

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

In the matter of an application under and in terms
of section 331 (1) of the Criminal Procedure Code
No. 15 of 1979.

The Commission to Investigate Allegations of
Bribery or Corruption,

No. 36, Malalasekera Mawatha,

Colombo 07.

Complainant

Court of Appeal Case No:

HCC 439-19

HC of Colombo Case No: B 1964/2013

V.

Chethiya Hasith Munasinghe

No. 29,

Thotupala Road, Katukurunda,

Moratuwa.

Accused

AND NOW BETWEEN

Chethiya Hasith Munasinghe

No. 29,

Thotupala Road, Katukurunda,

Moratuwa.

(Now in Welikada Prison)

Accused-Appellant

V.

The Commission to Investigate Allegations of
Bribery or Corruption,

No. 36, Malalasekera Mawatha,

Colombo 07.

Complainant-Respondent

Director General,

The Commission to Investigate Allegations of
Bribery or Corruption,

No. 36, Malalasekera Mawatha,

Colombo 07.

Respondent

Before: Menaka Wijesundera, J.
B. Sasi Mahendran, J.

Counsel: Nalin Ladduwahetty, PC with Kavithri Ubeysekara, Yasas Hewapathirana
and Menuka Premashantha for the Accused-Appellant
Wasantha Perera, DSG for the Respondent

Written 30.12.2021 (by the Accused-Appellant)

Submissions: 21.02.2022 (by the Respondent)

On

Argued On: 14.12.2023

Decided On: 31.01.2024

Sasi Mahendran, J.

The Accused-Appellants (hereinafter referred to as Accused) were indicted before the High Court of Colombo on the following four Counts under the Bribery Act.

1. Between the period of 23.12.2011 and 21.02.2012, at Kalutara within the jurisdiction of this Court, you being a public servant to wit Superintendent of Works of the Kalutara Urban Council did solicit a gratification, of 5% out of the annual insurance installments payable to the Sri Lanka Insurance Corporation by the Kalutara Urban Council, from Thalgaha Withanage Ruwan Thushara as an inducement or a reward for performing an official act of handing over the insurance work pertaining to the vehicles and buildings of the Kalutara Urban Council to Thalgala Withanage Ruwan Thushara an agent of the Sri Lanka Insurance Corporation and thereby committed an offence punishable under Section 19 (b) of the Bribery Act.
2. At the same time, place, and in the course of the same transaction referred to in charge 01, you being a public servant to wit Superintendent of Works of the Kalutara Urban Council, did solicit a gratification of 5% out of the annual insurance installments payable to the Sri Lanka Insurance Corporation by the Kalutara Urban Council from Thalgaha Withanage Ruwan Thushara and thereby committed an offence punishable under Section 19 (c) of the Bribery Act.
3. On or about 21.02.2012, at Kalutara within the jurisdiction of this Court, you being a public servant to wit Superintendent of Works of the Kalutara Urban Council, did accept a gratification of s.15,000/- being 5% out of the annual insurance installments payable to the Sri Lanka Insurance Corporation by the Kalutara Urban Council from Thalgaha withanage Ruwan Thushara as an inducement or reward for performing an official act of handing over the insurance work pertaining to the vehicles and buildings of the Kalutara Urban Council from Thalgaha Withanage Ruwan Thushara an agent of Sri Lanka Insurance Corporation and thereby committed an offence punishable under Section 19 (b) of Bribery act.

4. At the same time place and in the course of the same transaction referred to in charge 03, at Kalutara within the jurisdiction of this court, you being a public servant to wit Superintendent of Works of Kalutara Urban Council, did accept a gratification of Rs.15,000/- being 5% out of the annual insurance installments payable to the Sri Lanka Insurance Corporation by the Kaluthara Urban Council from Thalgaha Withanage Ruwan Thushara and thereby committed an offence punishable under Section 19 (c) of the Bribery Act as amended.

The prosecution led the evidence from five witnesses, marking productions P1 to P11. On behalf of the Accused Four witnesses gave evidence and the Accused made a dock statement, and they closed the case marking document X1.

After the trial, the Learned High Court Judge of Colombo convicted the Accused on all four Counts,

1. For each 1st, and 2nd Counts fine of Rs.2,500/- and 2 years Simple imprisonment (Both sentenced should run concurrently).
2. 3rd and 4th counts, fine of Rs.2,500/- and 2 years Simple imprisonment(both sentenced should run concurrently).

In addition to the above Rs.15,000/- was imposed as a penalty under section 26 of the Bribery Act and if in default 12 months of simple imprisonment will be imposed.

Being aggrieved by the aforesaid conviction and sentence, the Accused preferred to lodge a petition appeal to this Court.

The facts and circumstances giving rise to this appeal are that:

In presenting his evidence, PW01, Halgaha Withanage Ruwan Thushara, was identified as an appointed Insurance Agent for the Sri Lanka Insurance Corporation. The Accused held the position of Works Superintendent within the Kalutara Municipal Council.

Subsequent to a meeting with the secretary, the Accused engaged with PW01. He disclosed that Achira, the predecessor agent, had customarily allocated 5% of his commission

from the insurance corporation as a standard practice, and anticipated that PW01 would adhere to the same arrangement. In reciprocity, he assured the allocation of all forthcoming insurance policies to PW01.

On page 107 of the Appeal brief

ප්‍ර : ඊට අමතරව මොකද්ද කිව්වේ?

උ : ඊට පස්සේ මුණසිංහ මහත්තයා මට කිව්වා අවුර නම් අපේ රථවාහන රක්ෂණය කලාට පස්සේ ඒ ලබාදීම

සම්බන්ධව අපට යම් කොටසක් ලබාදෙනවා. ඔයාගෙනුත් අපි ඒක බලාපොරොත්තු වෙනවා කියලා කිව්වා.

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On page 109 of the Appeal brief

ප්‍ර : කොහොම කොටසක් ද ලබා දෙන්න කිව්වේ?

උ : ප්‍රතිශතයක් වශයෙන් 5%ක් පමණ මුදලක් ගෙවනවා කියලා කිව්වා.

ප්‍ර : තමන් අධිකරණයට ප්‍රකාශ කලානේ දැන් ඔය මුණසිංහ මහතා කිව්වා කියලා තමන්ගේ අනෙක් රක්ෂණ කටයුතු

කරන අනෙක් තැනැත්තා නම් තමාට ලැබෙනවා කොමිස් මුදලින් 5%ක් ගෙවනවා කියලා?

උ : ඔව්.

Upon being questioned, he revealed that 5% of the commission received from the Insurance Corporation for insuring the cab (PB-6360) owned by the municipal council constituted the agreed sum. As per the witness's account, this amounted to Rs. 15,000/-. However, there was no evidence presented to elucidate the calculation of this amount.

On page 133 of the Appeal brief

ප්‍ර : තව දුරටත් ප්‍රකාශ කර සිටියා ඒ අවස්ථාවේදී විත්තිකරු ඔබගෙන් ඔබට ලැබෙන කොමිස් මුදලින් 5% ක මුදලක්

අල්ලස් වශයෙන් ඉල්ලා සිටියා කියලා?

උ : එහෙමයි.

ප්‍ර : ගරු අධිකරණයට පැහැදිලිව ප්‍රකාශ කරන්න මේ 5% කොමිස් මුදල වශයෙන් අදහස් කරේ කුමක්ද කියලා?

උ : සාමාන්‍යයෙන් වාහන වලින් රක්ෂණ ආයතනයකට ගෙවන ලද වාරික මුදලින් බදු මුදල් ගෙව්වාට පසුව අපට

කොමිෂන් දීමනාවක් දෙනවා. එම කොමිෂන් දීමනාවෙන් 5% ක මුදලක් ඉල්ලා සිටියේ.

ප්‍ර : කොමිෂන් මුදල ඔබලාට කොයි ආයතනයෙන් ද ගෙවන්නේ?

උ : රක්ෂණ සංස්ථාවෙන්.

ප්‍ර : එතකොට 5% ක මුදල තීරණය වෙන්නේ මොන මුදල මතද?

උ : මා හට ගෙවන මුදලට රක්ෂණ ආයතනයෙන් වාරික මුදලින් බදු මුදල් හැරියට පස්සේ 10% ක් වගේ මට ගෙවීම කරන්නේ. එතකොට 5% ක් ඉල්ලුවේ රක්ෂණ වාරික මුදලින්.

ප්‍ර : රක්ෂණ වාරික මුදලින් 5% ක් තමයි විත්තිකරු ඔබගෙන් ඉල්ලා සිටියේ?

උ : එහෙමයි.

ප්‍ර : මෙසේ ඉල්ලා සිටීමට හේතුව මොකද්ද?

උ : ස්වාමිනි, අපට රක්ෂණ ආයතනයෙන් කෙමිෂන් එකක් ලැබෙනවා. මට ලැබෙන එකෙන් කොටසක් තමයි එයා ඉල්ලුවේ.

ප්‍ර : 5% ක මුදල කුමක් වශයෙන්ද ඉල්ලා සිටියේ?

උ : අල්ලස් මුදලක් වශයෙන්.

On Page 134 of the Appeal brief,

ප්‍ර : 5% ක මුදල ලැබුණොත් මොනවද ඔබට දෙනව කිව්වේ ?

පි : ඉදිරියට එන වාහන සහ ගොඩනැගිල්ලක් තියෙනවා එකයි, කැබ් එකක් එන්න තියෙනවා එකෙයි රක්ෂණය මට දෙනවා කියල කිව්වා.

On Page 169 of the Appeal brief,

ප්‍ර : ඊට පස්සේ මොකක්ද කිව්වේ ?

උ : අපිට සල්ලි දුන්නහම අපි කොහොමත් සලකනවා. අනිවාරයෙන් ඒ ටික ඔයාට තමයි දෙන්නේ කිව්වා.

Subsequently, PW01 filed a complaint with the Bribery Commission, leading to the orchestration of a sting operation on the 21st of February 2012. Accompanied by an undercover agent from the Bribery Commission, PW01 met with the Accused at a prearranged location. Upon the Accused accepting the money, he was apprehended.

The Accused refuted any allegations of soliciting gratification. He claimed that Hon. Luxman Wijemanna, the UNP MP for Kalutara District, harbored animosity towards him. At that time, the Kalutara Municipal Council was under UNP's jurisdiction. It was alleged by the Accused that Mr. Wijemanna had directed the Complainant to the Secretary of the Kalutara Urban Council, bearing a recommendation letter from Mr. Wijemanna. The Accused had shared his concerns about this arrangement with the Secretary.

The Accused's defense argued that this situation exacerbated the hostility between Mr. Luxman Wijemanna and himself, leading to a contrived case against him. The plan, according to the defense, was to solicit a loan of Rs. 15,000/- from the Accused, which he naively extended to the Complainant. Upon repayment of this loan by the Complainant, the Accused was arrested. In his evidence, the Accused acknowledged receiving Rs. 15,000/- from PW01, but claimed it was in repayment of a loan.

The pivotal issue at hand is whether the Prosecution has substantiated the alleged solicitation, which is central to Counts 1 and 2. According to these counts, the Prosecution must demonstrate that the Accused solicited a sum equivalent to 5% of the annual insurance premiums payable to the Sri Lanka Insurance Corporation by the Kalutara Urban Council from Thalgaha Withanage Ruwan Thushara as an inducement.

Upon examining PW01's testimony, it becomes evident that he provided varying accounts of the solicitation. Initially, he stated that the Accused demanded 5% of the insurance commission, but later referred to the alleged bribe as 5% of the Premium.

The inconsistency in PW01's evidence was overlooked by the Learned High Court Judge. It is a well-established principle in our courts that when a witness presents contradictory statements in their testimony, the reliability of their evidence is compromised.

Chandra Ekanayake, J in Padmatilake (Sgt) V. Director General, Commission to Investigate Allegations of Bribery/Corruption 2009 2 SLR Page 151, Held that;

"It has to be stressed here that credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the Judge. When witnesses make inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses is unreliable and in the absence of special circumstances, no conviction can be based on the testimony of such witnesses. On the other hand one cannot be unmindful of the proposition that Court cannot mechanically reject the evidence of any witness. With regard to appreciation of evidence in criminal cases it would be of importance to quote what Sir John Woodroffe & Amir Ali had to say in their work on- " Law of Evidence- 18" Edition - Vol. 1 at pg 471:-

"No hard and fast rule can be laid down about appreciation of evidence. It is after all a question of fact and each case has to be decided on the facts as they stand in that particular case. Where a witness makes two inconsistent statements in his evidence with regard to a material fact and circumstance, the testimony of such a witness becomes unreliable and unworthy of credence"

Furthermore, the Learned High Court Judge, in his judgment, did not adequately address the issue of solicitation. According to Counts 1 and 2, the alleged solicitation involves demanding 5% of the annual insurance installments payable to the Sri Lanka Insurance Corporation. However, the witness's testimony pertains to 5% of his commission.

The judgment of the Learned High Court Judge lacked a thorough analysis prior to reaching a conclusion regarding the alleged solicitation. The judgment appears to reveal an oversight, as the Learned High Court Judge did not discuss both versions of the witness's testimony and failed to provide reasoning for his determination. To better illustrate this point, it is necessary to reproduce the relevant portions of the judgment.

On page 476 of the Appeal Brief,

තවද විත්තිකරු නිල කායර්‍යයක් ඉටු කිරීම සඳහා එනම් කළුතර නගර සභාවට අයත් වාහනවලට අදාළ රක්ෂණ කායර්‍යයන් කිරීමේදී රක්ෂණ නියෝජිත රුවන්තු මාර යන අයට ලැබෙන රක්ෂණ වාරික මුදලින් 5% ක් අල්ලස් වශයෙන් ඔහුගෙන් අයැද ඇති බවත්, එකී 5% ක ප්‍රමාණය වන රුපියල් පහළොස්දහසක (15,000) මුදලක්

අල්ලස් වශයෙන් ලබා ගෙන ඇති බවටත්, පැමිණිල්ල විසින් සාක්ෂි මගින් සාධාරණ සැකයෙන් තොරව සනාත කර තිබේ.

On Page 464 of the Appeal Brief,

ඉහත විශ්ලේෂණය කරන ලද පැමිණිල්ලේ සාක්ෂි අනුව චෝදනාවල සඳහන් පරිදි විත්තිකරු විසින් පැ.සා. 01 ගෙන් කොමිස් මුදලින් 5% ක් වූ රුපියල් පහලොස්දහසක (15,000/-) අල්ලසක් අයැද ඇති බවත් එම අල්ලස් මුදල ලබා ගෙන ඇති බවත් තහවුරු වී ඇත. ඉහත විස්තර කර ඇති ආකාරයට පැ.සා. 01, පැ.සා.02 සහ පැ.සා.03 ගේ සාක්ෂි එකිනෙක මගින් තහවුරු වී තිබේ. එම සාක්ෂිකරුවන්ගේ සාක්ෂි අතර සිද්ධියේ මුලයට බලපාන වැදගත් පරස්පරතාවයන් හෝ ඌනතාවයන් කිසිවක් නැත. ඒ අනුව එකිනෙක මගින් තහවුරු වූ පැමිණිල්ලේ සාක්ෂි සාධාරණ සැකයෙන් තොරව අධිකරණයට පිළිගත හැකිය.

