

**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/ 0462/2017  
High Court of Colombo  
Case No. HCB/1952/2013**

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

**Complainant**

**Vs.**

1. Abdul Nazar Mohamad Lafoor
2. Jayaweera Munasinghe

**Accused**

**AND NOW BETWEEN**

Abdul Nazar Mohamad Lafoor

**Accused-Appellant**

**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** : **Shanaka Ranasinghe, PC, with**  
**Niroshan Mihindukulasuriya for the**  
**Appellant.**  
**Dilan Rathnayake, ASG for the**  
**Respondent.**

**ARGUED ON** : **19/09/2024**

**DECIDED ON** : **16/12/2024**

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**JUDGMENT****P. Kumararatnam, J.**

The above-named Accused-Appellant (hereinafter referred to as the Appellant) along with the 2<sup>nd</sup> Accused were indicted by the Director General of the Bribery Commission in the High Court of Colombo.

**Count 01** on the indictment was against the Appellant, that between 30.09.2011 and 06.10.2011, he being a Senior Assessor of the Department of Provincial Revenue Eastern Province, a public officer employed for assessing the overdue revenue taxes of “Manel Stores” in order to facilitate a concession on the said overdue taxes, did solicit an illegal gratification of Rs.25,000/- from one Rossiro Indika Ratnaweera which is an offence punishable in terms of Section 19(b) of the Bribery Act.

**Count 02** on the indictment was against the Appellant for accepting an illegal gratification of Rs.25,000/- from the said Rossiro Indika Ratnaweera for the purpose set out in Count 01, an offence punishable in terms of Section 19(b) of the Bribery Act.

**Count 03** on the indictment was against the Appellant for soliciting an illegal gratification of Rs.25,000/- from the said Rossiro Indika Ratnaweera being a public servant and offence punishable in terms of Section 19(c) of the Bribery Act.

**Count 04** on the indictment was against the Appellant for accepting an illegal gratification of Rs.25,000/- from the said Rossiro Indika Ratnaweera being a public servant and offence punishable in terms of Section 19(c) of the Bribery Act.

The sixth and seventh counts are against the 2<sup>nd</sup> Accused for aiding and abetting the Appellant in order to commit offences mentioned under counts No.2 and Count No.4 in the indictment.

After the trial, the Appellant was found guilty for all counts in the indictment and the Learned Judge of the High Court of Colombo has imposed the following sentence on the Appellant by his judgment dated 05/12/2017. The 2<sup>nd</sup> Accused was acquitted from the case.

**For the 1<sup>st</sup> Count** the Appellant was sentenced to 04 years simple imprisonment with a fine of Rs.4,000/- subject to a default sentence of 04 months simple imprisonment.

**For the 2<sup>nd</sup> Count** the 1<sup>st</sup> Appellant was sentenced to 04 years rigorous imprisonment with a fine of Rs.4,000/- subject to a default sentence of 04 months simple imprisonment.

**For the 3<sup>rd</sup> Count** the 1<sup>st</sup> Appellant was sentenced to 04 years rigorous imprisonment with a fine of Rs.4,000/- subject to a default sentence of 04 months simple imprisonment.

**For the 4<sup>th</sup> Count** the 1<sup>st</sup> Appellant was sentenced to 04 years rigorous imprisonment with a fine of Rs.4,000/- subject to a default sentence of 04 months simple imprisonment.

The Court further ordered the jail sentences imposed on Counts 1 and 3 and Counts 2 and 4 against the Appellant to run concurrently with each other. Accordingly, he was sentenced to 08 years simple imprisonment. Further, a penalty of Rs.25000/- was imposed against the Appellant.

Being aggrieved by the aforesaid conviction and sentence, the Appellants preferred this appeal to this court. The prosecution had called 04 witnesses and marked P1-14 documents in support of their case.

The Appellant had given evidence from witness box and called one witness on his behalf. The 2<sup>nd</sup> Accused had made his statement from the dock.

the Appellant was present in this Court on the day of the argument as he was on bail pending appeal granted by the High Court.

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

1. Did the Learned Trial Judge fail to consider the inter se contradictions of the prosecution witnesses which created a reasonable doubt in the prosecution case.
2. Did the Learned Trial Judge fail to consider the evidence of PW2 and PW3 as per the guidelines laid down by your Lordship's Court.
3. Has the learned Trial Judge failed to consider that the evidence of PW2 and PW3 creates a reasonable doubt in the prosecution case.
4. Did the Learned Trial Judge misdirected himself in wrongly evaluating the dock statement.
5. Has the Learned Trial Judge failed to consider the defence in total as required by law.
6. Without prejudice to the above grounds is the sentence imposed excessive in any event.

### **Background of the case.**

In this case the Appellant and 2<sup>nd</sup> Accused are employees of the Inland Revenue Department, attached to the Ampara Provincial Office.

According to PW1, Indika Rathnaweera had run a business establishment namely 'Manel Stores' in Ampara town from 2014 onwards. As he did not pay the turnover tax from 2010, some officers from the Ampara Provincial

Tax Office had come to his shop and confiscated all relevant documents on 30.09.2011 and thereafter he was asked to come to the tax office on 03.10.2011. When he met the Appellant in his office, he was informed that according to the income the Appellant generated, he was liable to pay Rs.140,000/-. But the Appellant had demanded Rs.25000/- to re-adjust the said amount to Rs.20600/-. This was informed to the Bribery Commission and a raid was organised to apprehend the culprits.

On the day of the raid PW1 went to the Appellant's office with a Bribery Officer, who acted as a decoy and handed over the money to the Appellant in presence of the decoy (PW2). When the money was handed over to the Appellant, he had put the same into a file and handed it over to the 2<sup>nd</sup> Accused. When the 2<sup>nd</sup> Accused was carrying the file the Bribery Officers had arrested him in the office and recovered the money.

PW2, PS 19901 Ajith Kumara had given evidence and corroborated the evidence given by PW1.

The Appellant denied the respective charges and made dock statement and adduced evidence to show that he was arrested on fabricated evidence.

As appeal grounds 1 to 3 raised by the learned President's Counsel for the Appellant are interconnected, I have decided to consider all those appeal grounds in combination 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.”*

According to prosecution’s stance, the solicitation, which would constitute an offence under the Bribery Act, was committed by the Appellant in this case. According to the evidence led through PW1, he had first met the Appellant at the Provincial Tax Office and inquired from him about his tax liability. At that time the Appellant had informed the amount and solicited Rs.25000/- from him to soft pedal the case. Hence, the Learned President’s Counsel appearing for the Appellant strenuously argued that leading of that evidence is highly prejudicial and maybe inadmissible as it prejudices the case for the Appellant as the money recovered from the possession of the 2<sup>nd</sup> Accused was given to him by the Appellant to begin with.

Next, the Learned President’s Counsel argued that the learned High Court Judge had failed to analyse the entirety of the evidence presented by the prosecution as it contained serious inter se and per se contradictions. He further stated that the Learned High Court judge should have paid attention to certain improbabilities and infirmities that surfaced in the prosecution’s 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 opposing 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 the Accused person is guilty or not.

According to PW1, after complaining to the Bribery Department a raid was arranged. PW2 acting as a decoy had accompanied PW1, when he went to give the money. PW2, the decoy had the money when the duo went to the Tax Office. The decoy had given the money to PW1. PW1 had then given the same to the Appellant and the Bribery Department Officers had entered the office and recovered the money from the 2<sup>nd</sup> Accused thereafter.

In this case the evidence presented by the prosecution is overwhelming. No contradictory position existed among the prosecution witnesses. The Learned High Court Judge had considered the inter se and per se contradictions of prosecution witnesses and held that the prosecution had adduced cogent, consistent, and believable evidence. Therefore, I conclude that the grounds of appeal raised by the Appellant have no merit.

The Learned President's Counsel finally drew the attention of this Court to the sentence imposed by the Learned High Court Judge. In this case the Learned High Court Judge had imposed 08 years simple imprisonment against the Appellant. The reason for imposing simple imprisonment is that the Appellant was 58 years old (now 65 years) and had undergone a surgery on his spinal code and need periodical medical attention. Highlighting this position, the learned President's Counsel invited this Court to re-consider the sentence considering the Appellant's age and his medical condition.

It will fall upon the judge or the magistrate who will issue the final decision in a given case to determine the appropriate sentence based on the severity of the harm caused to the victim and the directness of the responsibility the offender holds for the crime.

As such, the sentence that is imposed upon an offender should reflect the crime and be proportionate to the seriousness of the crime that has been committed. The weight given for each factor in a case is at the discretion of the judge or magistrate dealing with that instant case.

In this case the Appellant was in remand initially and was under interdiction from the date of offence. At the time of offence, the Appellant had put up 26 years' service. A conviction under the Bribery Act would result in the dismissal from the service. The Appellant had lost his employment benefit due to loss of employment.



In **R. A. P. Ruwansiri Perera v The Attorney General** SC Appeal 99/2006 decided on 21.06.2007 Sirani A. Bandaranayke, J. held that:

*“ It is not disputed that the Appellant had been guilty of a despicable act. Examining the circumstances of the case, both the High Court and the Court of Appeal had in my view, taken into their careful consideration the gravity of the offence. Therefore, if it could have been implemented, there would not have been any necessity for this Court to have considered the question of suspending such sentence. However, as stated earlier, when there has been a delay of over 08 years for the sentence to be confirmed due to no fault of the Appellant, this Court in my view has a duty to consider such circumstances and consequences that the Appellant had to encounter on account of such delay.*

*The Charge that had been hanging over the Appellant’s head over a period of 8 years and the disorganization that essentially would have followed due to the undue delay in confirmation of his sentence, in my view are circumstances, although not obligatory, that should be taken into consideration in suspending the sentence of imprisonment”.*

The learned Additional Solicitor General in keeping with the highest tradition of the Attorney General’s Department informed Court that he is not objecting for the re-consideration of the sentence imposed, as the sentencing is the prerogative of the Court.

In this case as per the indictment the offences were committed in the year 2011 and the Appellant was sentenced on 05.12.2017. Further this Appeal was taken up for argument on 19.09.2024. Considering the sentence imposed and the time period taken finally, I think this is an appropriate Case for the re-consideration of the jail sentence.

Hence, I set aside the sentence imposed on charges levelled against the Appellant. Considering all the circumstances of this case, I impose following sentence to the Appellant.

1<sup>st</sup> Charge- 01-year rigorous imprisonment suspended for 05 years.

2<sup>nd</sup> Charge- 01-year rigorous imprisonment suspended for 05 years.

I am not imposing any sentence on 3<sup>rd</sup> and 4<sup>th</sup> charges, as those are alternative charges to 1<sup>st</sup> and 2<sup>nd</sup> charges respectively. The fine imposed on all counts and the penalty imposed remain same.

Subject to above variations, the appeal is dismissed.

The Learned High Court Judge is to comply with the provisions of the Section 303 of the Code of Criminal Procedure Act No. 15 1979 when the Appellant is summoned before the High Court to convey this judgment.

The Registrar is directed to send 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**