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

SC. Appeal No. 31/2011

SC. SPL. LA. 99/2010

HIGH COURT HAMBANTHOTA

CASE NO. HCA 13/2010

HAMBANTOTA CASE NO. 85662

IN THE MATTER OF AN APPLICATION FOR SPECIAL LEAVE TO APPEAL AGAINST THE ORDER OF THE HIGH COURT IN TERMS OF SECTION 09 OF THE HIGH COURT OF PROVINCES (SPECIAL PROVISIONS) ACT NO. 19 OF 1990.

Priyantha Lal Ramanayake

No. 935, Siyambalakotte,

Barawakumbuka.

ACCUSED-APPELLANT-PETITIONER

Vs.

The Hon. Attorney General

RESPONDENT-RESPONDENT

BEFORE	:	**SISIRA J. DE ABREW, J.**
		S. THURAIRAJA, PC. J. &,
		E.A.G.R. AMARASEKARA, J.

COUNSEL	:	Dr. Ranjit Fernando for the Accused-Appellant-Petitioner.
		Yuresha de Silva, SSC. for the Hon. Attorney General.

ARGUED &		
DECIDED ON	:	27.01.2020

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SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases.

In this case, Accused-Appellant was convicted for the offence of robbery of a chain which is an offence punishable under Section 380 of the Penal Code. The value of the chain was Rs. 24,000/-. After trial, the learned Magistrate convicted the Accused-Appellant and sentenced him to a term of 01 year Rigorous Imprisonment and to pay a fine of Rs. 1500 carrying a default sentence of 01 month Rigorous Imprisonment. In addition to the said punishment, learned Magistrate ordered the Accused-Appellant to pay a sum of Rs. 100,000 as compensation to the victim carrying a default sentence of 01 year Rigorous Imprisonment.

Being aggrieved by the said judgment of the learned Magistrate, the Accused-Appellant appealed to the High Court. The learned High Court Judge by his judgment dated 06.05.2010 affirmed the conviction and the sentence and dismissed the appeal. Being aggrieved by the said judgment of the learned High Court Judge, the Accused-Appellant has appealed to this Court. This Court by its order dated 22.03.2011 granted Leave to Appeal on the following questions of law.

> "1) Did the High Court err by affirming the conviction of the Magistrate's Court in the teeth of errors in law with regard to the Burden of Proof and consideration of the Defense.
>
> 2) Did the High Court err by affirming the operation of a suspended sentence by the Magistrate Court when considering the nature of

the previous conviction. (notwithstanding Section 13 of the Criminal Procedure Code [Amendment] Act No. 47 of 1999)

3)   Did the High Court err by affirming the Order of the Magistrate's Court with regard to the compensation, by failing to consider the legality and/or propriety and justification for same."

The main point urged by the learned Counsel for the Accused-Appellant was that the learned Magistrate has made a grave error in law on the burden of proof. Learned Magistrate in his judgment dated 17.06.2009 stated that the Accused must prove his defence on a balance of probability. The Accused-Appellant who gave evidence under oath stated that he did not commit this offence. Then his defence was a denial of the offence. The Accused-Appellant has not relied on a general or special exception contained in the Penal Code. Was the learned Magistrate correct when he, in his judgment dated 17.06.2009, decided that the Accused must prove his defence on a balance of probability?   In finding an answer to this question it is relevant to consider the judicial decision in the case of **Martin Singho Vs Queen 69 CLW 21 at page 22** wherein His Lordship Justice T S Fernando held as follows;

"As this Court has pointed out on many occasions in the past, where an accused person is not relying on a general or special exception contained in the Penal Code, there is no burden on him to establish any fact."

As I pointed out earlier, the Accused-Appellant in this case has not relied on a general or special exception contained in the Penal Code. His defence was a denial of the offence. If the above decision of the learned Magistrate is accepted

as correct then the Accused in this case will have to prove his defence of denial of the offence on a balance of probability.

According to the law of this Country, this decision of the learned Magistrate is completely erroneous and wrong in law. When we consider the said misdirection committed by the learned Magistrate, we are unable to affirm the conviction of the Accused-Appellant. We hold that the learned Magistrate was completely wrong on that point.

According to the facts of this case alleged by the prosecution when the victim *Nandani* was walking on the road the Accused-Appellant snatched her chain. Soon after the incident, the Accused-Appellant too went to the Police Station. The Accused-Appellant too gave evidence under oath in this case. The Accused-Appellant denied the charge. The learned Magistrate has neither rejected nor accepted the evidence of the Accused-Appellant. This position is accepted by Counsel for both parties. We must consider whether the learned Magistrate has made an error in law when he decided to convict the Accused-Appellant without deciding whether he accepts or rejects the evidence of Accused-Appellant. In *Ariyadasa Vs. Queen* (68 NLR page 66) also reported in 68 CLW page 97 His Lordship Justice T.S. Fernando held as follows;

"1)   If the Jury believed the Accused-Appellant, he was entitled to be acquitted.

2)   Accused is also entitled to be acquitted even if his evidence though not believed was such that it caused the jury to entertain a reasonable doubt in regard to his guilt."

It is relevant to consider the judicial decision in *Martin Singho Vs. Queen (Supra)* His Lordship Justice T.S. Fernando in the said case made the following observation.

"Even if the jury declined to believe the Appellant's version, he was yet entitled to be acquitted on the charge if his version raised in their mind of the jury a reasonable doubt as to the truth of the prosecution case."

In *Queen Vs. Kularatne* 71 NLR 529 Court of Criminal of Appeal considering the question as to how to evaluate a dock statement of the Accused, held as follows:

1)   If they believe the unsworn statement it must be acted upon.

2)   If it raises a reasonable doubt in their minds about the case for the prosecution the defence must succeed.

For the benefit of the trial Judges and the legal practitioners of this Country, we make the following guidelines as to how the evidence given by an accused person should be evaluated.

1.   If the evidence of the Accused is believed by Court it must be acted upon.

2.   If the evidence of the Accused raises a reasonable doubt in the prosecution case, the defence of the accused must succeed.

3.   If the Court neither rejects nor accepts the evidence of the Accused, the defence of the accused must succeed.

Learned Magistrate in this case neither rejected nor accepted the Accused-Appellant's evidence. Even on this ground alone, the Accused-Appellant is entitled to be acquitted. We have earlier pointed out that the learned Magistrate has made a grave error in law when he made the observation which was referred to above with regard to the burden of proof. Considering all these matters, we answer the 1st question of law in the affirmative. Questions of law Nos. 02 and 03 do not arise for consideration. For the above reasons, we hold that the prosecution has not proved its case beyond reasonable doubt.

For the aforementioned reasons, we set aside both judgments of the learned High Court Judge and the learned Magistrate and acquit the Accused-Appellant.

Accused-Appellant acquitted.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC. J.

I agree

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA, J.

I agree

JUDGE OF THE SUPREME COURT

NT/-