

**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 Criminal Procedure Act  
No. 15 of 1979**

**Commission to Investigate Allegations of  
Bribery or Corruption,  
No.36, Malalasekara Mw,  
Colombo 07.**

**COMPLAINANT**

Vs ,

Illukpitiyage Jayantha Darmasiri Illukpitiya,

**CA/262/2007**

**ACCUSED**

**HC Colombo No. B 1621/2006**

**and now between**

Illukpitiyage Jayantha Darmasiri Illukpitiya,  
“Susiri Villa”,  
Ihala Kosgama,  
Kosgama.

**ACCUSED-APPELLANT**

Vs,

Commission to Investigate Allegations of  
Bribery or Corruption,  
No.36, Malalasekara Mw,  
Colombo 07.

**COMPLAINENT- RESPONDENT**

**Before** : **Vijith K. Malalgoda PC J (P/CA) &**  
**H.C.J Madawala J**

**Counsel:** Anil Silva PC with Nandana Perera for the Accused-Appellant  
Shanil Kularatne SSC for the AG

Argued On: 09.07.2015

Order On: 04.09.2015

The Accused- Appellant along with another person by name U.U.C. Gunawardena was indicted before the High Court of Colombo by the Commissioner General of Bribery and Corruption on three counts. The 1<sup>st</sup> and 2<sup>nd</sup> counts of said indictment referred to two charges under section 16B and 19C of the Bribery Act for solicitation of Rs. 6000/- from one Kollure Appuhamilage Nimal Padmasiri against the 1<sup>st</sup> accused namely U.U.C. Gunawardena. The 3<sup>rd</sup> count of the said indictment referred to a charge of accepting a gratification of Rs. 6000/- from the said Kollure Appuhamilage Nimal Padmasiri an offence punishable under section 19C of Bribery Act against the Accused- Appellant.

At the conclusion of the said trial the Learned High Court Judge had acquitted the 1st Accused on both counts against him and convicted the Accused-Appellant and sentenced him for four years rigorous impressments with a fine of Rs. 5000/- in default one year imprisonment and additional forfeiture of Rs. 6000/- with a default term of one year imprisonment.

Being dissatisfied with the said conviction and sentence the Accused- Appellant had preferred this Appeal.

The prosecution version of this case can be summarized as follows;

The virtual complainant of this case Kollure Appuhamilage Nimal Padmasiri is a resident from Gothatuwa, Angoda. On the day in question he had gone to the Ministry of Environment in Kosswatta and when he was returning home in his bicycle, at Ambagaha Junction he noticed a yellow colored van parked by the side of the road. He saw his wife inside the van and on making inquiries he got to know that his wife had been taken in to custody by the officers of Angoda Police station. He went direct to the Angoda Police Station and met the Accused- Appellant who was a Police Sergeant attach to Angoda Police Station.

He questioned the Accused-Appellant as to why his wife was arrested without arrack and at that stage the Accused- Appellant told him that he has to pay arrears Rs. 3000/- and another Rs. 3000/-for the current month and all together Rs. 6000/- was demanded from the complainant.

The position taken up by the virtual complainant was that he has to pay Rs. 3000/- to the 1<sup>st</sup> and 2<sup>nd</sup> accused every month to engage in his illicit arrack business. He promised to bring Rs. 6000/- within two or three days and he was asked to come to courts on the following day to bail out his wife.

He was further informed by the Accused-Appellant that he (the Accused-Appellant) will enter a wrong date in the books maintain at the Police Station and that his wife will get discharge once Rs. 6000/- is paid to the Accused-Appellant.

The following day he got his wife bailed out and went to a pawning centre in order to raise some money by pawning some jewellery to pay the Accused –Appellant. The person at the pawning center directed him to the Bribery Department to lodge a complaint.

At the High Court trial in addition to the virtual complaint his wife Pdmalatha, Investigation Officer Senewirathne Bandara who acted as the decoy and Chief Inspector of Police Wasantha were called as witnesses.

The virtual complainant in his evidence did not refer to any solicitation by the 1<sup>st</sup> accused, even though there are two counts of solicitation one under section 16B of the Bribery Act and the other under section 19C of the Bribery Act. In the absence of any evidence with regard to solicitation by the 1<sup>st</sup> accused, the Learned High Court Judge had correctly acquitted the 1<sup>st</sup> accused. Learned Counsel for the 2<sup>nd</sup> Accused-Appellant challenged the evidence given by the virtual complainant, Kollure Appuhamilage Nimal Padmasiri and Kodagoda Gamage Padmalatha wife of the virtual complainant based on contradiction mark per say and inter say.

According to the evidence of Padmasiri, he went to the Ministry of Environment in that morning but a contradiction was marked as 2D1 with his police statement to the effect; (page 56)

ප්‍ර: ගෙදර එන වෙලාවේ පොලීසිය දැකලා පැනලා ගියාද?

උ: නැහැ

ප්‍ර: ඔවුන් එනකොට පැනලා ගියා කියලා කිවුවද?

උ: එහෙම පැනලා දිවුවේ නැහැ

(එම කොටස 2වී වශයෙන් ලකුණු කර ගරු අධිකරණයට ඉදිරිපත් කරමි)

Following contradiction was marked from the statement of Padmalatha during her evidence (page 75)

ප්‍ර: පොලීසිය තමාව අත් අඩංගුවට ගන්න දිනයේ පොලීසිය එනවා දැකලා ස්වාමීපුරුෂයා පැනලා ගියාද?

උ: නැහැ

ප්‍ර: "එදත් පොලීසියෙන් එනවා දැකලා මගේ ස්වාමීපුරුෂයා පැනලා දිව්වා" එහෙම කිවුවාද අල්ලස් එකට

උ: නැහැ

එම කොටස 2.වී.2 ලෙස ලකුණු කරයි.

with regard to the search carried out by police at her residence, following contradiction was marked as 2.D.3 (at page 75)

ප්‍ර: තමාගේ ගේ හැමතැනම පරීක්ෂා කර බැලුවාද?

උ: නැහැ

ප්‍ර: " ඊට පසු පොලීසිය ඇවිත් ගේ හැමතැනම අරක්කු හෙවිවා" එහෙම කිව්වාද?

උ: ඒ දවසේ මොකත් හෙවිවේ නැහැ

එම කොටස 2 වි 3 ලෙස ලකුණු කර ඉදිරිපත් කරයි.

The following omission was also marked by the defence during the evidence of Padmalatha (page 76)

ප්‍ර: තමා කිව්වා අත් අඩංගුවට අරගෙන වාහනේ දාගෙන යනකොට මහත්තයා හම්බවුනා කියලා ?

උ: ඇවිල්ලා නවත්තාගෙන ඉන්නකොට මම මහත්තයා දැකලා අත වැනුවා

ප්‍ර: ඒ බව අල්ලස් දෙපාර්තුමෙන්තුවට කරපු කට උත්තරයේ කොහේවත් සඳහන් කර නැහැ කියලා පිලිගන්නවාද?

උ: මට මතක නැහැ, එදා සිද්ධිය කිව්වා.

Whilst referring to the above contradictions and omissions, the counsel for the Accused-Appellant took up the position that the two lay witnesses had deviated from their police statements before the High Court in order to corroborate each other and therefore the said contradictions and omissions are important and it goes to the root of the case.

When the defence was called, PC14119 Sujith Priyantha was summoned to give evidence as a defence witness, According to his evidence, on 5<sup>th</sup> July 2002 a police party consist of IP Nevil de Silva Sub Inspector Gunawardana (2st Accused) PS 12327 PCC 19334, 38859, RPC11815,

police assistants 480 and 2634 had conducted a raid at No 657/1 Elhena - Gothatuwa and arrested a woman into custody, but PC324341 Ilukpitiya was not a member of the said raiding party.

According to the evidence of Senevirathne Bandara the decoy, the transaction took place at a communication and he was listening to the dialog between the complainant and the 2<sup>nd</sup> Accused. At that time the complainant informed the 2<sup>nd</sup> Accused that he brought the Rs. 6000/- which was demanded and when money was handed over, he specifically said that out of Rs 6000/-, Rs 2000/- for the Accused, Rs 2000/- for Gunawardena and balance 2000/- for Udaya. 2<sup>nd</sup> Accused took the money and put it inside his trouser pocket and went out from the communication. At that stage the witness had signaled IP Wasantha who was stationed outside the communication and IP Wasantha had arrested the 2<sup>nd</sup> Accused. When IP Wasantha tried to arrest the 2<sup>nd</sup> Accused, he threw the money away.

