
FRANK PERERA

Vs.

ATTORNEY GENERAL

COURT OF APPEAL
WICKREMASINGHE, J.
P. FERNANDO, J.
CA/HCC/318/2015
HC COLOMBO 6248/2012
AUGUST 5, 2019

**Criminal law—Penal Code, sections 462, 455— Possession of a forged document—Mens
rea—Knowledge of the offence—Reasonable doubt**

The accused was indicted in the High Court for committing an offence punishable under section 462 read with section 455 of the Penal Code for knowingly having in his possession a forged police clearance certificate. After trial, the High Court found the accused guilty and sentenced him to seven years imprisonment. The accused appealed to the Court of Appeal on the grounds that the High Court judge had failed to consider the infirmities in the prosecution case and that the prosecution had not proved the mens rea of the offence beyond reasonable doubt.

Held:

1. In terms of section 462 of the Penal Code, the prosecution must prove that the appellant possessed the document and also that he knew it was a forged document.
2. It is always open to the trial court to base a finding of knowledge on evidence that the accused deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not wish to have his suspicion confirmed.
3. In a criminal case, suspicious circumstances alone do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt.
4. The trial judge has only considered the element of possession, not the knowledge of the accused as required. Hence, the trial judge erred when he found that the prosecution proved the charge beyond reasonable doubt.

Cases referred to:

1. Sweetv. Parsley (1970) AC 132at149
2. R. v. Hallam (1957) 1 QB 569
3. Westminster City Council v. Croyalgrange Ltd 83 Cr. App. R. 155 at 164
4. Joti Prasad v. State of Haryana 1993 Supp (2) Sec 497
5. Queen v. Sumanasena 66 NLR 350

APPEAL from the Judgment of the High Court of Colombo. Neranjan Jayasinghe for the Accused-Appellant.

Janaka Bandara, S. S. C., for the Respondent.

cur. adv. vult.

October 29, 2019

P. FERNANDO, J.

01. The Accused Appellant (Appellant) in the above numbered case was indicted in the High Court of Colombo for committing an offence punishable under section 462 to be read with section 455 of the Penal Code. According to the particulars of the alleged offence as mentioned in the charge is that the Appellant had in his possession a police clearance certificate knowing that it was a forged document.

02. After trial the learned High Court Judge found the Appellant guilty as charged and sentenced the Appellant to 7 years imprisonment. Being aggrieved by the said conviction and sentence, the Appellant preferred the instant appeal. The grounds of appeal urged by counsel for the Appellant in his written submissions are;

1. Learned High Court Judge failed to consider the infirmities in the prosecution case.
2. Learned High Court Judge failed to address his mind whether the prosecution has proved the Mens Rea of the offence beyond reasonable doubt.

Both grounds of appeal 1 and 2 will be considered together.

03. Facts revealed that there had been two ways to request for police clearance reports for the migrants. Normal procedure would take about a month to issue a clearance report. Special

procedure had been on a personal recommendation of an officer whose rank is Senior Superintendent of Police or above, where the clearance certificate can be obtained without delay. In this instance, Police Constable 77256 Gayan (PW6) had received this personal recommendation of SSP Upul Kumarasiri from the Appellant. Appellant had been a Police Constable attached to the office of the Senior DIG at Police Headquarters that had been in the same building on a different floor. On being suspicious of the genuineness of the document and after ascertaining that the recommendation was not signed by the SSP Upul Kumarasiri, investigations had commenced.

04. As per the evidence led by the prosecution and as admitted by the Appellant in his own evidence at the trial, the forged document in question had been handed over to Police Constable 72256 Gayan by the Appellant. The Appellant giving sworn evidence in his defence, admitted the fact that the document in question was handed over to Constable Gayan by him. The evidence of the Appellant at the trial was that on the day in question he had been going to the police clearance office to check on a clearance application on the request of an ASP named Dharmaratne. In the meantime, Officer named Kannangara had given him an envelope containing a document to be handed over to the clearance department. He had handed over the same to PC Gayan (PW6).

