DON PERCY NANAYAKKARA
v.
THE REPUBLIC OF SRI LANKA

COURT OF APPEAL.
S. N. SILVA, J. & D.P.S. GUNASEKERA, J.
CA APPEAL NO. 375/85.
HC COLOMBO CASE NO. 752/80.
JULY 06, 08, 09, 10, 22 AND 30, 1992.
SEPTEMBER 01 AND 08, 1992.

Criminal Law – Examinations – Rescrutiny – Unauthorised alterations in examination results sheet – Making a false document – Forgery – Sections 452 and 453 of the Penal Code – Exercise of discretion to add a mark in a borderline case – Sentence – Imposition of deterrent punishment.

The accused appellant was the Acting Deputy Commissioner of Examinations and the Officer-in-Charge of the Data Processing Section of the Examinations Department. This section was a key unit of the Department and it received data in respect of each G.C.E. (O.L.) and (A.L.) examination conducted by the Department. In respect of each examination, the section makes out an original results sheet in the form of a direct print from the computer. Candidates who sit for an examination not from schools but privately are issued individual result schedules taken from the original results sheet. At the material time the candidates had an option of seeking a rescrutiny of their marks. Any change in the grade, effected by a Rescrutiny Board, is entered in the original results sheet, by hand.

Candidate Hewagama's result sheet at the April 1978 A.L. examination indicated she had failed in Physics. On the rescrutiny despite an assurance by the accused-appellant the results sheet still showed a failure in Physics. The candidate's father took this matter up with the accused-appellant who took back the rescrutiny results schedule and handed over a fresh schedule showing a pass in Physics. As the candidate's employer wanted confirmation of the results, the accused-appellant issued a letter of confirmation under his hand confirming the pass in Physics. The original results sheet was also altered and the letter "F" (failure) which had earlier appeared on it was scored off and the letter "S" (pass) interpolated under the initial of the accused-appellant. The accused-appellant denied he did the alteration. Candidate Hewagama's father was Personal Assistant to the Secretary of the Political Victimisation Committee to which the accused-appellant had made representations. The accused-appellant received relief on the recommendation of the Committee and became known to Hewagama. It was when this matter was in progress that the rescrutiny of the Physics result was sought.

Again in the August 1978 O.L. examination candidate Satharasinghe had sought a rescrutiny of her results in French and Physics. The results schedule on rescrutiny showed that candidate Satharasinghe had obtained a credit pass in French and as for Physics the accused-appellant added one mark necessary for a credit pass and gave a credit pass in Physics. The accused-appellant admitted this alteration and claimed he had the discretion to do this in a borderline case. But in the results sheet the alteration was shown as done on the basis of rescrutiny and not on the basis of a bona fide exercise of discretion. The father of candidate Satharasinghe was acquainted with the accused-appellant.

Held :

(1) The alteration on the Physics results sheet of candidate Hewagama was clearly unauthorised. The accused had himself signed the letter of confirmation confirming the pass in Physics for production to the employer of candidate Hewagama, without allowing it to be done by the Certificate Branch according to the usual procedure. The alterations have been made dishonestly by the accused-appellant.

(2) The offence of forgery consists of the making of a false document as defined in section 453 of the Penal Code for any of the purposes stated in section 452. Section 453 defines a false document by setting out the particular process of making the document by which the document itself is rendered false. The three limbs of the section describe three distinct processes of dishonest or fraudulent making, altering or causing the execution or alteration of a document. The instant case involved the application of the first limb of 'making'. The word "makes" as appearing in the first limb of section 453 should be construed in the broader sense of creating or bringing into existence, the impugned document and not in the narrow sense of only writing the impugned document. Such an interpretation is necessary in a situation where the impugned document is typed or printed. The accused-appellant is guilty of making a false document.

(3) In regard to candidate Satharasinghe the alteration in respect of Physics is unauthorised and has been made dishonestly and without authority.

(4) There is no discretion in the Commissioner of Examinations to discriminate in favour of an individual candidate on the basis that such candidate has received marks that place him on the borderline of obtaining a credit. Any discretion that is exercised has to be done on a generalized and non-discriminatory basis. All candidates who have received marks up to that level should then be given the higher grade. The award of a higher grade, as a favour, based upon kinship, friendship or other considerations is a negation of the rule of law, that should strictly govern all processes of conducting public examinations. It is not indicated in the results sheet that the alteration of the Physics result was done on the basis of any discretion vested in the Commissioner. The cause for the alteration was given as on rescrutiny and was patently false.

(5) The accused-appellant was 60 years old, counted 24 years, of public service, had undergone incarceration for 64 days and was said to be suffering from renal failure, hypertension and an ischaemic heart disease. There was no evidence however that he was receiving in-patient treatment in hospital.

In assessing punishment the Court has to consider the matter from the point of both the offender and the public. The accused had held high public office and exercised extensive statutory power in conducting public examinations in this country. These examinations have to be conducted fairly and the results declared accurately. Thousands of students who face public examinations, every year, should have complete confidence in the fairness and accuracy of every process of the examinations. The accused has subverted the very basis of this confidence by his conduct in dishonestly showing favour to persons with whom he was acquainted. Therefore, public interest demands that he should be imposed a deterrent punishment.

Cases referred to :

1. *Panchanan v. The State,* AIR 1953 Calcutta 798.
2. *Siddhapa v. Lalithamma,* AIR 1954 Mysore 119.
3. *Province of Bihar v. Surendra Prasad,* AIR 1951 Patna 86, 89.
4. *Chatru Malik v. Emperor,* AIR 1928 Lahore 681, 686.
5. *King v. Caspersz,* 47 NLR 165.
6. *Attorney-General v. H. N. de Silva,* 57 NLR 121, 124.
7. *Gomez v. Leelaratne,* 66 NLR 285.

APPEAL from judgment, conviction and sentence of the High Court of Colombo.

Ranjith Abeysuriya, P.C., with *Lasantha Wickramatunga* for accused-appellant.

C. R. de Silva, D.S.G. for A.G.

Cur. adv. vult.

October 23, 1992.

S. N. SILVA, J.

The accused has filed this appeal from the conviction on charges 1, 2 and 4 of the indictment and the sentence of 3 years' R.I. imposed on him. The accused was a public officer employed at the Department of Examinations from 1966 until he was sent on compulsory leave on 16.10.1979. At the time material to the charges on which he was convicted, he was the Acting Deputy Commissioner of Examinations and was functioning as the officer-in-charge of the Data Processing Section of the Department. This is a key unit of the Department and it received data in respect of each G.C.E. (O.L.) and (A.L.) examination conducted by the Department, at two stages. Firstly at

the stage the applications of the candidates are received and secondly at the stage when the marks secured by each candidate are sent up by the unit in charge of the marking of scripts. Upon processing this data the section releases the result of the examination to the candidate. In respect of each examination, the section makes out an original results sheet in the form of a direct print from the computer. The results sheet contains the name, index number, the grade obtained in each subject offered (viz. Distinction, Credit, Pass, Fail – D, C, S, F) and the total number of subjects passed, in respect of each candidate. Candidates who sit for an examination privately (not from schools) are issued individual results schedules. These schedules are extracts in respect of the particular candidate taken from the original results sheet. At the material time the candidates had an option of seeking a rescrutiny of their marks by making separate applications in respect of each subject. This facility was available in respect of both types of examinations. Any change in the grade, effected by a Rescrutiny Board, is entered in the original results sheet, by hand.

Counts 1 and 4 relate to unauthorised alterations in the original results sheet of the G.C.E. (A.L.) examination held in April 1978 (P1) and G.C.E. (O.L.) examination held in August 1978 (P9). These alterations have been made in relation to candidates, Hewagama (Index No. HP 71547) at the A.L. examination and Satharasinghe (Index No. 0060182) at the O.L. examination. Count 2 relates to the making of a false document viz. Results Schedule (P5) which purports to confirm the altered result in respect of candidate Hewagama. The accused denied that he made any alteration in respect of candidate Hewagama and denied that he issued the schedule P5. He admitted making the alteration in respect of candidate Satharasinghe and sought to justify that alteration on the basis that it was a bona fide exercise of discretion. In view of this position, the evidence and the submissions in respect of the different sets of charges have to be separately dealt with.

C. P. Hewagama being the father of the candidate Hewagama gave evidence regarding the circumstances in which he sought the assistance of the accused as to an application for rescrutiny made by his daughter, in respect of one subject. He stated that he became acquainted with the accused when the latter came to present an appeal to the Political Victimisation Committee. The witness was functioning as a Personal Assistant to the Secretary of the Victimisation Committee. He stated that he assisted the accused

by expediting certain steps that had to be taken by the Committee with regard to the appeal which according to him was belatedly made. It is not disputed that the accused got relief upon the recommendations made by the Committee. When this matter was in progress, witness's daughter sought rescrutiny in the subject of Physics in which she had failed (Grade F). Witness requested the accused to look into this application for rescrutiny. At a certain stage the accused indicated, that the daughter secured a Pass in Physics (Grade S) pursuant to the rescrutiny. Some time thereafter, the daughter received a communication dated 31.1.1979 (P19) stating that there was no change in the result pursuant to the rescrutiny. Since this was contrary to the information given by the accused, witness contacted the accused regarding the matter and the accused agreed to look into it. Later the accused said that there was a mistake and requested the witness to meet him with P19 and the results schedule that had already been issued to the candidate. When the witness met the accused at the latter's office he handed over P19 and the results schedule to the accused who in turn gave a fresh schedule (P5) which shows that the daughter had secured a Pass (Grade S) in Physics. According to his evidence, by this time the daughter was employed as an Uncertified Science Teacher at the Education Department. When the schedule P5 was submitted to the Department, according to the usual procedure the Department sought confirmation of P5 from the Department of Examinations. This confirmation had been sought but there was a delay at the Department of Examinations, in replying the query. At that stage witness contacted the accused, once again, regarding the matter. The accused requested the witness to see him at the office. Witness met the accused on 10.10.1979 and the accused issued a letter of confirmation under his hand (P8) confirming the altered results as shown in the schedule P5.

The other evidence regarding this set of charges comes from official sources. Fonseka, Asst. Commissioner of Examinations, who succeeded the accused as the officer-in-charge of the Data Processing Section, produced the relevant portions of the original results sheet in regard to candidate Hewagama (P1). This results sheet shows that letter "F" appearing in the column Physics has been scored off and letter "S" written against it. In the last column showing the number of subjects in which the candidate has passed, number 3 has been scored off and 4 written against it. Beneath each alteration (P1A) an initial in the form of a single letter (ත) has been written. Witness who stated that he has worked with the accused for several

years identified the initial as being of the accused and specifically stated that the alteration had been made by the accused. The alteration (P1A) was identified as been made by the accused, by the Commissioner of Examinations witness Gunesekera and defence witness Gerald de Alwis who was also an Assistant Commissioner of Examinations. A retired Examiner of Questioned Documents testified for the defence and stated that no opinion could be expressed as to who made the alteration due to the insufficiency of the impugned writing. Learned trial Judge placed no reliance on this evidence because the witness did not have the necessary material or the opportunity to carry out a proper examination. The prosecution also produced in evidence the detailed mark sheet in the subject of Physics showing the marks secured by candidate Hewagama in Physics (P2 and P3). According to these mark sheets, this candidate had obtained 29 marks in paper I and 22 marks in paper II. Thus the average marks secured by the candidate is 26 out of 100 which is far below the pass mark of 38. The result of the Board of Rescrutiny (P4) shows that the Board found no change in the marks secured by the candidate. Therefore, P19 has to be taken as the correct statement of the result as disclosed by the Board of Rescrutiny. The alteration P1A cannot be referred to the rescrutiny and in any event witnesses Fonseka and Gunesekera specifically stated that if an alteration is made pursuant to a rescrutiny, that matter has to be noted at the foot of the altered results sheet. There is no such entry in the results sheet P1. In the circumstances the alteration P1A is clearly unauthorised.

The accused in his evidence denied having made the alteration P1A. He admitted meeting witness Hewagama at the Political Victimisation Committee but denied that he had any conversation regarding the rescrutiny application made by his daughter. He also denied that he issued P5. The accused admitted that witness Hewagama met him at the office on 10.10.1979 regarding the confirmation sought by the Department of Education of the results schedule. At that stage witness had shown him a photo copy of the front of the schedule P5. The accused gave that copy of the schedule to his secretary requesting her to attend to the matter. He admitted signing the letter P8 which confirms the altered result. His defence is that he did not check the original results sheet before signing the letter P8. But, that he signed the letter in the belief that his secretary has caused the matter to be properly checked. The secretary was not called as a witness.

Learned trial judge has disbelieved the evidence of the accused regarding the denial of making the entries P1A and of issuing of P5. He has believed the evidence of Hewagama regarding the circumstances in which P5 was issued to him. He has also believed the evidence of witness Fonseka and Gunesekera and the defence witness de Alwis that the accused made the alteration P1A.

Learned President's Counsel submitted that the trial Judge was in error when he accepted the evidence of witness Hewagama. It was submitted that Hewagama knew other persons in the Department of Examinations and would have got the alteration done by one of them. As regards credibility, learned President's Counsel submitted that the evidence of Hewagama shows manifest improbability in two matters. They are : (1) according to the witness' evidence when P5 was given, which was contrary to letter received after the rescrutiny (P19), he merely took it from the accused although there was no authentication on the face of the document. It was submitted that any person would have insisted that the altered schedule be authenticated specially because it was contrary to the results already declared ; (ii) Hewagama stated that he did not tell the daughter that he got the altered schedule (P5) from the accused. It was submitted that this is highly improbable since the daughter would invariably have asked, as to how he managed to get a results schedule different from what was originally issued and confirmed by the letter sent after rescrutiny.

We have carefully considered these two matters in relation to the evidence of Hewagama and the other evidence adduced by the prosecution. Hewagama has been specifically cross examined as regards these aspects at the trial. In relation to the first matter he stated that since the schedule P5 was given directly by the accused being the Deputy Commissioner, he did not think it necessary to seek further authentication. We are inclined to accept the view expressed by learned trial Judge that there is no improbability in this version. The second matter relates to something what the father would have told the daughter regarding the person who gave the fresh schedule. Hewagama specifically stated that he did not consider it necessary to tell the daughter as to who gave the schedule P5. These matters have to be viewed in the background of the other evidence of Hewagama. According to Hewagama's evidence, before the letter P19 was received the accused informed him that the daughter

had passed in Physics pursuant to the rescrutiny. When the witness spoke to the accused later regarding P19, the accused said that P19 had been sent by mistake and requested the witness to see him with that document and the original results schedule. Viewed in this background, we do not see merit in the submission of learned President's Counsel that the evidence of Hewagama should have been disbelieved by the trial Judge in view of these two matters. On the other hand, Hewagama's evidence is supported by the following matters :-

(i) Documents P19 (letter dated 31.01.1979 sent to candidate Hewagama informing her of the results upon rescrutiny) and the envelope in which the letter was sent (P36) were found inside a drawer of the table of the accused at the time it was searched by the police in the presence of witness Fonseka. These two documents were shown to the accused when he was brought from the remand prison on 27.11.1979. Hewagama's evidence is that he handed over these documents to the accused prior to receiving the fresh schedule P5.

(ii) The letter P8 addressed to the Department of Education confirming the results of candidate Hewagama (as altered) is signed by the accused. The explanation of the accused is that he issued the letter on being shown a copy of the results schedule P5. However, the significant fact is that the letter specifically confirms the altered results. If any officer of the Examinations Department checked on the original results schedule, for the purpose of confirmation, that officer would invariably have discovered the unauthorised alteration P1A. Hence the fact that the accused himself signed the letter of confirmation, without allowing it to be done by the Certificate Branch, according to the usual procedure, supports the position of the prosecution that the accused made the unauthorised alterations. On the other hand, the suggestion of the defence that Hewagama got the alteration done by another person and sought the assistance of the accused only to get the letter of confirmation P8 is baseless. If Hewagama got the alteration done by another person he would not have gone to the accused to get confirmation of the altered result, knowing fully well that the forgery will be discovered at that stage.

(iii) The document P6 (letter dated 14.08.1979) sent by the Department of Examinations seeking confirmation of the results of candidate Hewagama) was also found in the drawer of the accused's table when it was searched on 19.11.1979. According to the evidence this being a letter sent through the official channels would have been dealt with by the Certificate Branch. It would not have ordinarily received the attention of the accused directly. This matter supports the submission made by the prosecution that the accused removed the letter from the Certificates Branch and kept it in his drawer to prevent any person from discovering the alteration in P1A, in dealing with P6, in the ordinary course.

(iv) The evidence of witnesses Fonseka and Gunesekera and the defence witness Gerald de Alwis that the alterations in P1A are in the writing of the accused.

(v) Evidence of witness Yasawathie (subject clerk) that the schedule P5 (with reference to the serial number) had been issued to the accused in the ordinary course.

Considering the foregoing matters we are of the view that there is no merit in the submission of learned President's Counsel that the evidence of Hewagama should have been disbelieved by the learned trial Judge. The several items of evidence referred above, in our view, clearly establish that the accused made the unauthorised alterations in P1A. The alterations produce a result that is not borne out by the marks of candidate Hewagama obtained in the subject of Physics and has been made dishonestly. The guilty knowledge of the accused in this respect is seen by the fact that he kept the documents P19, P36 and P6 in his drawer to prevent discovery by any other person. The fact that he took upon himself the task of signing the letter of confirmation P8 is a clear indication of the steps taken by him to prevent any discovery of the dishonest act. In the circumstances we are of the view that charge No. 1 has been established beyond reasonable doubt and that there is no error in the finding of the learned High Court Judge in this respect.

Charge No. 2 which relates to issuing of P5, directly flows from the unauthorised alteration P1A. Learned President's Counsel submitted that this charge could only be established if it is proved that the accused himself made the false document P5. This

document is a printed results schedule in which the signature of the Commissioner is also printed. The particulars such as the name, index number and grades obtained are typed. This is clearly a false document since it reflects an incorrect grade in respect of the subject of Physics. Learned President's Counsel submitted that the prosecution should establish that the accused himself typed out the entries in this document. That, it is not sufficient if all what the prosecution can establish is that the accused was responsible for this document or caused it to be typed by any other person.

Learned President's Counsel relied on the following passage from Gour's Penal Law of India, in relation to the corresponding section (464) of the Indian Penal Code :-

> "In order to attract the application of the first part of section 464 it is necessary that the accused should make a false document or part of a false document and not merely cause it to be made. Making a false document is one thing and causing a false document to be made is another." (10th edition–vol. IV–p3904)."

We have considered the submission of learned President's Counsel as a matter of law. The offence of forgery consists of the making of a false document as defined in section 453 of the Penal Code, for any of the purposes stated in section 452. Section 453 defines false document by setting out the particular process of making the document by which the document itself is rendered false. The three limbs of the section describe three distinct processes of dishonest or fraudulent making, altering or causing the execution or alteration of a document. This case involves the application of the first limb of "making", which reads as follows :

> "Firstly – who dishonestly or fraudulently makes, signs, seals or executes 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"

The passage cited by learned President's Counsel in Gour is based on the judgment of Mitter, J. of the High Court of Calcutta in the case of *Panchanan v. The State* [1]. In that case, the accused according to the evidence, had obtained the thumb impression of an old lady on a blank paper so that he could get authority to act on her behalf in an action filed against her. This paper was used to make out a conveyance of the old lady's property, by another accused. The accused who wrote out the conveyance was acquitted and the High Court held that the conviction of the accused who obtained the thumb impression on the blank paper cannot be sustained because he did not make the conveyance. It is in this context that the learned Judge made the observation that is contained in the passage stated above. However, a perusal of other judgments of High Courts in different States of India show that the word "makes" appearing in the first limb of the definition of forgery is not restricted to the actual writing of the impugned document itself. In the case of *Siddhapa v. Lalithamma* [2] the High Court of Mysore upheld the conviction of the accused of forgery where he had caused to be printed, false marriage invitations issued under the names of two persons, announcing the celebration of the marriage of the accused with the complainant who was a young woman owning property. Neither the complainant nor the persons under whose names they were issued had authorised the accused to print such invitations and in fact no marriage was fixed between the accused and the complainant. According to the evidence the accused caused the printing to be done, distributed these invitations to friends and caused it to be published in the newspapers. Balakrishnaiya, J. followed other decisions in India and held that the word " makes " in the definition means nothing else than the creation or bringing into existence of a document. On that basis he upheld the conviction although the accused had only authorised the printer, to print the document. Similar interpretations have been given to the word "makes" by the High Court of Patna in the case of *Province of Bihar v. Surendra Prasad* [3] and the High Court of Lahore in the case *Chatru Malik v. Emperor* [4]. Therefore, we are of the view that the word "makes" as appearing in the first limb of section 453 should be construed in the broader sense of creating or bringing into existence, the impugned document and not in the narrow sense of only writing the impugned document. Indeed, such an interpretation is necessary in a situation where the impugned document is typed as in this case or printed as in the Mysore case referred to above.

In this case there is no direct evidence as to who typed the entries in the schedule P5. This schedule, as noted above, is the normal form in which results are communicated. It has the signature of the Commissioner printed on it. Thus it carries with it the authority of the Commissioner to disclose the correct result as appearing in the original results sheet. If an unauthorised result is entered in this schedule the position is that the document does not have the authority of the Commissioner but, becomes a dishonest manifestation of the Commissioner's authority. We are of the view that the following items of circumstantial evidence establish that the accused created or brought into existence the schedule P5, in the form in which it appears now :–

(i) the (blank) schedule is one issued to the accused for the purposes of his official work. This was disclosed by the subject clerk with reference to the entries in the register upon which the forms of schedules are issued and the serial number of the schedule.

(ii) The document in the present form was given to Hewagama by the accused at his office.

(iii) It contains the results as altered by the accused in P1A, according to the previous finding.

(iv) Its contents are confirmed by the letter P8 signed by the accused.

Therefore we see no basis to interfere with the conviction on charge 2.

As regards charge 4, the prosecution adduced the evidence of Satharasinghe being the father of the candidate. He stated that his son sat the G.C.E. (O.L.) examination in August 1978. On receipt of the results, he sought rescrutiny of the marks in the subjects of Physics and French. At or about this time, he met the accused at the house of the then Minister of Education, in connection with another matter. Later he received letter dated 15.03.1979 (P23) stating that there is no change in the results in Physics. However, no reply was received regarding the rescrutiny application in the subject of French. He contacted the accused regarding this matter and the accused agreed to look into it. When he contacted the accused later, the accused said that the candidate had got one mark less than the Credit level in Physics and that he had the discretion to give that mark. He requested the witness to see him after the rescrutiny result is received in respect of French. Thereafter the rescrutiny result in

French was received stating that the candidate had secured a Credit in that subject. Since the accused had agreed to alter the result in Physics by giving an extra mark, witness met the accused on 19.04.1979 with the results schedule P17 and P23 being the letter which communicated the result upon rescrutiny, in the subject of Physics. The accused retained these documents and issued the fresh schedule P18 under his signature. This schedule states that the candidate has obtained a Credit in Physics as well. The original results sheet in respect of candidate Satharasinghe has been produced marked P9. It shows alterations in respect of the subject of Physics and French. In both places the letter "S" has been scored off and the letter "C" written. The initial has been written beneath these entries. At the bottom of the sheet it is written as follows :–

"Physics C – on rescrutiny
French C – on rescrutiny."

Both entries are bracketed and the accused has placed his full signature. As stated above the accused admitted making both alterations and the entries at the bottom.

The alterations and the entry in respect of the subject of French is authorised since it is based upon rescrutiny. The case for the prosecution is that the alteration in respect of Physics is unauthorised and has been made dishonestly. The accused in giving evidence stated that he had a discretion to add a mark in a borderline case. His evidence in this regard was supported by the evidence of witness Bogoda Premaratna. Both witnesses have been cross examined at length by the prosecution regarding this aspect of the exercise of discretion. They were not able to point to any instance where a borderline case was singled out for special treatment. Learned trial Judge has disbelieved the evidence of the accused and of Premaratna regarding this aspect. We are firmly of the view that there is no discretion in the Commissioner of Examinations to discriminate in favour of an individual candidate on the basis that such candidate has received marks that place him on the borderline of obtaining a Credit. Any discretion that is exercised has to be done on a generalized and a non-discriminatory basis. All candidates who have received marks up to that level should then be given the higher grade. The award of a higher grade, as a favour, based upon kinship, friendship or other considerations is a negation of the rule of law, that should strictly govern all processes of conducting public examinations.

Learned President's Counsel submitted that in any event the accused cannot be considered as having acted dishonestly because he has made the alteration in P9 and the corresponding entry, quite openly and without any attempt to hide or conceal the authorship of the alteration.

In other words, it was submitted that even if the discretion has been exercised on an erroneous basis, the accused has acted *bona fide* and not dishonestly. We are not inclined to accept this submission for the reason that in the results sheet P9, the accused has stated that the result in respect of Physics is also altered on the basis of rescrutiny. It is not stated there that the alteration was done on the basis of any discretion vested in the Commissioner. Thus, the cause for the alteration as given in P9 is patently false. The accused sought to explain this on the basis that he used the word "rescrutiny" differently in the two instances. As regards French, he used "rescrutiny" in the sense of rescrutiny of marks. As regards Physics, he used "rescrutiny" in the sense of a rescrutiny of the result. There is no basis whatever to accept such an explanation. The accused has failed to produce the appeal which he claimed was made by Satharasinghe nor did he produce any file containing the particulars of an official exercise of discretion. On the other hand documents P17 and P23 given by Satharasinghe were found by the police inside a locked drawer of the table, in the presence of the accused. These circumstances clearly establish that the alteration in P9 was made dishonestly and without authority.

For the reasons stated above, we affirm the conviction on charges 1, 2 and 4 of the indictment.

As regards sentence, learned President's Counsel submitted that the accused is 60 years old at present and has had 24 years' in public service. It was submitted that the accused has undergone periods of incarceration in remand up to 64 days. He further submitted that the accused has been suffering from renal failure, hypertension and an ischaemic heart disease. There is no evidence that the accused is at present receiving in-patient treatment at any hospital. On these matters learned President's Counsel submitted that the accused should be imposed a non custodial sentence. Learned President's Counsel also relied on the judgment of the Supreme Court in the case of *King v. Caspersz* [5].

Learned Deputy Solicitor-General objected to any variation of the sentence that has been imposed. He relied on the observations of Basnayake, ACJ, in the case of *Attorney-General v. H. N. de Silva* [6] and of Sriskandharajah, J. in the case of *Gomez Vs Leelaratne* [7].

We have carefully considered the question of sentence in the light of the submissions made and the judgments that were cited. We are of the view that in assessing punishment the court has to consider the matter from the point of both the offender and the public. The accused has held high public office and exercised extensive statutory power in conducting public examinations in this country. These examinations have to be conducted fairly and the results declared accurately. Thousands of students who face these public examinations, every year, should have complete confidence in the fairness and accuracy of every process of the examinations. The accused has subverted the very basis of this confidence by his conduct in dishonestly showing favour to persons with whom he was acquainted. Therefore, public interest demands that he should be imposed a deterrent punishment. We are of the view that there is no reason whatever to interfere with the sentence imposed by the trial Judge.

We are also mindful of the fact that the accused has stayed away from the country contrary to the conditions imposed in granting bail.

We accordingly affirm the conviction and the sentence of 3 years' R.I. imposed on the accused and dismiss the appeal.

D. P. S. GUNASEKERA, J. - I agree.

Appeal dismissed.