I concur that this oversight alone is sufficient to render the judgment invalid. Further scrutiny reveals that the prosecution has not convincingly established the element of inducement. What were the actions undertaken by the Accused following the acceptance of the money?

In PW01's evidence, it was indicated that the inducement by the Accused was to provide PW01 the opportunity to insure other vehicles and buildings for the insurance corporation. However, there is no corroborative evidence to affirm that the Accused actually performed such an act. It is also noted that PW01 was the exclusive agent of the insurance corporation for insuring properties related to the Municipal Council.

Given the absence of concrete evidence demonstrating that the specific sum of Rs. 15,000/- was obtained as a bribe or through corrupt means, it appears that the Learned High Court Judge may have overlooked a crucial aspect of the offense under Section 19(c) of the Bribery Act.

The second point of contention revolves around the calculation of the alleged bribe of Rs. 15,000/-. Initially, in his evidence, PW01 stated that Mr. Munasinghe, on behalf of the Accused, had requested a sum equivalent to 5% of the commission he would receive after insuring the vehicle. However, during cross-examination, PW01 changed his statement, indicating that the Accused had asked for 5% of the insurance premium payable to the Insurance Corporation.

There is no direct evidence to suggest that the Accused explicitly demanded Rs. 15,000/- as a bribe. In Counts 3 and 4, where the amount in question is Rs. 15,000/-, clear evidence is required to prove that the Accused personally demanded this sum. There is no evidence to indicate that he made such a demand. On the contrary, PW03 mentioned that the amount was calculated based on the insurance premium.

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තවද ඒ ආකාරයෙන්ම විත්තිකරු විසින් කොමිස් මුදලින් 5% ක් ඉල්ලූ බවට සටහන් කර නැති බවට පැ.සා.03 ගෙන් ප්‍රශ්න කර ඇත. ඒ පිළිබඳව පැහැදිලි කරමින් පිළිතුරු දී ඇති පැ.සා.03 පවසා ඇත්තේ 5% ක් කියන්නේ ආසන්න වශයෙන් රුපියල් පහළොස්දහසක (15,000/-) මුදලක් බවයි.

Additionally, it is important to consider that the Accused claimed to have provided a loan of Rs. 15,000/- to PW01. According to his account, the money he received from PW01 was the repayment of this loan. The Learned High Court Judge failed to evaluate this evidence.

We are mindful of the dictum made by Rodrigo J in **James Silva V The Republic of Sri Lanka (1980) 2SLR Page 167** citing **Jayasena V the Queen 72 NLR Page 313**, Held that

“It is a grave error of law for a trial Judge to direct himself that he must examine the tenability and truthfulness of the evidence of the defence in the light of the evidence led by the prosecution. Our criminal law postulates a fundamental presumption of legal innocence of every accused till the contrary is proved. This is rooted in the concept of legal inviolability of every individual in our society; now enshrined in our Constitution. There is not even a surface presumption of truth in the charge with which an accused is indicted. Therefore, to examine the evidence of the accused in the light of the prosecution witnesses is to reverse the presumption of innocence.

A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters before the Court adduced whether by the prosecution or by the defence in its totality without compartmentalising and, ask himself whether as a prudent man, in the circumstances of the particular case, he believes the accused guilty of the charge or not guilty - see the Privy Council Judgment in Jayasena v The Queen.”

In the instant appeal, we observe that the Learned High Court Judge did not adequately evaluate the entirety of the evidence presented. Instead, there appears to have been a selective consideration of portions of evidence from the entire proceedings, leading to the conclusion that the Prosecution had substantiated its case.

I hold that the evidence led by the Prosecution is insufficient to prove the guilt of the Accused beyond reasonable doubt. Therefore, for the reasons outlined above, the judgment of the Learned High Court Judge dated 2019.03.21 is set aside. Accordingly, this appeal is allowed, and the convictions entered, and sentences imposed upon the accused are set aside and he is acquitted of all charges.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera, J.

I AGREE

JUDGE OF THE COURT OF APPEAL