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

In the matter of an Application for Special leave to Appeal in terms of Section 9 of the High Court of the Provinces (Special Provisions) Act No.9 of 1990 read with Article 128 of the Constitution Democratic Socialist Republic of Sri Lanka

Samara Archchige Chandra Sagara
Sri Palabaddala,
Ratnapura

Accused-Appellant-Petitioner-Appellant

SC Appeal 103/2015
SC (SPL)LA 9/2015
High Court Colombo
HCMCA 157/2013
MC Colombo 53739/03

Vs

1. Officer-in-Charge
   Police Station,
   Kiribathgoda.

Complainant-Respondent-Respondent-Respondent

2. Honourable Attorney General
   Attorney General's Department
   Colombo 12

Respondent-Respondent-Respondent

Before : Sisira J De Abrew J
Priyantha Jayawardena PC J
NalinPerera J

Counsel : Anil Silva PC with SahanKulatunga
for the Accused-Appellant-Petitioner-Appellant
ARH Bary SSC for the Attorney General

Argued on : 1.3.2017

Decided on : 14.09.2017

Sisira J De Abrew J

The accused-appellant in this case was convicted for committing the offence of theft on a vehicle bearing registration number WPLA 7841which belongs to Prasad Cooray which is an offence punishable under Section 370 of the Penal Code. The appeal filed by the accused-appellant was dismissed by the learned High Court Judge by his judgment dated 4.12.2014. 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 17.6.2015, granted leave to appeal on questions of law set out in paragraphs 12(c) to 12(f) and 12(h) of the petition of appeal of the petition of appeal which are set out below.

1. Has the learned Magistrate as well as the learned High Court Judge erred in law when they convicted Petitioner on charge No.1 although the said charge has not been proved beyond reasonable doubt?
2. Has the learned High Court Judge failed to appreciate that althoughthe learned Magistrate in his judgment adverted to matters which had no bearing in respect of the charges such as circumstantial evidence, expert evidence, common intention, prescription, jurisdiction, territorial jurisdiction, the relevancy of productions and documents but failed to

address the main issues of the case and therefore that the judgment of thelearned Magistrate is not a judgment within the meaning of Section 283 of the Code of Criminal Procedure Act No.15 of 1979?

3. Havethe learned Magistrate as well as the learned High Court Judge failed to carefully and judicially analyze the evidence in this case where there are two completely contradictory positions as regards how the vehicle happened to be with the Petitioner's father which has resulted in there being no proper judgment in law?
4. Is the conviction of thePetitioner on charge No.1 contrary to law in view of the fact thatthe learned Magistrate as well asthe learned High Court Judge have not related the evidence to the charge?
5. Is the sentence imposed on the Petitioner illegal, unreasonable and excessive?

Learned President's Counsel who appeared for the accused-appellant submitted that when the accused-appellant removed the vehicle he did not entertain dishonest intention to cheat Prasad Cooray as the accused-appellant was under the impression that the owner of the vehicle was his father. I now advert to the above contention. The accused-appellant in the case admits that he removed the vehicle from the possession Prasad Cooray. The vehicle in question was initially purchased by the father of the accused-appellant on a hire purchase agreement with the LOLC Finance Company. Since initial installments went into areas, the accused-appellant with the help of one SisiraWickramasinghe who was known to Prasad Cooray took a loan of Rs.1.0 Million from Prasad Cooray keeping the vehicle as security. Prasad Cooray claims that later on 11.8.2009, the vehicle was transferred in his

name. Prasad Cooray states, in his evidence, that when the accused-appellant removed the vehicle from his possession on 26.8.2009, he was the owner of the vehicle.

Although the accused-appellant claims that the owner of the vehicle washis father, the father of the accused-appellant, by a receipt dated 9.7.2009 (marked P1) states that the vehicle in question was handed over to Prasad Cooray together with Revenue Licence, Insurance Certificate and the Identification Card belonging to the vehicle. Further the vehicle transfer form V1 was signed by the father of the accused-appellant. Details of the vehicle had not been filled in V1.The accused-appellant admits that V1 had been signed by his father. Therefore the contention of the accused-appellant that the owner of the vehicle was his father at the time of the removal of the vehicle from the possession of Prasad Cooray cannot be accepted. In my view the intention of making a complaint to Sapugaskanda Police Station by the father of the accused-appellant to the effect that SisiraKumara got his signature on some papers is not genuine.

The accused-appellant states in his evidence that he removed the vehicle with the intention of handing it back to Prasad Cooray soon after the conclusion of RatnapuraDevalaya'sPageant. Is this correct? If the above evidence of the accused-appellant is correct, why did he keep the vehicle in his custody for one month? The accused-appellant admits in his evidence at page 78 that he kept the vehicle in his possession for one month. The accused-appellant further admits, in his evidence at page 80, that he did not park the vehicle at the usual place thinking that the police would come and remove the vehicle. The Police Officer who took the vehicle into his custody, in his evidence, states that he did not find the number plate of the vehicle at the time he took

the vehicle into custody. The accused-appellant too admits in his evidence that the number plate of the vehicle had been removed at the time that the vehicle was taken into custody. His evidence at page 82 and 83 suggests that it was removed by him. The above evidence clearly indicates that he had entertained dishonest intention when he removed the vehicle from the possession of Prasad Cooray. The Police Officer who took the vehicle into his custody had observed the following the matters.

1. Front buffer of the vehicle had been removed.
2. Windscreen of the vehicle had been damaged.
3. Dash-board of the vehicle had been damaged.
4. Steering wheel of the vehicle had been locked.

It has to be stated here that even if Prasad Cooray came to remove the vehicle, he could not have done sosince thesteering wheel of the vehicle had been locked. When one considers the above evidence, it is clear that the accused-appellant had taken all possible steps to prevent the vehicle being removed from his possession. When I consider the above evidence, I am of the opinion that the accused-appellant had entertained dishonest intention to cheat Prasad Cooray when he removed the vehicle from the possession of Prasad Cooray. For the above reasons, I reject the contention of learned President's Counsel that the accused-appellant did not entertain dishonest intention when he removed the vehicle from the possession of Prasad Cooray.

For the aforementioned reasons, I hold that the learned Magistrate had rightly convicted the accused-appellant on count No.1 of the charge sheet (count under Section 370 of the Penal Code) and that the learned High Court

Judge had rightly affirmed the conviction of the accused-appellant. For all the above reasons, I affirm the conviction of the accused-appellant. In view of the conclusion reached above, I answer the questions of law set out in paragraphs 12(c), 12(e) and 12(f) of the Petition of Appeal in the negative. The questions of law set out in paragraph 12(d)of the Petition of Appeal does not arise for consideration.

The next question that must be decided is whether the sentence imposed by the learned Magistrate is excessive.The accused-appellant was sentenced to a term of one year simple imprisonment, to pay a fine of Rs.1500 carrying a default sentence of six months simple imprisonment and to pay Rs.100,000/- as compensation to the virtual complainant. When the accused-appellant gave evidence in December 2012, he was 30 years old. The offence was committed in August 2009. This shows that the accused-appellant was only 27 years old when he committed the offence. The record does not indicate the accused-appellant had any previous convictions. The vehicle was, initially, kept as a security and a loan of Rs.1.0Million was raised from Prasad Cooray by the accused-appellant when his father could not pay monthly installments to the Finance Company. His father has now lost the vehicle. When I consider all the above matters, I feel that the sentence imposed by the learned Magistrate is excessive. I therefore suspend the sentence of one year simple imprisonment for a period of seven years. Suspension of term of imprisonment is made effective from the date on which this judgment is explained to the accused-appellant by the learned Magistrate.

In view of the conclusion reached above, I answer the questions of law set out in paragraph 12(h) of the Petition of Appeal as follows. The sentence

imposed on theaccused-appellant is excessive. Subject to the above variation of the sentence, the appeal of the accused-appellant is dismissed.

Conviction of the accused-appellant affirmed

Sentence of imprisonment suspended.

Judge of the Supreme Court.

Priyantha Jayawardena PC J

I agree.

Judge of the Supreme Court.

NalinPerera J

I agree.

Judge of the Supreme Court.