

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

CA 197/2008

HC COLOMBO B 1555/05

DON SIMON SIGANETHTHI

ACCUSED-APPELLANT

VS

DIRECTOR GENERAL,

COMMISSION FOR INVESTIGATION  
INTO BRIBERY AND CORRUPTION,

36, MALALASEKARA MAWATHA,

COLOMBO 7

COMPLAINANT-RESPONDENT

BEFORE: A W A SALM, J & SUNIL RAJAPAKSHA, J

COUNSEL: Iqbal Mohamed with M.I.M. Ishara for the  
accused-appellant and Thusith Mudalige, S.S.C for the  
complainant-respondent.

ARGUED ON : 23.01.2014

DECIDED ON : 24.03.2014

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A W A SALAM, J

The accused-appellant who functioned as the Registrar of the District Court of Monaragala during the period relevant to the charges under consideration in this appeal, stood arraigned by the Director-General for the Prevention of Bribery and Corruption for soliciting and accepting a gratification or reward to execute a writ of possession against a Judgment-Debtor in a civil case. The charges preferred against him were as follows..

1. Between 16.04.1998 and 16.5.1998 while holding the public office, as Registrar of the District Court of Monaragala solicited a gratification or reward of Rs 5000/- from Ratnayaka Mudiyansele Anulawathie, as an inducement for the performance of an official duty, namely to execute a writ of possession to hand over the vacant possession of two boutique rooms to her as commanded by the decree entered in rent and ejection case bearing No 07 in D.C Monaragala and thereby committed an offence punishable under Section 19 (b) of the Bribery Act.

2. At the same time, place and in the course of the same transaction as referred to in count No 1, while holding the public office, as the Registrar of the District Court of Monaragala, solicited a sum of Rs. 5000/- as a gratification from Ratnayaka Mudiyansele Anulawathie and thereby committed

an offence punishable under Section 19 (c) of the Bribery Act, read together with Section 8 of the bribery (amendment) Law No 38 of 1974 and Section 11 of the Bribery (amendment) Act No 9 of 1980.

3. At the same time, place and in the same course of transaction as mentioned in count No 1 above, while holding the public office aforesaid accepted a reward or gratification of Rs 4000/- from Ratnayaka Mudianselage Munasingha as an inducement for the performance of an official act, namely to execute a writ of possession to hand over vacant possession of two boutique rooms to Ratnayaka Mudiyansele Anulawathie as commanded by the decree entered in rent and ejection case bearing No 07 in D.C, Monaragala and thereby committed an offence punishable under Section 19 (b) of the Bribery Act.

4. At the same time, place and in the same course of transaction mentioned in count No 1 above, while holding the public office, as Registrar aforesaid accepted a gratification or reward of a sum of Rs 4000/- from Ratnayaka Mudiyansele Munasingha and thereby committed an offence punishable under Section 19 (c) of the bribery act, read together with Section 8 of the Bribery

(amendment) Law No 38 of 1974 and Section 11 of the Bribery (amendment) Act No 9 of 1980.

The learned High Court Judge after trial by judgment dated 25 July 2008 found the accused-appellant guilty on all four counts and sentenced him to undergo 4 years RI on each count but to run concurrently. Further, he imposed a fine of Rs.5000/- on each count with a default sentence of 1 year imprisonment. In addition, he ordered the recovery the gratification said to have been accepted by the accused-appellant, as a fine imposed by court and in default of payment of the said fine sentenced him to a anoer period of imprisonment for 1 year.

Aggrieved by the said judgment and sentence, the accused-appellant has preferred the instant appeal to have the conviction and sentence set aside. When the appeal was taken up for argument, the learned Senior State Counsel, bringing the age old traditions of the Official Bar, once again back to life, submitted that he was not inclined to support the conviction and sentence. The reasons adduced by the learned Senior State Counsel for his decision are quite obvious, when the evidence for the prosecution is examined regard being had to the misdirection in the judgment.

Counts No 1 and 2 preferred in the indictment refer to a sum of Rs 5000/- being solicited by the accused-appellant. Counts No 3 and 4 refer to a sum of Rs 4000/- being accepted by the accused-appellant. According to the

evidence of R M Anulawathie, the accused-appellant had solicited Rs.4000/- from her to execute the decree in the civil case. However, as per 1<sup>st</sup> and the 2<sup>nd</sup> counts, the accused-appellant stood charged for soliciting Rs.5000/-. The learned High Court Judge without amending count No's 1 and 2 found the accused-appellant guilty of soliciting Rs.5000/-, whereas even if the evidence of the main witness for the prosecution is accepted, it would amount to the accused-appellant having solicited Rs. 4000/- and not Rs. 5000/-. In this context, it appears that the finding of the learned High Court Judge to the effect that the charge relating to the accused-appellant soliciting a sum of Rs.5000/- has been proved beyond reasonable doubt is unsupported by evidence and therefore points to a clear misdirection.

As far as the 3<sup>rd</sup> and 4<sup>th</sup> counts are concerned the accused-appellants was alleged to have accepted a sum of Rs. 4000/- from Ratnayaka Mudiyansele Munasingha, in order to carry out certain duties relating to the execution of a writ of possession in favour of Ratnayaka Mudiyansele Anulawathie. Therefore, in order to bring home a charge of accepting an illegal gratification, the prosecution ought to have proved beyond reasonable doubt amongst other things that the accused-appellant accepted a sum of Rs. 4000/- from Ratnayaka Mudiyansele Munasingha.

The evidence led by the prosecution on this aspect is totally contradictory to the charges framed against him. The evidence of the main witness for the prosecution (Anulawathie) was that the gratification or reward concerned was handed over to the accused-appellant by her in the presence of her husband Ratnayaka Mudiyansele Munasingha. The learned High Court Judge has failed to give any attention to this important aspect of the matter before he decided to convict the accused-appellant. This, in my opinion has led to a grave misdirection ending up in a travesty of justice.

The only eyewitness through whom the prosecution could have corroborated the allegation against the accused-appellant was Ratnayaka Mudiyansele Munasingha. As he was not among the living, when the trial came up, the prosecution appears to have been prevented from leading his evidence to corroborate the evidence of the main witness Anulawathie. The question that remains to be addressed here is whether the conviction of the accused-appellant is safe in the light of the discrepancy between the charges and the uncorroborated evidence of Anulawathie that she offered the gratification to the accused-appellant.

As regards the question of corroboration of the evidence of Anulawathie, the learned High Court Judge has relied on the proposition of law laid down in Sunil Vs Attorney General 1999 SLR Volume 3 191. No doubt it was laid

down by this court in the case of Sunil Vs Attorney General (supra) that there appears to be a misgiving among trial Judges that the testimony of a witness in bribery prosecution is required to be corroborated before it could be acted upon and such a proposition is a manifest error of law.

In this respect it is worthwhile referring to the judgment in K D M Gunasekara Vs Attorney General 79 1 New Law Report page 348. In that case the accused-appellant, was charged with having solicited a sum of Rs. 100/- and with having accepted a gratification of a sum of Rs. 100/- to issue a birth certificate. The complainant stated that his father was present when the accused asked for the money and the latter was listed as the witness on the back of the indictment, but the case for the prosecution was closed eventually without the father being called as a witness. The trial Judge stated that the accused did not give evidence and since the complainant's evidence was free of contradictions, no corroboration was necessary. The accused was convicted on both counts.

Vythialingam, J with the concurrence of Malcolm Perera, J, and Ratwatta, J delivering the judgment of the Supreme Court emphasised that although the evidence in a bribery case is uncontradictory, it needs to be tested and evaluated in the ordinary way before it is accepted.

No doubt, in terms of Section 79 of the Bribery Act in any proceedings for bribery, the giver of a gratification shall be

a competent witness against the person accused of taking the gratification and shall not be regarded as an accomplice, and the decision or finding shall not be illegal merely because it proceeds upon the uncorroborated testimony of such giver.

In *Siriwardena v. Republic* (S. C. Appeal No. 6-7/75-D. C. Colombo 245/B.-S. C. Minutes of 20.12.76) the Supreme Court pointed out that it is of course open to the trial Judge to convict on the uncorroborated testimony of the complainant provided he found it to be cogent and convincing and Section 79 (1) of the Bribery Act which enables him to do so.

As far as the present case is concerned, the learned Judge has failed to take into account that there is nothing in the Bribery Act in Section 79 which enhances the credibility of the prosecution witness Anulawatie to dispense with the necessity of looking for corroboration. (Vide *Queen*, 75 N.L.R. 121 at 126).

It is the bounden duty of any trial Judge, to evaluate the evidence of the 'giver' of a gratification despite the fact that he is not treated as an accomplice in the commission of the offence, in the ordinary way before he accepts the testimony of the giver as being true.

The experience of a Judge, in this respect is so valuable that the citizens most of the time feel safe in the hands of Judges than in an administrative body, when decisions



concerning their fate in matters involving their liberty are taken, for they possess the judicial training to approach an issue in the way as permitted by law, irrespective of other consideration. However, such an approach is patently lacking in the impugned judgment, both in respect of the finding and the manner of sentencing.

Another striking feature in the impugned judgment revolves around the failure of the trial Judge to estimate the quality of the evidence given by the main prosecution witness and to give the benefit of doubt arising from such contradictions to the accused-appellant. The question relating to corroboration of the version of the prosecution should have been addressed only if the evidence of the "giver" is convincing. The narration of the incident by the main witness was extremely weak and unconvincing in every material particular. The complaint to the Bribery Commission has been admittedly made after 2 years and 8 months. The delay in making the complaint to the Bribery Commission has not been satisfactorily explained, nor has it been considered as a fact favourable to the accused-appellant.

Further, in the complaint made to the Bribery Commission, Anulawathie has charged the accused-appellant of having accepted Rs 10000/- and upon being questioned as to the discrepancy has failed to give an acceptable explanation.

The learned High Court Judge has neither embarked upon any critical examination or careful analysis of the evidence adduced by the prosecution nor has he properly considered the evidential value of the dock statement made by the accused-appellant. Inherent improbabilities of the case for the prosecution has not been addressed at all, by the learned High Court Judge.

As regards the actual amount of money allegedly solicited and accepted as a bribe, the learned High Court Judge quite correctly has emphasised in the judgment that there are unsatisfactory features in the evidence of the prosecution witnesses. However, he has treated them as being trivial.

I am of the opinion that **HAD** the learned High Court Judge treated those contradictions and the unsatisfactory features in the evidence led in the case, in its correct perspective, he would never have found the accused-appellant guilty of the charges levelled against him.

For reasons stated above, I set aside the findings, conviction and sentence imposed on the accused-appellant and acquit him from all the charges.

As the Honourable Attorney General has rightly elected not to support the conviction, it is very unlikely that there will be a further appeal against this judgment. As such, the Registrar of the High Court is directed to forthwith

release the cash bail, the accused-appellant has furnished pending appeal.

Appeal allowed and conviction quashed.

Judge of the Court of Appeal

Sunil Rajapakha, J

I agree.

Judge of the Court of Appeal

NR/-