

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

In the matter of an application in
terms of section 331 of the criminal
procedure code Act No.5 of 1997.

High Court(Colombo)

Dadalege Pathmasinghe

Case No. HC/B/1663/06

Kalapura, Shanthipura,

C.A. No. 202/2012

Nuwara Eliya.

Accused Appellant

Vs.

Commission of Inquiry Into

Allegations of Bribery and

Corruption.

Respondent

BEFORE

: **H.N.J.PERERA, J**

P.W.D.C. JAYATHILAKE, J

COUNSEL : Sharon Seresinhe for the
Accused Appellant.
Wasantha Perera SSC for the
Respondent.

ARGUED ON : 25.06.2014

DECIDED ON : 26.06.2015

P.W.D.C. Jayathilake, J

Ashoka Kusumsiri was a bungalow keeper. He bought a land in Kalapura and built a house there. As he applied for electricity connection for his newly built house, there was a need to submit a certificate obtained from Grama Niladhari of the area certifying the residence. Then Kusumsiri went to Grama

Niladhari of Kalapura, namely Dadallage Pathmasingha. Pathmasingha asked Kusumsiri for Rs.5000/= in order to fill up the necessary documents. Kusumsiri returned home and on instructions from several others, he informed the Bribery Commission about Grama Niladhari's demand for money. The officers of the Bribery Commission came to Nuwara Eliya and met Kusumsiri on 20th March 2006.

On the said date, a police team from the Bribery Commission headed by Police Inspector Liyanage made arrangements for a raid and sent Kusumsiri along with Sergeant Silva to Grama Niladhari's Office. Kusumsiri had Rs.5000/= in thousand rupee notes given to him by the Chief Inspector Liyanage. At Grama Niladhari's Office, Kusumsiri introduced Sergeant Silva who was wearing a sarong and a T-shirt as his technician to Grama Niladhari. Grama Niladhari asked Kusumsiri to give him the documents and the money and said he would bring the documents to Kusumsiri's place in the evening. Then Kusumsiri gave the documents and Rs.5000/= to Grama Niladhari Pathmasingha. At this stage, Inspector Liyanage and other officers who were

waiting at a distance from which the office could be seen came inside on a signal by Sergeant Silva and arrested Grama Niladhari.

Dadallage Pathmasinghe was indicted for demanding and accepting Rs.5000/= from Kusumsiri as a bribe on four counts under the Bribery Act.

He was convicted after trial and sentenced to four years rigorous imprisonment and was imposed a fine of Rs.5000/= carrying a default sentence of six months rigorous imprisonment for each count. And he was ordered to pay Rs.5000/= as a fine with default sentence of six months rigorous imprisonment. Being aggrieved with the conviction and the sentence the Accused Appellant has preferred this appeal to this court.

The Accused Appellant has given evidence for his defence. In his evidence he has admitted the following facts.

He knew Kusumsiri and met him in his office as well as outside on a number of occasions in order to obtain his recommendation for electricity

connection to Kusumsiri's house. On the day of the raid, Kusumsiri came to his office in the morning at about 10.15.

Sergeant Silva who was in civil came by a motor cycle. Kusumsiri put money into Accused Appellant's shirt pocket requesting him to sign the document.

Then the accused Appellant took the money into his right hand refusing to accept it and sign the document. When the Bribery Officers came in as he had realized that he had been caught in a planned trap. So he put the money into his mouth.

But his explanation for refusing to sign the particular document was due to the non availability of a necessary certificate from the Grama Niladhari of the division where Kusumsiri was residing earlier.

In the petition of appeal Attorney at Law for the Accused Appellant has stated the following matters as grounds of appeal.

- a. The learned High Court Judge had erred in law failing to analyze the evidence favourable to the Accused Appellant.

- b. The learned High Court Judge had erred in law in considering the evidence disregarding contradictions and lack of credibility of the witnesses for the prosecution.
- c. The learned High Court Judge had erred in law in finding the Accused Appellant guilty in spite of the presence of evidence creating a reasonable doubt against the case at the prosecution.

However, not only it is hard to find any item of evidence favourable to the Accused Appellant but also the evidence of Accused Appellant itself corroborates the prosecution case. The learned counsel for the Accused Appellant submitted that Accused Appellant's putting the money into his mouth when the Bribery Commission Officers entered his office was a mere reaction of a reasonable man. But the learned Senior State Counsel contended that inference drawn by the said reaction was that the Accused Appellant had wanted to hide the money from Bribery Commission Officers. Provided that Kusumsiri had put the money into Accused Appellant's pocket, immediate reaction of the Accused Appellant should have been throwing the

money at Kusumsiri instead of putting the money into the mouth and chewing it.

The learned Senior State Counsel submitted that the prosecution has proved all charges beyond reasonable doubt as the testimonial trust worthiness of the witnesses has not been challenged at all.

The learned trial judge has analyzed the evidence of the prosecution witness and also the evidence of the Accused Appellant and has come to the conclusion that all charges have been proved beyond reasonable doubt. We are of the view that there is no reason to interfere with the conclusion for conviction of the learned trial judge. It has been submitted before the trial judge that the accused was a father of three children and he was the sole bread winner of the family. The entire family has faced a difficult situation as a result of this unfortunate incident. The learned Trial Judge has passed four years rigorous imprisonment for each count so as to implement them currently.

Taking account the other consequences the Accused Appellant had to undergo, this court decides to set aside the term of four years rigorous imprisonment passed on all four counts and to substitute three years rigorous imprisonment for each count to be implemented concurrently. The rest of the sentence will remain unaltered.

The High Court Judge of Colombo is directed to issue a fresh committal accordingly. Appeal is dismissed subject to the above alteration.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

H.N.J. PERERA, J

I agree

JUDGE OF THE COURT OF APPEAL