05. On being questioned as to how he received the document, he had promptly said that it was given to him by Officer Kannangara. Evidence also revealed that on the arrest of Kannangara, investigators had recovered various productions including rubber stamps of various Police Officers which can be used to make forged documents. Kannangara and two others had been taken into custody along with the Appellant and the Appellant had been granted bail.

06. It is the contention of the counsel for the Appellant that in the light of the evidence adduced by the defence and the position taken by the defence, the prosecution had failed to prove that the Appellant had knowledge that the document in question was a forged one. He had merely handed over the document to PW6 on the request of Officer Kannangara. Prosecution had failed to prove the required Mens Rea, counsel submitted.

07. Counsel for the Respondent submitted that the learned Trial Judge has analyzed the evidence of the Appellant and that evidence was not sufficient to create a reasonable doubt on the case for the prosecution.

08. Admittedly, the forged document in question had been handed over to Gayan (PW6) by the Appellant. Whether the Appellant was aware or had knowledge that it was a forged document has to be decided on the proved circumstances. Court will have to see whether the Appellant had knowledge that it was a forged document that he was carrying or whether he carried it innocently without any knowledge of the forgery. However, the aspect of negligence or keeping a blind eye also has to be considered.

09. In terms of section 462 of the Penal Code under which the Appellant was charged, knowledge that the document is forged is an ingredient to be proved. State must prove that the Appellant possessed the document (which is admitted) and also that he knew that it was a forged document. Where the word 'knowledge' is included in the definition of an offence it makes it plain that the doctrine of Mens Rea applies to that offence. (*Sweet v. Parsley, 1R v. Hallam*²)

10. Knowledge includes willfully shutting one's eyes to the truth. It is always open to the trial Court to base a finding of knowledge on evidence that the Accused had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not wish to have his suspicion confirmed. (*Lord Bridge in Westminster City Council v. Croyalgrange Ltd*³)

11. 'Knowledge' is an awareness on the part of the person concerned indicating his state of mind . . . 'Knowledge' will be slightly on higher plane than 'reason to believe.' A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. (*Joli Prasad v. State of Haryana*⁴)

10. On knowledge, the Appellant has given clear and consistent evidence as to how it made him carry the document in question on the request of Kannangara to the clearance department. When the question arose, he had promptly informed the authorities as to how it happened. Investigators on the said information have

recovered from Kannangara the material used by Kannangara to make forged documents.

11. Admittedly, handing over the document to PW6 is not within the duties of the Appellant. However, it was his evidence that there had been occasions where the Police Officers assist known persons to get the matters expedited. In the circumstances one cannot assume that the Appellant had knowledge that the document was a forged one. In a criminal case suspicious circumstances alone do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the Accused beyond reasonable doubt. (*Queen v. Sumanasena*⁵)

12. Counsel for the Respondent submitted that on 3 occasions the Appellant had lied in Court. On perusing the evidence, it is abundantly clear that those answers were taken out from the Appellant in cross examination after making the Appellant confused or misled by the counsel. They cannot be considered as deliberate lies that would affect the credibility of the Appellant.

13. In his judgment, the learned Trial Judge has failed to consider the defence of lack of knowledge urged by the Appellant. The learned Trial Judge has gone on the basis that it was not the duty of the Appellant to hand over the documents to the clearance department. The learned Trial Judge has only considered the element of possession, not the knowledge as required. Hence, the learned Trial Judge erred when he found that the prosecution has proved the charge beyond reasonable doubt. As the prosecution has failed to prove the element of 'knowledge' beyond reasonable doubt, the conviction cannot be sustained. Both grounds of appeal should succeed. I acquit the Appellant of the charge.

WICKREMASINGHE, J. - *I agree.*

Appeal allowed.

Judgment by: K. Priyantha Fernando, J.

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