the safety locker and the money deposited therein, as they alone possessed the keys and knowledge of the password.

Considering the above evidence, I hold that the learned High Court Judge correctly found that the appellant's dock statement did not create any doubt in the prosecution's case. The making of a false statement is sufficient to establish the dishonest intention of the appellant.

In the case of Attorney General v. Dewapriya Walgamage and Another 1990 (2) SLR 2012 held that S.N. Silva (as he was then) held that ;

*a) There are two basic ingredients to the offence of criminal misappropriation under S. 386 of the Penal Code-*

*i. A mental element of dishonesty, and*

*ii. An act of misappropriation or conversion of movable property to his own use by the accused.*

According to the above judgment, the prosecution was required to establish that the appellant had converted the misappropriated money for her own use. The Learned High Court Judge, having carefully considered the evidence placed before him, particularly the procedures referred to by the witnesses, came to the conclusion that the funds in question had been misappropriated by the appellant together with the accused.

I am mindful that the Samurdhi Bank Society falls within the scope of public property which is an offence punishable under Section 5(1) of the Public Property Act No. 12 of 1982.

In those circumstances, I am not inclined to interfere with the judgment delivered by the Learned High Court Judge dated 4th September 2015 together with the sentencing order and dismiss the appeal.

The Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**