

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

*In the matter of an Appeal in terms of  
section 331 (1) of the Code of Criminal  
Procedure Act No. 15 of 1979.*

**Court of Appeal No:**

CA/HCC/0023/19

Director General,

Commission to Investigate Allegations of

Bribery or Corruption,

No. 36, Malalasekara Mawatha,

Colombo 07.

**COMPLAINANT**

**Vs.**

**High Court of Colombo**

Case No: HCB 1976/2013

Nalantha Sisira Kumara Madduma

Patabendi

No. 183/41, Siriliya Niwasa,

Siyambalagoda,

Polgasowita.

**ACCUSED**

**AND NOW BETWEEN**

Nalantha Sisira Kumara Madduma

Patabendi

No. 183/41, Siriliya Niwasa,

Siyambalagoda,

Polgasowita.

**ACCUSED-APPELLANT**

**Vs.**

Director General,

Commission to Investigate Allegations of

Bribery or Corruption,

No. 36, Malalasekara Mawatha,

Colombo 07.

**COMPLAINANT-RESPONDENT**

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Kapila Waidyaratne, P.C. with Akkila Jayasundara  
and Akhila Mathishi for the Accused-Appellant

: Ruvini Wickramasinghe, Deputy Director General of  
CIABOC for the Respondent

Argued on : 05-08-2024

Written Submissions : 18-10-2019 (By the Accused-Appellant)

: 22-11-2019 (By the Respondent)

Decided on : 23-10-2024

**Sampath B. Abayakoon, J.**

This is an appeal preferred by the accused-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of his conviction and the sentence by the learned High Court Judge of Colombo. The appellant was indicted before the High Court of Colombo in terms of 12 counts preferred under the provisions of the Bribery Act. The said counts are as follows.

1. He, being a Government Servant and an Excise Guard attached to the Excise Office of Tangalle, solicited a gratification of Rs. 5000/= from Satharasinghe Gamage Premawathi *alias* Hemawathi, between the periods of 20-03-2012 and 28-04-2012, for not initiating legal action against Tibbotuwawa Gamage Piyadasa for the offence of having White Beedi in possession, at Tangalle, and thereby committed an offence punishable in terms of section 16(b) of the Bribery Act.
2. At the same transaction and on 28-04-2012, accepting a gratification of Rs. 5000/= from the earlier mentioned Premawathi *alias* Hemawathi, and thereby committing an offence punishable in terms of section 16(b) of the Bribery Act.
3. At the same time and at the same transaction mentioned in count 1, being a Government Servant and an Excise Guard attached to the Excise Office of Tangalle, solicited a gratification of Rs. 5000/= from the earlier mentioned Premawathi *alias* Hemawathi, and thereby committing an offence punishable in terms of section 19(c) of the Bribery Act.

4. At the same time and at the same transaction mentioned in count 2, the appellant committed an offence punishable in terms of section 19(c) of the Bribery Act by accepting Rs. 5000/= as a gratification from the earlier mentioned Premawathi *alias* Hemawathi.
5. At the same time and at the same transaction mentioned in count 1, the appellant solicited a bribe of Rs. 1000/= to allow her to sell White Beedi without a permit, and thereby committed an offence punishable in terms of section 16(b) of the Bribery Act.
6. At the same time and at the same transaction mentioned in count 1, the appellant solicited a bribe of Rs. 1000/= from the earlier mentioned Premawathi *alias* Hemawathi, and thereby committed an offence punishable in terms of section 19(c) of the Bribery Act.
7. The appellant, being a Government Servant and an Excise Guard attached to the Excise Office of Tangalle, solicited a bribe of Rs. 10,000/= from Siriwardana Pathiranage Lionel not to prosecute him for having White Beedi in his possession, and thereby committed an offence punishable in terms of section 16(b) of the Bribery Act.
8. At the same time and at the same transaction mentioned in count 7, the appellant accepted a sum of Rs. 4000/= as a gratification from the earlier mentioned Lionel not to prosecute him before a Court of law, and thereby committed an offence punishable in terms of section 16(b) of the Bribery Act.
9. At the same time and at the same transaction mentioned in count 7, the appellant solicited a sum of Rs. 10,000/= from the earlier mentioned Lionel, and thereby committed an offence punishable in terms of section 19(c) of the Bribery Act.
10. At the same time and at the same transaction mentioned in count 7, the appellant accepted a sum of Rs. 4000/= from the earlier mentioned Lionel, and thereby committed an offence punishable in terms of section 19(c) of the Bribery Act.

11. The appellant, being a Government Servant and an Excise Guard attached to the Excise Office of Tangalle, accepted Rs. 3000/= as a gratification between the period of 03-04-2012 and 30-04-2012 to not to prosecute him for having White Beedi in his possession, and thereby committed an offence punishable in terms of section 16(b) of the Bribery Act.
12. At the same time and at the same transaction mentioned in count 11, the appellant accepted a gratification of Rs. 3000/= from the earlier mentioned Lionel, and thereby committed an offence punishable in terms of section 19(c) of the Bribery Act.

After trial, the appellant was found guilty for the 1<sup>st</sup> to 7<sup>th</sup> and the 9<sup>th</sup> count preferred against him while he was acquitted of the 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> counts by the learned High Court Judge of Colombo of his judgment dated 22-01-2019.

Accordingly, he was sentenced for a period of 2 years each rigorous imprisonment for the 8 counts where he was found guilty, and was also ordered to pay a fine of Rs. 3000/= each in relation to the said counts. In default of paying the fine, he was ordered to serve a period of 2 months each simple imprisonment. In addition to the above, he was ordered to pay Rs. 5000/= in terms of section 26 of the Bribery Act as a fine, and in default, he was ordered to serve a simple imprisonment period of 3 months.

Of the periods of 2 year imprisonments ordered in relation to each of the counts where he was found guilty, it was ordered that the sentences in relation to 1<sup>st</sup> and the 3<sup>rd</sup> count, 2<sup>nd</sup> and the 4<sup>th</sup> count, 5<sup>th</sup> and the 6<sup>th</sup> count, and 7<sup>th</sup> and the 9<sup>th</sup> count shall be served concurrently to each other, which means a total period of 8 years rigorous imprisonment.

### **Facts In Brief**

PW-01 Premawathi was married to Piyadasa mentioned in the counts against the appellant, and was running a small boutique in her house situated at Gatamaanna, Beliatta. She used to sell a type of Beedi called White Beedi in her boutique supplied by one Siriwardana Pathiranage Lionel, who used to supply this kind of Beedi to the shops situated around the area.

Her husband has been a farmer as well as a cinnamon peeler. On 25-03-2012, around 10.30 in the morning, while she was in her boutique, two persons, including the appellant whom she knew as an Excise Officer has come to the boutique. The appellant has come inside and had asked for Beedi where she has replied that she does not have any. However, the appellant who was in civilian clothes has searched the boutique and has found several bundles of White Beedi on her table.

Thereafter, the appellant has informed her that she will be fined Rs. 100/= for each Beedi and has told her that he needs Rs. 5000/= upfront and Rs. 1000/= every month thereafter to not to prosecute her and to allow her to carry on with the selling of Beedi. After making the demand, taking down some notes and requiring her to sign, the appellant has left. Before leaving, the appellant has taken her mobile phone number and has given several phone calls to her subsequently, demanding the money, informing that if not, action will be instituted.

In the meanwhile, the husband of PW-01, namely Piyadasa, and Pathiranage Lionel, who used to supply her with beedi has been arrested by the appellant and several other officers at Tangalle for an alleged offence of consuming Ganja. He has been produced before the Angunukolapalassa Magistrate's Court and fined. Since then, PW-01 and her husband have decided to lodge a complaint in this regard with the Bribery Commission, and has lodged the complaint in April 2012, just after the New Year. Accordingly, Bribery Commission officials have come and met her, and after recording a statement, has organized the raid which

led to the arrest of the appellant. Rs 5000/= used in the said raid has been given by the Bribery Commission officials to PW-01, which was in Rs. 1000/= notes. PW-01 has selected one of the officers who came and met her to accompany her as a decoy since he was a young person with boyish looks.

As the appellant has informed her to come near the liquor store situated in Beliatta, she has gone there with the decoy in the morning, but the appellant has not come. Later, on his instructions, she has again gone at around 3.30 in the afternoon near the same place where the appellant has met her. He has inquired whether the money was brought and has accepted the money from the PW-01. He has also assured that she will not be prosecuted, but she will have to pay Rs. 1000/= every month to carry on with the trade.

When this was happening, the decoy who was near her has grabbed hold of the appellant, where the appellant has thrown the money he had in his hand. At the same time, other officials of Bribery Commission have also come and arrested the appellant.

In this matter, PW-01's husband Piyadasa has also given evidence and has confirmed what his wife told him of the demand by the appellant. He has also given evidence to the effect that while this demand was made and in progress, he, along with Pathiranage Lionel, who supplied White Beedi, was arrested for allegedly possessing Ganja and was charged at the Angunukolapalassa Magistrate's Court. According to his evidence, he has also gone to the Excise Office at Tangalle to discuss the matter with the appellant where he has been informed that it is he who will be charged and not the PW-01. In the process, the appellant has made the same demand for Rs. 5000/= and Rs. 1000/= on each month for him to turn a blind eye about the selling of White Beedi at their boutique.

The decoy who accompanied PW-01 has corroborated the events that took place before the appellant was arrested by the Bribery Commission officials. PW-04

had been the officer who led the raiding party of the Bribery Commission. He has also given evidence in relation to the complaint received and the investigations carried out in that regard and also the raid that took place on 28-04-2012.

The prosecution has called Siriwardana Pathiranage Lionel as PW-05. He is the alleged supplier of White Beedi to PW-01, as well as the person mentioned in 7<sup>th</sup> to 12<sup>th</sup> counts preferred against the appellant. He has stated the manner in which he manufactures White Beedi and had admitted that he had no permit to manufacture such beedi. He has stated that two officers from the Excise Department visited his home in March 2012 and the appellant who was one of the officers demanded Rs. 10,000/= not to prosecute him for the offence of manufacturing Beedi illegally. Accordingly, he has given Rs. 7000/= to the appellant. He has also spoken of him and the husband of PW-01 been charged for having Ganja in their possession before the Magistrate's Court of Angunukolapalassa. However, he has admitted that he gave Rs. 7000/= not to the appellant directly, but to a Wine Store nominated by the appellant.

The prosecution has also called an official from the Angunukolapalassa Magistrate's Court to establish that the husband of PW-01 and earlier mentioned Lionel was charged before the Court, and also an Excise Inspector to produce relevant documents in that regard. He has also confirmed that the appellant was an Excise Guard attached to Excise Office of Tangalle during the time relevant to this incident.

After the conclusion of the prosecution case and when the learned trial Judge decided to call for a defence from the appellant, he has made a lengthy dock statement. He has denied that he ever solicited or accepted bribes from either PW-01 or PW-05 Lionel. He has claimed that the PW-01 and her husband, along with PW-05 made this false allegation against him due to the fact of his detection of illegal drugs in their possession.



He has also claimed that when this raid took place, he never took any money on to his hand, but PW-01 forcibly attempted to put some money into his trouser pocket, and he was arrested while this attempt was made.

On behalf of the appellant, Development Officer of the Divisional Secretariat Office of Beliatta has been called to give evidence as to the Wine Store situated in the area.

### **The Grounds of Appeal**

At the hearing of this appeal, the learned President's Counsel for the appellant, based on his written submissions filed before the Court, relied on the following grounds of appeal.

1. The indictment is contrary to law as the joinder of charges is contrary to section 174 and 175 of the Code of Criminal Procedure Act No. 15 of 1979.
2. It has been proven that Piyadasa (PW-02) and Lionel (PW-05) have deliberately uttered falsehood before the Court, therefore, their evidence cannot be relied upon.
3. The evidence of PW-01 Premawathi cannot be relied upon.
4. The evidence of PW-02 cannot be relied upon.
5. The learned High Court Judge has failed to correctly and independently evaluate the credibility of the evidence of PW-05 Lionel.
6. The evidence of PW-01 concerning the trap is contrary to the evidence of PW-03.
7. The learned High Court Judge while accepting that there is a discrepancy regarding the location where the trap took place, has failed to give the benefit of the doubt to the appellant.
8. The learned High Court Judge has failed to consider the defence case.

It was the position of the learned President's Counsel for the appellant that there was a serious misjoinder of charges as count number 7 to 12 preferred against the appellant were not related to a thing happened during the same transaction,

but of an entirely different transaction occurred on different dates. It was his position that this misjoinder has the effect of vitiating the conviction of the appellant.

He also cited several instances where he stated as serious discrepancies in the evidence of the prosecution witnesses of the raid, and the manner in which the raid took place. He was also of the view that the evidence of Lionel (PW-05) in relation the other incidents which involved him had been considered in a prejudicial manner against the appellant by the learned High Court Judge in his judgment. He was of the view that this has failed to guarantee a fair trial against the appellant. He was also vivid in arguing that the learned High Court Judge has failed to consider the defence put forward by the appellant in its correct perspective.

The learned Counsel for the complainant-respondent in her submissions before the Court conceded that there had been a misjoinder of charges in relation to the 7<sup>th</sup> to 12<sup>th</sup> count preferred against the appellant. However, she relied on the provisions of section 436 of the Code of Criminal Procedure Act to argue that since no prejudice has been caused to the appellant due to the said misjoinder, the conviction in relation to 1<sup>st</sup> to 6<sup>th</sup> counts preferred against him should remain.

It was her position that the prosecution has proved beyond reasonable doubt, the said counts against the appellant, and there was no basis to argue that PW-01 and other relevant witnesses have made up a story against the appellant. She pointed out that the learned High Court Judge has well considered the defence version of events in his evaluation of the evidence. It was moved that the conviction in relation to the 1<sup>st</sup> to 6<sup>th</sup> counts preferred against the appellant should be affirmed as there was no merit in the grounds of appeal urged on behalf of the appellant in relation to the said counts.

### **Consideration of The Grounds of Appeal**

As the 1<sup>st</sup> ground of appeal urged relates to a fundamental question of law, I will now proceed to consider the said ground of appeal before I move on to the other grounds of appeal urged. It was contended and admitted that there was a misjoinder of charges in relation to the 7<sup>th</sup> to 12<sup>th</sup> counts preferred against the appellant as the said counts refers to a similar, but a different incident.

It needs to be noted that when the indictment was read over to the appellant or at any stage during the trial, misjoinder of charges has not been pleaded and it was only at the appeal stage, this position has been taken.

The case of **Lionel Vs. Officer-In-Charge, Meetiyagoda Police Station (1987) 1 SLR 210** was a case very much similar to the facts relating to misjoinder of charges urged in this appeal.

The 6 appellants, the 1<sup>st</sup> to 6<sup>th</sup> accused were charged by a Magistrate, who was also an Additional District Judge, on count (1) with abducting one Arnolis Silva from his house, and on count (2), 6 others, the 7<sup>th</sup> to 12<sup>th</sup> accused were charged with causing mischief by damaging the house and property of Arnolis Silva. No objection to the misjoinder of charges was raised at the time the accused were charged, nor was an application made for separate trials. After trial, the 1<sup>st</sup> 6 accused were convicted on count 1 and each of them was sentenced to 9 months rigorous imprisonment, and the 7<sup>th</sup> accused was convicted on count 2 and fined Rs. 200/=.

On appeal, the Court of Appeal held that the two offences referred to in counts 1 and 2 were unconnected incidents and were not committed in the course of the same transaction, and set aside the conviction and the sentence of the 7<sup>th</sup> accused on count 2. But the sentence and conviction of the 1<sup>st</sup> to 6<sup>th</sup> accused on count 1 were affirmed.

The appellants appealed from the judgment of the Court of Appeal. The learned Counsel for the appellants contended that the misjoinder of

charges is an illegality which vitiates the whole charge and not a curable irregularity.

**Held:**

**L.H. de Alwis, J. (Sharvananda, C.J. and H.A.G. de Silva, J. agreeing)**

- 1. That the time at which it falls to be determined that the conditions of the offences alleged had been committed in the course of the same transaction had been fulfilled, is the time when the accusation is made, and not when the trial is concluded and the result is known.*
- 2. That a misjoinder of charges is curable under provisions of the Code of Criminal Procedure if there had been no actual or possible failure of justice.*
- 3. As the misjoinder in the present case has not prejudiced the appellants and occasioned a failure of justice it amounts to an irregularity that is curable under section 436 of the Code of Criminal Procedure Act No. 15 of 1979 and the appeal, therefore, fails.*

Section 436 of the Code of Criminal Procedure Act referred to above reads as follows.

**436. Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account –**

**(a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, summing up, or other proceedings before or during trial or in any inquiry or other proceedings under this Code; or**

**(b) of the want of any sanction required by section 135,**

**unless such error, omission, irregularity, or want has occasioned a failure of justice.**

It is abundantly clear from the judgment that the learned High Court Judge has not used the evidence led through PW-05 Lionel in relation to the 7<sup>th</sup> to 12<sup>th</sup> counts preferred against the appellant in determining 1<sup>st</sup> to 6<sup>th</sup> counts, where the appellant was found guilty. It is quite apparent that it was the person called Pathirana Lionel (PW-05) who has supplied the White Beedi to the PW-01. It is also in evidence that after soliciting a bribe of Rs. 5000/=, and Rs. 1000/= monthly thereafter, the husband of PW-01 and the earlier mentioned Lionel has been arrested for an alleged offence of possessing Ganja, and they have been charged before the Angunukolapalassa Magistrate's Court, although both of them have denied in their evidence that they possessed Ganja and has taken up the stand that they were falsely implicated. That is a factor which relates to the 1<sup>st</sup> to 6<sup>th</sup> counts preferred against the appellant, which I do not find as a reason to consider that fact has caused prejudice towards the appellant, as that piece of evidence cannot be considered as part of the evidence in relation to 7<sup>th</sup> to 12<sup>th</sup> counts preferred against the appellant.

I am unable to agree with the contention of the learned President's Counsel that the learned High Court Judge has considered the said pieces of evidence in a prejudicial manner. Therefore, I am of the view that the said misjoinder in itself would not have any vitiating effect on the conviction of the appellant in relation to the 1<sup>st</sup> to 6<sup>th</sup> counts, as it has not caused any prejudice towards the appellant.

Since the 2<sup>nd</sup> to 7<sup>th</sup> grounds of appeal urged are grounds based on the credibility of prosecution witnesses, I will now proceed to consider the said grounds of appeal together, along with the 8<sup>th</sup> ground of appeal where it was contended that the learned High Court Judge has failed to consider the defence case.

It is abundantly clear from the relevant prosecution witnesses that PW-01 and her husband (PW-02) or PW-05 for that matter, had no reason whatsoever to falsely accuse the appellant for soliciting and accepting a bribe from PW-01.

PW-01 had been a housewife, who ran a small boutique at her house where she has sold White Beedi supplied by PW-05. It is an admitted fact that PW-05 had no license to manufacture Beedi in such a manner. However, it has been undisputed that Beedi manufactured by PW-05 has been commonly available in the boutiques of the area. Under the circumstances, when PW-01 says that the appellant being an Excise Guard came and detected some bundles of Beedi available in her shop for sale and demanded Rs. 5000/= from her to not prosecute her, and also Rs. 1000/= on every month for her to carry on with the trade, it cannot be considered under any circumstances a concocted story.

Therefore, it is clear that the PW-01 and her husband have lodged a true complaint in this regard to the Bribery Commission as they are entitled to. This complaint has resulted in a raid being organized by the officers of the Bribery Commission and the appellant being arrested while accepting Rs. 5000/= as solicited by him previously.

Although the learned President's Counsel for the appellant claimed that there were several inconsistencies in the evidence of PW-01, PW-02 and that of PW-05, and that they have uttered deliberate falsehood in that regard, I have no basis to agree with such a contention.

It is trite law that evidence in a criminal case has to be considered in its totality and not in a piecemeal basis. It is quite apparent that when two persons describe the same incident after several years of its occurrence, there can be obvious discrepancies in that regard. Such discrepancies become relevant only if they create a reasonable doubt in their evidence against an accused person. It is well-settled law that no person is expected to have a photographic memory of an event when describing that in a subsequent proceeding.

At this stage, I find it appropriate to refer to the Indian case of **Bhoginbhai Hirjibhai Vs State of Gujarat (AIR 1983-SC 753 at pp 756-758)** very often cited in our Courts. It was held:

- 1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*
- 2) Ordinarily, so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*
- 3) Ordinarily, a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.*
- 4) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometime so operates on account of the fear of looking foolish or being disbelieved though the witnesses is giving truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defense mechanism activated on the spur of the moment.*

The PW-01 not properly describing the location of the Wine Store which was near the place the raid took place or whether the decoy held the appellant before the other officers came and arrested him, were not matters that creates any doubt as to the raid or discrepancies that goes on to the root of the matter.

For a discrepancy or a contradiction to be relevant, it has to be a material discrepancy or a contradiction.

**Shiranee Thilakawardena, J.** in the case of **The Attorney General Vs. Potta Naufar and Others (Ambepitiya Murder Case) (2007) 2 SLR 144** observed that;

*“..when faced with contradictions in a testimonial of a witness, the Court must bear in mind the nature and the significance of the contradiction.*

*..the Court must come to a determination regarding whether these contradictions were an honest mistake on the part of the witness or whether it was a deliberate attempt to mislead Court.”*

In the case of **Mahathun and Others Vs. The Attorney General (2015) 1 SLR 74** it was held:

- (1) When faced with contradictions in a witness testimonial, the Court must bear in mind the nature and significance of the contradictions, viewed in light of the whole of the evidence given by the witness.
- (2) Too great a significance cannot be attached to minor discrepancies, or contradictions.
- (3) What is important is whether the witness is telling the truth on the material matters concerned with the event.
- (4) Where evidence is generally reliable much importance should not be attached to the minor discrepancies and technical errors.
- (5) The Court of Appeal will not lightly disturb the findings of a trial judge with regard to the acceptance or rejection of testimony of a witness unless it is manifestly wrong.

In the case of **State of U.P. Vs. M. K. Anthony, AIR 1985 SC 48**, it was held:

*“While appreciating the evidence of a witness the approach must be whether the evidence of a witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies,*



*drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to tender it unworthy of belief.*

*Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.”*

I am unable to agree with the contention that the learned High Court Judge has failed to consider the defence put forward by the appellant. In fact, the learned High Court Judge has correctly noted that the appellant has failed to suggest the relevant witnesses when they were giving evidence that he was enticed by them to come to a place near a Wine Store in the guise of providing information and hoisted a false bribery charge against him.

The learned High Court Judge has drawn his attention to the value that can be attached to a dock statement made by an accused person and the relevant legal provisions in that regard. The learned High Court Judge has considered whether the dock statement or the questions put to the witnesses under cross-examination or the position taken up by the appellant has created a reasonable doubt as to the charges against the appellant or at least it has provided a reasonable explanation.

It was only after considering the defence put forward by the appellant in its correct perspective, and also after having considered the evidence in its totality, the learned High Court Judge has found the appellant guilty to the 1<sup>st</sup> to 6<sup>th</sup> count for which I find no basis to disagree.

Therefore, I do not find any basis to interfere with the conviction and the sentence of the appellant in relation to the 1<sup>st</sup> to 6<sup>th</sup> count preferred against him where he was found guilty.

Accordingly, I dismiss the appeal against the said counts for want of merit, and affirms the conviction and the sentence in that regard.

However, as I have discussed earlier, since the 7<sup>th</sup> and the 9<sup>th</sup> count where the appellant was found guilty are counts based on a misjoinder of charges, I set aside the conviction and the sentence of the appellant in relation to those two counts, and acquit the appellant in relation to the 7<sup>th</sup> and the 9<sup>th</sup> count.

Since the appellant is on bail pending appeal, it is directed that the sentence in relation to the 1<sup>st</sup> to 6<sup>th</sup> counts preferred against the appellant shall commence from the date where the learned High Court Judge of Colombo pronounce this judgment to the appellant.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal