

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

In the matter of an application in terms of  
Criminal Procedure Code Act No 15 of 1979.

Director – General

Commission to Investigate Bribery and  
Corruption

**COMPLAINANT**

**Vs**

Withana Gunawardena

Punchikkadeniya, Henawala

Mirissa.

**ACCUSED**

**CA Case No. 261/2012**

**HC Case No. 1318/97**

**AND NOW**

Withana Gunawardena

Punchikkadeniya, Henawala

Mirissa.

**ACCUSED – APPELLANT**

**Vs**

1. Director – General

Commission to Investigate Bribery and  
Corruption

2. Attorney General

Attorney General's Department

Colombo.

**COMPLAINANT – RESPONDENT**

**BEFORE** : Deepali Wijesundera J.  
L.U. Jayasuriya J.

**COUNSEL** : Shanaka Ranasinghe PC with  
M. Mihindukulasuriya for the  
Accused – Appellant.  
Wasantha Perera SSC for the  
Respondents.

**ARGUED ON** : 25<sup>th</sup> November, 2016

**DECIDED ON** : 17<sup>th</sup> January, 2017

**Deepali Wijesundera J.**

The accused appellant was indicted in the High Court of Colombo for soliciting a sum of Rs. 50,000/= and accepting the same under Sec. 19 (b) and 19 (c) of the Bribery Act. The appellant was convicted on the first, and second charges and he was acquitted on the third and fourth charges which are alternative charges.

The learned counsel for the appellant submitted that the soliciting was done between the 01<sup>st</sup> to the 30<sup>th</sup> April 1996, which the learned High Court Judge failed to consider thus causing an error. He further submitted that the learned High Court Judge failed to give due consideration to the debilitating infirmities of the prosecution witnesses. It was held in **Karunaratne vs A.G. 1998 3 SLR 261;**

***“Even if one can say on the evidence that there was a willingness to accept an amount on the evidence led there is no positive evidence in regard to the date when that willingness had been expressed”.***

The appellant's counsel stated that the solicitation was done not during the period referred to in the indictment but on the 08<sup>th</sup> of February 1996 vide pages 95 and 97 of the brief.

The learned counsel for the accused appellant submitted that the learned High Court Judge has failed to consider the contradictions inter – se. On a perusal of the evidence of the first witness we find that he has gone to the accused appellant's office which he described and said it was partially made of non transparent glass. But the decoy Seneviratne has testified to the effect that the glass cubicle was transparent. Witness Nimal Gunasena, Deputy Commissioner of Inland Revenue also stated in evidence that the glass cubicle was not transparent. On this, a doubt arises as to how the decoy observed the transaction taking place. This contradiction goes to the root of the case. The learned High Court Judge has failed to give the benefit of this doubt to the accused appellant.

According to the first witness the money which was given by the Bribery Commission was with the decoy but the decoy has testified to the

effect that the money was with the first witness (vide page 127). In the judgment of SC appeal no. 99/2007 SC Spl. L.a. no. 80/2007 it was held;

*“Paramount duty of the court to consider the entire evidence - judicial evaluation of credibility of prosecution witnesses - no conviction on inconsistent statements - ‘Beyond reasonable doubt’ is the standard of proof in criminal cases”.*

Witness Anandaraja has received P1 on the 05<sup>th</sup> of February 1996 and he has gone to meet the accused appellant on the following day (pages 95 and 97). On this evidence we could see that the charges of solicitation has not been established by the prosecution. And the second charge of accepting the money too has not been established beyond reasonable doubt as stated above.

For the afore stated reasons this court decides to set aside the conviction and the sentence dated 21<sup>st</sup> March 2002, and allow the appeal.

Appeal Allowed.

**JUDGE OF THE COURT OF APPEAL**

**L.U. Jayasuriya J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**