Witness Wasantha, who was the Chief Investigation Officer, had corroborated the evidence of the decoy and confirmed the fact that the arrest took place outside the communication.

However, the complainant had given a different interpretation to the raid. According to him he contacted the 2<sup>nd</sup> Accused and informed him that he had come with the money and waiting for him at the communication. At that stage the decoy too was inside the communication. When the 2<sup>nd</sup> Accused came inside, he informed the accused that he brought the money and counted it and gave it to the 2<sup>nd</sup> Accused. 2<sup>nd</sup> Accused informed him "if you want you can even sell arrack on the road now" and put the money inside his trouser pocket. At that stage the decoy who was inside the communication, held the 2<sup>nd</sup> Accused from his collar and the 2<sup>nd</sup> Accused put some currency notes inside his mouth and threw the balance away. When the money was thrown, the 2<sup>nd</sup> Accused was near the door step of the communication and the rest of the police officers were standing just outside the communication.

Complainant does not corroborate the decoy on the fact that, there was specific reference by him with regard to whom the money should go. It is also observed by this court that there is a major contradiction between the complainant and the decoy as to who arrested the Accused and where was the arrest took place. According to the decoy and IP Wasantha, the arrest took place outside the communication by IP Wasantha but according to the complainant, the arrest took place inside the communication by the decoy. This position is further confirmed by Lorita Shyamalie the sales personal at the communication, to the effect that a group of persons had taken a man away from the communication, and later she was informed by them that they are from Bribery Department.

Court further observes that none of the police officers in their evidence had referred to the 2<sup>nd</sup> Accused putting some money inside his mouth and when witness Wasantha was specially questioned on this, (at page 107) his answer was that the 2<sup>nd</sup> Accused tried to throw the money away.

Both Accused preferred to make dock statements when they were called upon for their defences. 1<sup>st</sup> Accused denied taking part in any raid at the complainants' house along with the 2<sup>nd</sup> Accused and in fact he had assisted his Officer in Charge on this day. Since he conducted few raids at the complainants' house before, the complainant was not in good terms with him.

The second Accused in his dock statement took up the position that, he went to the communication on that day to meet a person who volunteered to provide some information and after meeting the complainant, he informed the complainant that he will pass the information to the relevant officers and when he tried to come back, some money was forced to him. When he threw the money away, he was arrested by the bribery officials.

Learned Counsel for the Accused –Appellant whilst referring to the judgment, submitted that, the Learned High Court Judge had failed to consider the defence version and to evaluate the evidence led in the trial.

In the case *Chandradasa V. Queen 72 NLR 160* the court of Criminal Appeal concluded, that “It is the duty of a Trial Judge to place a defence, however weak and insubstantial it may appear to be, fairly and adequately before the jury.

Even though the present case is not a jury trial, we observe that, the Learned Trial Judge has a duty to consider the defence case, however it is weak, before coming to a conclusion. He should have at least rejected the defence case giving reasons for his rejection. In the present case he acknowledges the evidence of the defence witness PC 14119 Sujith Priyantha but failed to evaluate the said evidence, with the rest of the defence case and accept or reject the defence version, given to this case.

“In the case of *Moses Vs State 1999(3) SLR page 401* His Lordship Justice Hector Yapa remarked, “a duty is cast on the Judges to give reasons for their decisions as their decisions are subject to review by Superior Court”.

The trial judge, in the present case has not only failed to give reasons for his decision but also failed to give reasons for the rejection of the defence case.

As pointed out by me earlier, there are contradictions and omissions produced at the trial and the Learned Trial Judge had failed to consider the contradictions per say with regard to evidence of the two lay witnesses and contradiction inter say between the complainant and the official witnesses, in addition to his failure to give reasons for his decision and failure to give reasons for the rejection of the defence case.

I am not in favour of ordering a retrial in the present case for the reason that as I have concluded earlier, some of the contradictions and omissions produced during the trial goes to the root of this



case. I further conclude that the contradictions I have pointed out between the evidence of the official witnesses and the lay witness, creates a reasonable doubt on the trap laid by the officers of the Bribery Commission. For the reasons discussed above the appeal is allowed and the conviction and the sentence on the Accused-Appellant is set aside.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. MADAWALA,**

I agree,

**JUDGE OF THE COURT OF APPEAL**

Appeal allowed and the conviction and sentence set aside.