

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979

**Court of Appeal Case No.
CA/HCC/ 0327/2019**

**High Court of Colombo
Case No. HCB/2086/2015**

1. Wadduwage Ruwan Indrajith
2. Koswatte Ralalage Lalith Premalal
Samaraweera
3. Colambage Lakshman alias Sampath

Accused-Appellants

Vs.

The Director General
Commission to Investigate
Allegations of Bribery or Corruption
No.36, Malalasekera Mawatha,
Colomb0-07.

Complainant-Respondent

BEFORE

:

**Sampath B. Abayakoon, J
P. Kumararatnam, J**

COUNSEL : **Palitha Fernando, P.C. for the
1st Appellant.
S.Jayawardena, PC with
L.Warusavithana for the 2nd
Appellant.
N.Jayasinghe with Imangsi Senarath
and Randunu Heellage for the 3rd
Appellant.
Sudharshana De Silva, SDSG for the
Respondent.**

ARGUED ON : **08/12/2023**

DECIDED ON : **03/05/2024**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellants (hereinafter referred to as the Appellants) were indicted by the Director General of the Bribery Commission in the High Court of Colombo.

Count 01 on the indictment was against the 1st Appellant, that between the 11th and 12th of June 2012, he being an excise Officer, a public officer employed for the detection, prosecution and punishment of offenders solicited an illegal gratification of Rs.50,000/- from one Rohitha Pushpakumara for protecting Wellambage Sudharsini Nilanthi Perera a

suspect arrested for having Heroin a Narcotic drug in her possession from being prosecuted before the High Court, which is an offence punishable in terms of Section 16(b) of the Bribery Act.

Count 02 on the indictment was against the 1st Appellant for soliciting an illegal gratification of Rs.50,000/- from the said Rohitha Pushpakumara being a public servant and offence punishable in terms of Section 19(c) of the Bribery Act.

Count 03 in the indictment was against the 1st Appellant for accepting an illegal gratification of Rs.50,000/- from the said Rohitha Pushpakumara for the purpose set out in Count 01, an offence punishable in terms of Section 16(b) of the Bribery Act.

Count 04 on the indictment was against the 1st Appellant for accepting an illegal gratification of Rs.50,000/- from the said Rohitha Pushpakumara being a public servant and offence punishable in terms of Section 19(c) of the Bribery Act.

Count 05 on the indictment was against the 2nd Appellant for abetting the 1st Appellant to commit the offence set out in Count 01 of the indictment, an offence punishable in terms of Section 16(b) read with Section 25(2) of the Bribery Act.

Count 06 on the indictment was against the 2nd Appellant for abetting the 1st Appellant to commit the offence set out in Count 02 of the indictment, an offence punishable in terms of Section 19(c) read with Section 25(2) of the Bribery Act.

Count 07 on the indictment was against the 3rd Appellant for abetting the 1st Appellant to commit the offence set out in Count 03 of the indictment, an offence punishable in terms of Section 16(c) read with Section 25(2) of the Bribery Act.

Count 08 on the indictment was against the 3rd Appellant for abetting the 1st Appellant to commit the offence set out in Count 04 of the indictment, an offence punishable in terms of Section 19(c) read with Section 25(2) of the Bribery Act.

After the trial, the Appellants were found guilty for their respective counts and the Learned Judge of the High Court of Colombo has imposed the following sentences on the Appellants by his judgment dated 24/10/2019.

For the 1st Count the 1st Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

For the 2nd Count the 1st Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

For the 3rd Count the 1st Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

For the 4th Count the 1st Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

The Court further ordered the jail sentences imposed on Counts 1-4 against 1st Appellant to run concurrently each other.

For the 5th Count the 2nd Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

For the 6th Count the 2nd Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

The Court further ordered the jail sentences imposed on Counts 5-6 against 2nd Appellant to run concurrently each other.

For the 7th Count the 3rd Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

For the 8th Count the 3rd Appellant was sentenced to 05 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

The Court further ordered the jail sentences imposed on Counts 7-8 against 3rd Appellant to run concurrently each other.

Being aggrieved by the aforesaid conviction and sentence, the Appellants preferred this appeal to this court. The prosecution had called 04 witnesses and marked P1-6 documents in support of their case.

The 1st Appellant had given evidence from witness box and called two witnesses on his behalf. The 2nd and 3rd Appellants had made their statements from the dock.

All the Appellants were present in this Court on the day of the argument as they were on bail pending appeal granted by the High Court.

On behalf of the 1st Appellant the following Grounds of Appeal were raised.

1. The Learned Trial Judge did not pay adequate attention to the obvious infirmities of the case for the prosecution.
2. The fact that a cautious approach should be adopted in analysing the evidence of the Bribery Officers was not sufficiently considered by the Learned High Court Judge.
3. The reasons for accepting the evidence of the Bribery Officers, rejection the evidence led on behalf of the defence have not been adequately set out in the judgment of the Learned High Court Judge.

4. The fact that the charge was based on the protection of an offender from prosecution and that the offender had already been produced in Court at the time of the alleged acceptance was not considered by the Learned High Court Judge.
5. Evidence of solicitation has been led of facts not covered by the charges which amounts to leading inadmissible evidence that has caused prejudice to the 1st Appellant.

On behalf of the 2nd Appellant the following Grounds of Appeal were raised.

1. There are 07 different versions by the prosecution witnesses which are inconsistent with each other and given inherent weaknesses, no other conclusion whatsoever with any other witness against the 2nd Appellant.
2. The Counts 5 and 6 are connected to Count 01, and the charge is solicitation of Rs.50,000/-.
3. No date of offence is established by the prosecution.
4. The 1st Appellant did not incriminate 2nd Appellant in his evidence with regard to solicitation.
5. The evidence given by PW1 is not trustworthy.
6. Given the fact that there is only solitary evidence against the 2nd Appellant, the Learned High Court Judge had not observed the demeanour of the witness.
7. No phone call evidence led in the trial.

On behalf of the 3rd Appellant the following Grounds of Appeal were raised.

1. The Learned Trial Judge is erred in law in coming to the conclusion that the evidence of PW1 is corroborated by the evidence of PW2.
2. The Learned Trial Judge has failed to take into consideration that the prosecution has failed to prove the charges against the 3rd Appellant.

3.The Learned Trial Judge has wrongly refused the evidence of the defence.

Background of the case.

In this case the 1st and 2nd Appellants are Excise officers and the 3rd Appellant is a civil citizen.

According to PW1, Rohitha Pushpakumara is a vegetable seller at Peliyagoda Central Market, and he is married to a lady called Sudharsani Perera. During the time pertaining to this case, his marriage had virtually come to an end as his brothers-in-law were engaged in selling narcotics. On 11.06.2012, when he came home after his business routine, he was informed that his wife was arrested by officers attached to the Excise Department. When he went to the Excise Office, he had met 2nd and 3rd Appellants. The 3rd Appellant is the brother of the witness.

When he inquired from 2nd Appellant, he was told that she was arrested on a drug charge and the 2nd Appellant demanded Rs.200,000/- from the witness in order to release his wife without being charge in court. As the witness did not possess such amount, he had pleaded the 2nd Appellant to release his wife. Then the 2nd Appellant had directed him to talk to the 1st Appellant. When he met the 1st Appellant, he too demanded Rs.200,000/- from the witness. As he did not have such an amount with him, PW1 after a compromise, agreed to pay Rs.50,000/- to the Excise Officers. In the meantime, his brother 3rd Appellant also advised PW1 to pay the amount demanded by the Excise Officers.

On the following day, PW1 had called the Bribery Department and a raid was arranged by the Bribery officials. When he was at the Bribery Commission, the 1st Appellant had called PW1 and told that his wife had been produced in court on the allegation of possession of a Cannabis Cigar and demanded Rs.50,000/- immediately. Thereafter, as per the arrangement PW1 with PW2 WPC 801 Kalaimany, the decoy had gone to the Excise Office and handed

over Rs.50,000/- to the 1st Appellant who in turn gave the same to 3rd Appellant. At that time the Bribery Officials had entered the office and arrested 1st and 3rd Appellant.

PW2, WPC 801 Kalaimony had given evidence and corroborated the evidence given by PW1.

The Appellants denied their respective charge/s and adduced evidence to show that they were arrested on fabricated evidence.

As all the appeal grounds raised by the Counsels for the Appellant are interconnected, I decided to consider all those appeal grounds together in this judgment.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond reasonable doubt. There is no burden on the Appellant to prove his innocence. This is the “Golden Thread” as discussed in **Woolmington v. DPP** [1935] A.C.462. In this case Viscount Sankey J held that:

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt..... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal.”

As the appeal grounds raised by the Appellants are interconnected, I decided to consider all those grounds together hereinafter.

According to prosecution’s stance, the solicitation, which would constitute an offence under the Bribery Act, was committed by the 2nd Appellant in this case. According to the evidence led through PW1, he had first met the 2nd Appellant at the Excise Office and inquired from him about the arrest of his wife. At that time the 2nd Appellant had confirmed the arrest and solicited Rs.200,000/- from him to soft pedal the case. Hence, the Learned President’s

Counsel appearing for the 1st Appellant strenuously argued that leading of that evidence amounts to leading highly prejudicial inadmissible evidence and it prejudices the case for the 1st Appellant as it is alleged that the 2nd Appellant abetted the 1st Appellant to commit the offences set out in the indictment.

Next, the Learned President's Counsel argued that there was a strong motive for false implication. The 3rd Appellant in this case happens to be an informant to Excise Officers. Further, the 3rd Appellant is the brother of PW1. There had been an animosity due to personal reason over an illegitimate relationship between the 3rd Appellant and the wife of PW1. Therefore, the Learned High Court judge should have paid attention to certain improbabilities and infirmities that surfaced in the prosecution's case.

In **Kalinga Padmatilaka v The Director General of Commission to Investigate Allegation of Bribery or Corruption** SC Appeal 99/2007 decided on 30.07.2009 the Supreme Court 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 2 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.

In **Gurcharan Singh V. State of Haryana** - Criminal Law Journal 1994 (2) 171 the Court held that:

“Where the material witnesses make inconsistent statements in their evidence on material particulars, the evidence of such witnesses becomes unreliable and unworthy of credence, thus making the prosecution case highly doubtful.”

According to PW1, after complaining to the Bribery Department a raid was arranged. PW2 acted as a decoy had accompanied PW1, when he went to give money. PW2, decoy had the money when the duo went to the Excise Office. The decoy had given the money to PW1. Before he could give the money to 3rd Appellant, the Bribery Department Officers had entered the office and recovered the money from the 1st Appellant. The 2nd Appellant was not present at the Excise Office at that time. The relevant portion is re-produced below:

Page 122 of the brief.

ප්‍ර : මොකක් කියලාද දුන්නේ 3 වන විත්තිකරුට ?

උ : 3 වෙනි විත්තිකරුට දෙන්න හම්බු වුනේ නැහැ, මෙහෙම අන දික් කරලා දුන්නා (දුන් ආකාරය පෙන්වා සිටී) දෙන කොටම ඇවිල්ලා අල්ලා ගන්නා.

ප්‍ර : මොකුත් කිව්වාද ඒ වෙලාවේ දී?

උ : මොකුත් කිව්වේ නැහැ, සල්ලි දෙන කොට මිස්සිව සැක හිතුවා. එතකොට මහත්වරුන් ඇතුළේ ගේට්ටුව ලග දුවන් එනවා. සල්ලි ගන්න ගමන්ම මෙයාට සැක හිතුවා මේක මොකක් හට් දෙයක් තමයි කියලා. සල්ලි ගන්නේ 1 වන විත්තිකරුගේ අතේම තිබ්ලා තමයි.

PW2, WPC 801 Kalaimany the decoy in this case had told Court that the money given to 1st Appellant was recovered from the 3rd Appellant. The relevant portions are re-produced below:

Page 172 of the brief.

අධිකරණයෙන් :-

ප්‍ර : අබේසිංහ මහත්මයා දෙන අවස්ථාවේදී මුදල් කාගේ ප්‍රභූ තිබුණේ ?

උ : මුදල් වාහනයේ තිබුණේ ස්වාමිනි.

ප්‍ර : සිද්ධිය වෙත අවස්ථාවේදී අංක යෙදීමක් සිදු කළා කිව්වනේ ?

උ : ඔව් ස්වාමිනි.

ප්‍ර : ඒ සල්ලි කාගේ ළග තිබ්ලාද සොයා ගත්තේ ?

උ : සමපත් ළග තිබ්ලා ස්වාමිනි.

Page 194 of the brief.

ප්‍ර : ඊට පස්සේ තමුන්ලා කියන විදියට සමපත් කියන පුද්ගලයා අතින් තමයි අබේසිංහ මහත්මයා සල්ලි ටික ගත්තේ, එහෙමද ?

උ : ඔව් ස්වාමිනි.

PW3, IP/Abeysinghe who headed the raid also corroborated the evidence given by the decoy PW2. The relevant portion is re-produced below:

Page 222 of the brief.

ප්‍ර : දැන් එතකොට තමුන් ලක්ෂ්මන් කියන පුද්ගලයා පරීක්ෂා කලාද ?

උ : පරීක්ෂා කලා කියන්නේ, ඔහුගේ අතේ සල්ලි තිබුනා. ඒ සල්ලි මම ක්ෂණිකවම ගන්නා ස්වාමිනි.

These contradictions would be of importance in view of the fact that the 1st Appellant had consistently taken the stance that no money was ever given to him and that nothing was recovered from him.

Although the above mentioned inter se contradictions were not marked, it is the duty of the Trial Judge should consider such evidence favourable to the Accused with utmost care. The Learned High Court Judge in his judgment stated as follows:

Pages 384-385 of the brief.

මෙම මුදල් අයදීම හා භාර ගැනීම සම්බන්ධයෙන් පැමිණිලිකරු විසින් දෙන ලද සාක්ෂිය බිඳ හෙලීමට විත්තිය සමත් වී නැත. තවද පැමිණිලිකරු විත්තිකරුවන්ට එරෙහිව මෙම නඩුවේ දී

අසත්‍ය සාක්ෂි දෙන බවට අධිකරණයට හෙළි වී නැත. පැමිණිලිකරු හා විත්තිකරුවන් අතර අමනාපයක් තිබෙන බව අධිකරණයට සනාථ වී නැත. ඉහත දක්වා ඇති හේතූන් මත 1 වන සාක්ෂිකරුගේ සාක්ෂිය අධිකරණය පිළිගනිමි.

එබැවින් මෙම සාක්ෂිය මතම පමණක් වුවද විත්තිකරුවන් වරදකරුවන් කිරීමට අධිකරණයට හිතීමය අයිතියක් ඇත. කෙසේ වුවද මෙම පැමිණිලිකරුගේ සාක්ෂිය උපාය දැනිකාව වන කලෙයිමති (පැ.සා.2) යන අයගේ සාක්ෂියෙන් තහවුරු වී ඇත. මෙම උපාය දැනිකාවගේ සාක්ෂිය අධිකරණය ඇගයීමේ දී අධිකරණයට සනාථ වන්නේ මෙම සාක්ෂිකරුගේ සාක්ෂිය සම්බන්ධයෙන් ද කිසිදු පරස්පරතාවයක් හෝ උග්‍රතාවයක් ලකුණු කිරීමට විත්තිය සමත් වී නොමැති බවයි. මෙම උපාය දැනිකාව පැමිණිලිකරුගේ සාක්ෂිය තහවුරු කරමින් අධිකරණයේ සාක්ෂි දී ඇත. විත්තිකරුවන් විසින් පැමිණිලිකරුගෙන් මුදල් භාර ගැනීම සම්බන්ධයෙන් පැමිණිලිකරු දෙන ලද සාක්ෂිය මෙම සාක්ෂිකාරිය විසින් ද තහවුරු කර ඇත. මේ සම්බන්ධයෙන් උපාය දැනිකාව වන කලෙයිමති යන අයගේ සාක්ෂිය අධිකරණය සලකා බලයි.

With this glaring contradiction, the Learned High Court Judge has come to his own finding that the all money noted were recovered from the 3rd Appellant. The relevant portion is re-produced below:

Page 387 of the brief.

ඇත්ත කරුණ වන්නේ මෙම මුදල් නෝට්ටු සියල්ල සොයා ගෙන තිබෙන්නේ 3 වන විත්තිකරුගේ ඩාරයේ තිබීමයි.

This contradictory position of the prosecution witness is not considered by the Learned High Judge in its correct perspective.

The Apex Court has established precedents in a number of cases stating that the defense would prevail when there is a contradiction that affects the core of the case.

When a witness gives evidence before the court upon oath, he is expected to tell the truth in a court of law. If the person gives contradictory evidence opposite to the statement, it is usually called a contradiction. It is the duty of the trial judge to unearth the truth and to come to a conclusion whether an Accused person is guilty or not.

In the case of **State Rep. by Inspector of Police v. Saravanan** AIR 2009 SC 152 the Court held that:

“The contradictions/ omissions must be of such nature which materially affects the trial. Minor contradictions, inconsistencies, embellishments or improvements which do not affect the core of the prosecution case should not be made a ground to reject the evidence of the witness in its entirety.”

In the case of **Shamal Ghosh Vs. State of West Bengal** 2012 All. S. C. R, 1921 the Court held that:

“Omission to state a fact whether it is a material contradiction or not is a question of fact. The discretion is left with the Court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of prosecution materially.

As the contradictory portions of evidence given by PW1, PW2 and PW3 which is re-produced above certainly affects the root of the prosecution’s case, I conclude that the prosecution has not proved the case against the 1st Appellant beyond reasonable doubt. Therefore, the grounds urged by Learned President’s Counsel for the 1st Appellant have merit.

The Learned President’s Counsel who appeared for the 2nd Appellant strenuously argued that the charge of solicitation in the indictment had not proved beyond reasonable doubt by the prosecution. As such, the 2nd Appellant cannot be charged for aiding and abetting 1st Appellant in the indictment.

According to PW1, when he went to the Excise Office to see his wife who was arrested on a drug charge, it was the 2nd Appellant who had demanded Rs.200,000/- from him to secure his wife’s release.

The relevant portion is re-produced below:

Pages 112-113 of the brief.

ප්‍ර : එතකොට තමන් සුරාබදු කාර්යාලයට ගිහිල්ලා පළවෙනියටම හමුවූ වුනේ කාවද ?

උ : පළවෙනියටම හමුවූ වුනේ මැද ඉන්න එක්කෙනාව.

ප්‍ර : මැද ඉන්න පුද්ගලයාව හමුවුවෙලා මොනවාද කිව්වේ ?

උ : මම කිව්වා මගේ බිරිඳව ගෙනැල්ලා තිබෙනවා, මොකටද ගෙනාවේ කියලා ඇහුවිවා. උඹට වැඩක් නැහැ නේ ඒකෙන් මම ගෙනාවේ මට ඕනෑ නිසා. උඹලා වික්කේ නැතත් ඒකෙන් මට වැඩක් නැහැ. මට ඕන වෙලාවට මම ගේනවා, උඹලා ඉස්සර කුඩු වික්කානේ උඹලා ඉතිං ඔක්කොම. හැම එකාටම සල්ලි දෙනවා නේ. මට ඕන නින්දා මම බිරිඳව ගෙනාවා. මහාධිකරණයේ හඩු පවරනවා හයිකෝට් එකක් දානවා. එහෙම නැත්නම් මට සල්ලි ඕනෑ කියලා කිව්වා. මම කිව්වා මා ලග සල්ලි දෙන්න සල්ලි නැහැ කියලා. ලක්ෂ 2 ක් තමයි මගෙන් ඉස්සෙල්ලාම ඉල්ලුවේ. ඒ රූම ගෙනත් දෙන්න කියලා කිව්වා ලක්ෂ දෙකම. මම කිව්වා මට ලක්ෂ 2 ක් සල්ලි ගෙනත් දෙන්න බැහැ මට මේ අවස්ථාවේ, මේ රූ වෙලා මට ලක්ෂ 2 දෙන්න බැහැ. එතකොට රූ 10.30 ට 11.00 ට විතර ඇති. මම කිව්වා මට එව්වර සල්ලියක් මගේ අතේ නැහැ. මට එහෙම සල්ලියක් දෙන්න බැහැ කියලා කිව්වා.

ප්‍ර : දැන් තමන් කිව්වා ඔය මැද ඉන්න නිලධාරියාව හමුවූ වුනා කියලා, මැද ඉන්න නිලධාරියා කියන්නේ කී වෙනියට ඉන්න එක්කෙනා ද ?

උ : මැදම ඉන්න එක්කෙනා.

ප්‍ර : අංක අනුව කියනවා නම් ?

උ : දෙවෙනියා.

But no charge of solicitation had been framed against the 2nd Appellant. As such, the money solicited by the 1st Appellant had not been proved beyond reasonable doubt. Proof of demand is an essential factor in a bribery case.

When considering the totality of the evidence it is crystal clear that the prosecution has failed to prove beyond reasonable doubt that there was solicitation by the 1st Appellant on the date specified in the indictment.

Also, the prosecution has failed to prove beyond reasonable doubt that the Appellant had accepted the gratification on the date specified in the indictment.

Hence, the adding and abetting charges framed against the 2nd and 3rd Appellants also fail.

As the prosecution has failed to prove the charges beyond reasonable doubt against the Appellants, I allow the appeal and acquit them from all the charges.

The Registrar is directed to send a copy of this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL