

**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/ 0018-019/2020

High Court of Colombo

Case No. HCB/1939/2012

1. Galle Hettiarachchige Anil Jayantha
2. Ranasinghe Mudiyanselage Arawe
Gedera Neil Kumara

Accused-Appellants

Vs.

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

Complainant-Respondent

BEFORE

: P. Kumararatnam, J.

Pradeep Hettiarachchi, J.

COUNSEL : **Saliya Peiris, PC with Geeth Karunaratne and Dhimansha Marso for the 1st Appellant.**
Kavindu D. Indatissa for the 2nd Appellant.
Janaka Bandara, DSG for the Respondent.

ARGUED ON : **24/09/2025**

DECIDED ON : **03/11/2025**

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 a police officer, a public official employed for the detection, prosecution and punishment of offenders solicited an illegal gratification of Rs.10,000/- from one Wickramasinghe Siriwardhana Piyapala for preventing, Rathnayake Mudiyanselage Leelasena a suspect introduced for having Elk meat in his possession being prosecuted, 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.10,000/- from the said Wickramasinghe

Siriwardhana Piyapala 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.5,000/- from the said Wickramasinghe Siriwardhana Piyapala 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.5,000/- from the said Wickramasinghe Siriwardhana Piyapala 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 2nd Appellant, that on the 19th August 2009, he being a police officer, a public official employed for the detection, prosecution and punishment of offenders accepting an illegal gratification of Rs.5,000/- from one Wickramasinghe Siriwardhana Piyapala, for preventing Rathnayake Mudiyanselage Leelasena a suspect introduced for having Elk meat in his possession being prosecuted, which is an offence punishable in terms of Section 16(b) of the Bribery Act.

Count 08 in the indictment was against the 2nd Appellant for accepting an illegal gratification of Rs.5,000/- from the said Wickramasinghe Siriwardhana Piyapala, for the purpose set out in Count 01, an offence punishable in terms of Section 19(c) 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 07 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 07 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 07 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 07 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 the 1st Appellant to run consecutive to each other.

For the 5th Count the 2nd Appellant was sentenced to 07 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 07 years rigorous imprisonment with a fine of Rs.5,000/- subject to a default sentence of 01 months simple imprisonment.

For the 7th Count the 2nd Appellant was sentenced to 07 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 2nd Appellant was sentenced to 07 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 5-8 against the 2nd Appellant to run consecutive to each other.

Being aggrieved by the aforesaid convictions and sentences, the Appellants preferred this appeal to this court.

The prosecution had called 08 witnesses and marked P1-P14 documents in support of their case. The Appellants had made their statements from the dock and closed their case.

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. Whether the charge can be substantiated in the light of Rathnayake Mudiyanselage Leelasena being charged in the Magistrate Court of Polonnaruwa on 10.08.2009.
2. The learned High Court Judge failed to recognize that PW1 was a witness unworthy of credit, therefore, it was dangerous to act on the uncorroborated testimony of PW1.
3. Whether the evidence of the Bribery Commission ought not to be relied upon on the weight of the evidence.

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

1. The learned High Court Judge has failed to appreciate that, despite there being several Bribery Officers around, the 2nd Appellant was not arrested as soon as the money was allegedly handed over to him by PW1, but much later, at the Police Station where the 2nd Appellant

worked at, creating a suspicion regarding the genuineness of the prosecution evidence.

2. Failure to appreciate that PW1 and PW4 had malicious motive to create false allegations against the 2nd Appellant as revenge.
3. The learned High Court Judge has failed to evaluate and appreciate the falsehood uttered by PW1 and PW3 under oath.
4. The learned High Court Judge failed to appreciate that the evidence of Lilasena, which is of utmost importance, was not led at the trial.
5. The learned High Court Judge who pronounced the judgment did not have the benefit of observing any of the important witnesses of the prosecution case.

Background of the case albeit briefly is as follows:

In this case the 1st and 2nd Appellants are Police officers attached to the Aralaganwila Police Station at the time of the incident.

PW1, Piyapala was the owner of the hotel named 'Ranga Hotel' situated near the Aralaganwila Police Station. On 09.08.2009 at around 11.30 p.m. the Appellants had gone to the said hotel to conduct a search. When they opened the deep freezer, they had found a parcel of meat, which according to the Appellants was Elk meat. PW1 had countered that the meat so found was not Elk meat but was beef for which he had a permit. At that time, the 1st Appellant had scolded PW1 in foul language.

At that time the 1st Appellant had solicited a bribe of Rs.10,000/- from PW1 to favour PW1 during the legal process and a bribe of Rs.5,000/- was accepted by the 1st Appellant at the hotel upon agreement to accept the rest of the bribe later. Thereafter, a person named 'Leelasena' who was employed under PW1 was arrested by the Appellants and produced before the learned Magistrate of Polonnaruwa on the following day and was granted bail.

On 16.08.2009, PW1 with his son PW4 went to the Aralaganwila ASP's Office and lodged a complaint against the Appellants. On the following day, PW1 had lodged another complaint at the Bribery Commission, who organized a raid to arrest the Appellants. PW2 and PW3 both from the Bribery Commission came to Aralaganwila to organise the raid.

On 19.08.2009, as per instructions, PW1 had called the 2nd Appellant to collect the balance money at the hotel. The 1st Appellant had gone to the hotel and collected the balance money. After accepting the money, the 1st Appellant and PW1 had gone to the police station and there, PW3 had arrested the 1st Appellant but the 2nd Appellant was not arrested at that time.

According to the dock statement of the 1st and 2nd Appellants, they had arrested a person called Leelasena and produced him before the Magistrate of Polonnaruwa on the day following their raid of the hotel. The Appellants denied their respective charge/s and had taken up the position that they were arrested on fabricated evidence.

As all the grounds of appeal raised by the Counsels for the Appellant are interconnected, I will hereby consider all grounds of appeal together as follows.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond a 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."

At the very outset, the learned Counsel for the 2nd Appellant informed the Court that he would agree with the argument put forward by the learned President's Counsel for the 1st Appellant.

Each charge delves on the basis that the 1st Appellant had solicited and accepted a bribe from the complainant, PW1 in order to prevent prosecution of one 'Leelasena' for an offence that he had committed.

During the trial, it had come to light that the Appellants had arrested 'Leelasena' on 09.08.2009 for possession of Elk meat and that he was produced along with the meat to the Polonnaruwa Magistrate Court on 10.08.2009 under case No. 72423. It is not disputed that the Appellants had performed their official duties and entered relevant notes in the police book. As such, there is no iota of evidence led by the prosecution that the Appellants had protected or safeguarded 'Leelasena' by stalling his prosecution in the relevant Magistrate Court.

Although 'Leelasena' is an essential witness he has not been called to give evidence in the High Court. It is very important to note that 'Leelasena' was not named as a witness on the back of the indictment.

A witness is an important constituent of the process of administration of justice. By giving evidence linking to the charge of the offence, the witness performs a sacred duty of assisting the court to discover the truth. To arrive at a fair decision, all essential evidence must be produced by the prosecution.

In **Stephen Seneviratne v The King** [1936] 3 All ER 36 at 46 where Lord Roche said:

"Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution."

Therefore, not calling 'Leelasena' to give evidence has caused great prejudice to the Appellants as the charges were based on the Appellants having committed the said offence in order to protect or safeguard 'Leelasena' by preventing his prosecution for an offence. But 'Leelasena was charged in the Polonnaruwa Magistrate Court on the following day for being in possession of illegal Elk meat.

Next, the learned President's Counsel for the 1st Appellant argued that there was a strong motive for false implication in this case. PW1 and PW4 in their evidence admitted that they lodged the complaint due to the incident which took place on 09.08.2009. PW4, the son of PW1 admitted in his evidence that he lodged this complaint in the Bribery Commission as the Appellants scolded him in filth in front of his parents. The learned High Court Judge should have paid attention to these 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.”

The prosecution had relied on the evidence given by PW1 to prove the charges levelled against the Appellants. But on examination of his evidence, it is clear that PW1 is an unreliable witness. PW1 took up the position that ‘Leelasena’ was discharged by the learned Magistrate of Polonnaruwa as the meat recovered was not Elk meat, but was beef. PW8, the Registrar of Magistrate Court of Polonnaruwa confirmed that ‘Leelasena’ was convicted for possession of Elk meat after receiving the report from Department Zoology that confirmed the meat sent for analysis was Elk meat. Further, PW4, the son of the PW1 too confirmed that in order to treat his friends, they had Elk meat in their possession and it was arrested by the police.

These contradictions is of great importance given that the Appellants had consistently taken the stance that they have arrested ‘Leelasena’ with illegal Elk meat on 09.08.2009.

Although the above mentioned inter se contradictions were not marked, it is the duty of the Trial Judge to consider such evidence favourable to the Accused with utmost care.

With this glaring contradiction, the learned High Court Judge has come to his own conclusion that all the charges had been proved beyond a reasonable doubt.

The Apex Court of Sri Lanka 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 or she 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 evidence given by PW1 and PW4 certainly affects the root of the prosecution's case, I conclude that the prosecution has not proved the case against the Appellants beyond a reasonable doubt. Therefore, the grounds urged by learned President's Counsel for the 1st Appellant have merit.

The learned Counsel who appeared for the 2nd Appellant while endorsing the argument put forward by the learned President's Counsel, on behalf of the 1st Appellant, strenuously argued that the charges against the 2nd Appellant in the indictment had not been proved beyond a reasonable doubt by the prosecution. As such, the 2nd Appellant cannot be charged for aiding and abetting the 1st Appellant in the committing the alleged crime.

Also, the prosecution has failed to prove beyond a reasonable doubt that the 2nd Appellant had accepted the gratification on the date specified in the indictment. Hence, the charges framed against the 2nd Appellant also fail.

When the Respondent was invited to place their argument, the learned Deputy Solicitor General in keeping with the highest traditions of the Attorney General's Department, informed the Court that he is unable to depend upon the judgment and he is in agreement with the contentions raised by the learned Counsels for the Defense.

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

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

Pradeep Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL