

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

H.M. Gunathilaka
Accused Appellant

CA 318/2007

HC-Colombo-B 1445/2004

Vs.

The Bribery Commission
Respondent

Before : **Sisira J. de Abrew, J. (P/CA) &**
P.W.D.C. Jatathilaka, J.

Counsel : Neranjan Jayasinghe for Accused
Appellant

Kapila Waidyaratne, ASG for AG

Argued &

Decided on : 06.03.2014

Sisira J. de Abrew, J. (P/CA)

The accused appellant in this case was convicted of soliciting a bribe of Rs. 5000/- on 07.08.2002 which is an offence punishable under Section 19 (b) of the Bribery Act, of the offence of soliciting a bribe of Rs. 5000/- on 07.08.2002 which is an offence punishable under Section 19(c) of the Bribery Act, of the offence of accepting Rs. 5000/- as a bribe on 14.08.2002 which is an offence punishable under Section 19 (b) of the Bribery Act and of the offence of accepting Rs. 5000/- as a bribe on 14.08.2002 which is an offence punishable under the Section 19(c) of the Bribery Act.

The learned trial judge sentenced him, on each count, to a term of 4 years Rigorous Imprisonment, and to pay a fine of Rs. 5000/- carrying a default sentence of 1 year Rigorous imprisonment. In addition to the above punishment he was also ordered to pay Rs. 5000/- as a penalty carrying a default sentence of 1 year Rigorous Imprisonment.

The accused was a field officer. According to the facts of this case, the accused appellant solicited a bribe of Rs. 5000/- on 07.08.2002. Thereafter, the accused appellant on 14.08.2002 accepted a bribe of Rs. 5000/- from Gamini Edirisinghe from whom he solicited a bribe. The amount of Rs. 5000/- was given to the accused appellant by Gamini Edirisinghe in the office of the Accused Appellant. Police Constable Hassan who acted as a decoy witnessed the giving of the bribe. Thereafter he was arrested by IP Wasantha attached to the Bribery Commissioner's Department.

The contention of the learned Counsel for the appellant was that Gamini Edirisinghe, the virtual complainant came and put money in the drawer of the accused appellant's table. But we note that this defence has not been taken up by the accused appellant in his dock statement. We also note that he took up this position when he was arrested by IP Wasantha on 14.08.2002. But when he made the dock statement, he did not take up this position.

Learned counsel for the accused appellant after arguing the case for two days makes an application to withdraw this appeal. He also makes an application to reduce the sentence as the accused appellant was a government officer for a period of 24 years. He submits that he is now a 62 year old man. We allow the application to withdraw the appeal. We affirm the convictions.

Having considered the mitigatory circumstances that I have stated above we decide to intervene with the sentence imposed by the learned trial judge. We set aside the term of 4 years Rigorous Imprisonment imposed on count No. 1,2,3 and 4 and sentence him to a term of two (2) years Rigorous Imprisonment(RI) on each count (on count No. 1,2,3 and 4). We make order that the sentence of 2 years (RI) imposed on each count should run concurrently. Therefore the aggregate amount that he has to undergo is 2 years Rigorous Imprisonment. We acting under Section 303 of the Criminal Procedure Code, suspend the sentence for a period of 10 years. The fines imposed by the learned trial judge on

each count remain unaltered. Penalty imposed by the learned High Court Judge too remains unaltered.

Subject to the above variation of the sentence appeal of the appellant is dismissed. Learned High Court Judge of Colombo is directed to explain the repercussions of the suspended sentence.

Appeal dismissed.

PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. JAYATHILAKA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

LA/-