

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

**In the matter of an Appeal in terms of
Section 331 of the Code of Criminal
Procedure Act No. 16 of 1979.**

Bribery and Corruption Commission,
Malalasekara Mawatha,
Colombo 07.

Court of Appeal Case No.
CA/HCC/101/2019

Complainant

Vs.

High Court of Colombo
Case No.
HCB/2113/2015

Kiribandage Kapilawansa Upulwila
Pahala Mara Gaha Wewa,
Anuradhapura.

Accused

AND NOW BETWEEN

Kiribandage Kapilawansa Upulwila
Pahala Mara Gaha Wewa,
Anuradhapura.

Accused-Appellant

Vs.

Bribery and Corruption Commission,
Malalasekara Mawatha,
Colombo 07.

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
 Amal Ranaraja, J.

Counsel: Amila Palliyage with Sandeepani Wijesooriya, Savani Udugampola, Lakitha Wakistha Arachchi and Subaj De Silva for the Accused-Appellant.

Janaka Bandara, D.S.G. for the Respondent.

Argued on: 03.11.2025

Judgment on: 02.12.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused-appellant (hereinafter referred to as the “Appellant”) has been indicted in the *High Court of Colombo* in High Court case number HCB 2113/15.

The charges in the indictment are as follows;

Charge 01

On or about, October 30, 2013, in *Mahabulankulama*, in the district of *Anuradhapura*, within the jurisdiction of this Court, the appellant being a public servant, namely the *Mahabulankulama Grama Seva Officer*, in order to assist in preparing and issuing permits for two plots of land, solicited a sum of Rs.6000 from one *Punchihewa Rasika Lakmal* as gratification, thereby committing an offense punishable under section 19(a) of the Bribery Act (as amended).

Charge 02

At the same time and place and during the same course of action, the appellant, being a public servant, namely the *Mahabulankulama Grama Seva Officer*, solicited a sum of Rs.6000 from one *Punchihewa Rasika Lakmal* as gratification, thereby committing an offense punishable under section 19(c) of the Bribery Act (as amended).

Charge 03,

On or about October 04, 2013, in *Mahabulankulama*, in the district of *Anuradhapura*, within the jurisdiction of this Court, the appellant

being a public servant, namely the *Mahabulankulama Grama Seva Officer*, in order to assist in preparing and issuing permits for two plots of land, accepted a bribe of Rs.6000 from one *Punchihewa Rasika Lakmal*, thereby committing an offense punishable under section 19(a) of the Bribery Act (as amended).

Charge 04

At the same time and place and during the same course of action as mentioned above, the appellant being a public servant, namely the *Mahabulankulama Grama Seva Officer*, accepted a bribe of Rs. 6000 from one *Punchihewa Rasika Lakmal* as gratification, thereby committing an offense punishable under section 19(d) of the Bribery Act (as amended).

2. At the conclusion of the trial, the learned High Court Judge has convicted the appellant of the charges and sentenced him as follows;

A term of three years rigorous imprisonment each for charges 1, 2, 3 and 4.

A fine of Rs.5000 each in respect of charges 1, 2, 3 and 4 with a term of one year rigorous imprisonment each in default of the payment of the fine.
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Further, a fine of Rs.6000 as provided for by section 26 of the Bribery Act with a term of one year rigorous imprisonment in default of the payment of the fine.
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The Learned High Court Judge has directed that the substantial terms of rigorous imprisonment shall run concurrently.

3. Aggrieved by the conviction, the disputed judgment, together with the sentencing order, the appellant has preferred the instant petition of appeal to this Court.

Case of the Prosecution

4. The land in question is state-owned and has historically been utilized for cattle farming, a venture for which PW4 has served as a care taker. However the cattle farm has been abandoned in the early 1990's, and since then, PW4 has continued to occupy the land where the farm once thrived. Despite numerous

attempts to secure a permit for the land, PW4 has been unsuccessful and has ultimately decided to abandon any further efforts in that regard.

5. Thereafter, PW1 who is PW4's nephew has made an effort to obtain a permit for the same land currently occupied by PW4. In response to PW1's initiative, the appellant has afford to assist PW1 in securing that permit and allegedly solicited and accepted a sum of Rs.6000 for such assistance.

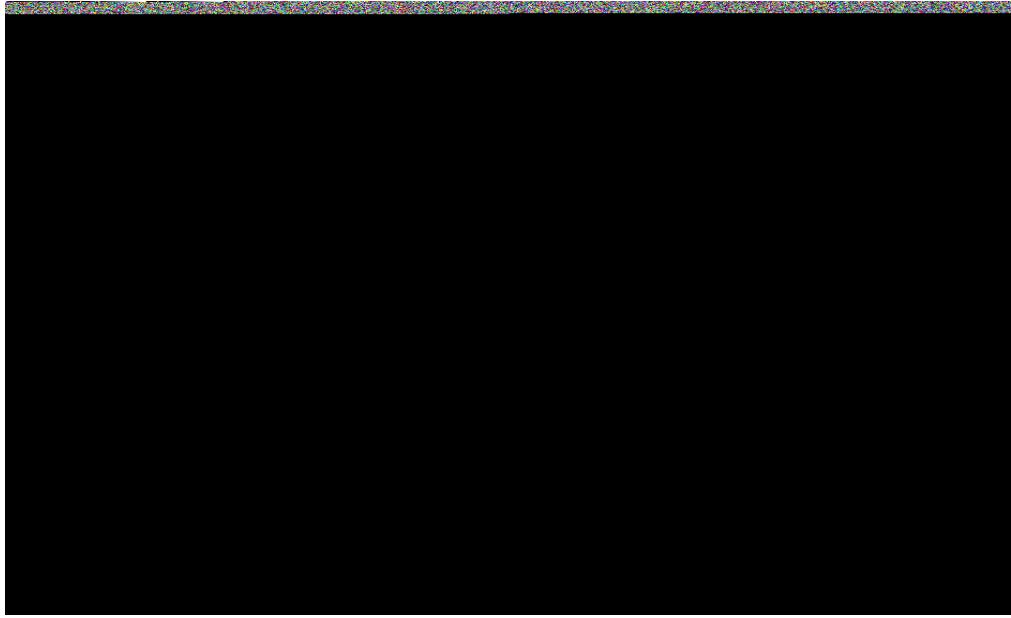
Case of the Appellant

6. The appellant contends that he has been falsely implicated as a result of an introduction. He also asserts that circumstances surrounding this introduction has been misrepresented resulting in unjust accusations against him.

Grounds of Appeal

7. When the appeal was taken up for argument, the learned counsel for the appellant urged the following grounds of appeal;
 - i. The learned Trial Judge failed to consider the inconsistencies in the evidence of the prosecution's case.
 - ii. The criteria adopted when evaluating evidence is contrary to settle principles of law.
- iii. The learned High Court Judge erred in law by rejecting the evidence of the defence on the wrong premise.
8. PW1 has testified that he first reported the solicitation of Rs.6000 by the appellant to the *Commission to Investigate Allegations of Bribery or Corruption* on October 31, 2013. Accordingly to PW1, on the following day, November 01, 2013, he has met PW2, the decoy, and PW3, the Officer-in-Charge of the raiding party together with the other officers involved in the raid in Anuradhapura. They have recorded his statement, and the raid was conducted the same day. During this operation, the appellant has been arrested in his office, where he was found in possession of the sum of money he had accepted from PW1 a while earlier.
9. PW2 and PW3 in their respective testimonies have stated that they were unable to conduct the raid on the first day they went to *Anuradhapura*. Instead they conducted the raid a few days later, on November 04, 2013. They have also testified that the appellant was arrested while he was in the corridor rather than inside his office.
10. The learned Counsel for the appellant has to draw the Court's attention to the discrepancies identified earlier. It is contended that the prosecution witness number one (PW01), who acts as the virtual complainant, has failed to provide testimony regarding an incident allegedly occurring on November 04, 2013.

That without PW1 establishing the factual groundwork of the prosecution's case, the credibility and reliability of subsequent corroborating witnesses are significantly undermined.

11. Consequently, that the prosecution has not fulfilled its burden of proof, leading to a reasonable doubt regarding the appellant's guilt. In light of these deficiencies, the principle of "*the presumption of innocence*" should prevail. Thus the Court should favourably consider granting the appellant the benefit of the doubt, resulting in the acquittal of the charges against him.
12. In light of these circumstances, I will now focus my attention on a specific portion of the dock statement made by the appellant.
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[*vide* page 419 of the Appeal Brief]

13. The appellant has stated that on the afternoon of November 04, 2013, PW1 and another individual visited his office. When he inquired about the purpose of their visit, PW01 confirmed that it was related to surveying a piece of land. Also that a raid was conducted and the appellant arrested thereafter.
14. In light of this information, it is clear that PW1, along with the decoy (PW2) have visited the appellant's office on November 04, 2013. Furthermore, a raid was conducted on the same day leading to the appellant's arrest.
15. When evaluating testimony presented at a trial, it is essential to adopt a holistic approach rather than a piecemeal analysis. This perspective necessitates considering the testimonies from both the prosecution and the accused as interconnected elements of the overall case. By doing so, a Court can better assess the strengths and weaknesses of each party's narrative.

- 16.Taking a holistic view allows for a more refined understanding of the proceedings. For instance, certain shortcomings in the prosecution's case may be contextualized by the testimony of the accused. In some instances, ambiguity in the prosecution's claims can be clarified through insights provided by the accused testimony.
- 17.Furthermore, it is important to recognize that there is no prohibition against a Court considering the interaction between the two testimonies. By examining them together, the Court can obtain a more comprehensive understanding of the key issues at stake. This approach promotes fairness in evaluating the evidence put forth by both parties.
- 18.The testimony of the appellant has effectively resolved any ambiguity regarding the date on which the raid was conducted and the subsequent arrest of the appellant. Also there is no notable delay on the part of PW1 in filing the complaint which lends greater credibility to the timeline of events.
- 19.Moreover, the likelihood that the raid was planned as a direct consequence of PW1's complaint, culminating in the appellant's arrest during the acceptance of the bribe, is strongly supported by prosecution's compelling testimony. While there may be some ambiguity concerning the exact location of the appellant's arrest, whether it occurred in the office, or the corridor, this discrepancy is not material to the case. What matters more is the substance of the allegations and the supporting evidence.
- 20.It is also relevant to recognize that PW1 was unlikely to have maintained detailed notes regarding the incident involving the appellant. In such circumstances, any shortcomings in PW1's memory must be considered crucial, especially in assessing the credibility of the witnesses' account. While lapses in memory can occur, they do not inherently undermine the overall reliability of PW1's testimony when viewed in light of the corroborative elements provided by the prosecution. The absence of evidence indicating any animosity or ill will between the appellant and PW01 is also pertinent to this matter.
- 21.Despite the appellant's assertion that any payment required from PW1 was intended for surveying a different plot of land, it is noteworthy that this claim has not been presented to the prosecution witnesses during cross examination. This omission raises concerns about the credibility of the appellant's argument and suggests that it may be an afterthought rather than a genuine defense.
- 22.The learned High Court Judge has considered these factors among others, when assessing the reliability of the appellant's testimony. The failure to challenge the prosecution witnesses on this crucial point undermines the appellant's position and makes it difficult to support the claim that the payment in question was unrelated to the matters at hand. Given this context, the

learned High Court Judge's decision to disregard the appellant's testimony is well founded.

23. Due to the matters discussed above, I am not inclined to interfere with the conviction, the disputed judgment, together with the sentencing order. I proceed to affirm the conviction, disputed judgment and the sentencing order and dismiss the appeal.

Appeal dismissed.

I make no order regarding costs.

24. The Registrar of this Court is directed to send this judgment to the *High Court of Colombo* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal