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

In the matter of an Appeal in terms of section 331 (1) of the Code of Criminal Procedure Act No- 15 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal No:

CA/HCC/0466/2017

The Director General,

Commission to investigate Allegations of Bribery or Corruption,

No. 36, Malalasekara Mawatha,

Colombo 07.

COMPLAINANT

Vs.

High Court of Colombo

Case No: HCB/1822/2009

Girigoris Jansage Lesli Senadeera

ACCUSED

AND NOW BETWEEN

Girigoris Jansage Lesli Senadeera

ACCUSED-APPELLANT

Vs.

The Director General,

Commission to investigate Allegations of Bribery or Corruption,

No. 36, Malalasekara Mawatha,

Colombo 07.

RESPONDENT

Before	: Sampath B Abayakoon, J.
	: P. Kumararatnam, J.
Counsel	: Anil Silva, PC for the Accused-Appellant
	: Subashini Siriwardena, Addl. Director General of the Bribery Commission for the Respondent
Argued on	: 11-01-2022
Written Submissions	: 08-10-2018 (By the Accused-Appellant)
	: 25-01-2019 (By the Respondent)
Decided on	: 21-02-2022

Sampath B Abayakoon, J.

This is an appeal by the accused appellant (hereinafter referred to as the appellant) on being aggrieved by the conviction and sentence of him by the learned High Court Judge of Colombo.

The appellant was indicted before the High Court of Colombo on the following counts.

(1) That on or about 28th May 2008 the appellant being a public servant and being the Land Officer attached to Tawalama Divisional Secretariate, solicited as an inducement or a reward, a sum of rupees 10000/- from W.G. Sydney Raveendra for him to obtain a land permit for the unauthorized State land he is in possession, an offence punishable in terms of section 19(b) of the Bribery Act.

(2) At the same time and at the same transaction for committing an offence punishable in terms of section 19(c) of the Bribery Act by soliciting the same amount.

(3) On 17th June 2008 at Akuressa, accepting a sum of rupees 9000/- as an inducement or a reward from the above-mentioned Sydney Raveendra, an offence punishable in terms of section 19(b) of the Bribery Act.

(4) At the same time and at the same transaction for committing an offence punishable in terms of section 19(c) of the Bribery Act by accepting the same amount.

After trial, the appellant was found guilty as charged and was sentenced to a total term of eight years rigorous imprisonment on counts one and three and a fine. He was also ordered to pay a sum of rupees 9000/- in terms of section 26 of the Bribery Act.

Facts as revealed in evidence briefly are as follows.

The PW-01 Sydney Raveendra was in occupation of an unauthorized plot of state land and was in the process of taking steps to obtain a permit for the land. When he went to Tawalama Divisional Secretariate on 28th May 2008 to handover his application, (the document marked P-01 at the trial), the appellant who was the land officer who handled the subject, informed him to give him a call in the night, which he did. When he called as instructed, he has been informed by the appellant that rupees ten thousand has to be given to him in order to arrange the permit for the land.

Subsequently, on the complaint to the Bribery Commission by PW-01, the ensuring raid has been conducted on the 17th of June 2008. PW-01, along with the decoy (PW-10) who acted as the elder brother of PW-01, has met the appellant who came in a Motorcycle at a place near the Akuressa Police Station. It was the evidence of PW-01 that he phoned the appellant around noon on that day and the appellant gave him a call at about 2.30pm using a landline and informed him that he is coming to Akuressa. It was stated that after accepting the application which was in a long envelope, as well as rupees 9000/- as a reduced amount, while still seated on the motorcycle, the appellant placed both the envelope and the money in the pocket of the fuel tank cover of the motorcycle, at which point the officials of the Bribery Commission arrested him.

PW-10 who was the decoy who accompanied PW-01 at the time of the incident has given evidence supporting the version of the PW-01 as to what happened at the time of accepting the money by the appellant.

Sub Inspector Livera Douglas was the officer who was in charge of the raiding team. He has given evidence as to the conduct of the raid and what steps he took after the conclusion of the raid in order to produce the appellant before the Magistrate. Evidence has also been led to establish that the appellant was serving as the land officer of Tawalama Divisional Secretariate at the time of the incident and that he was a public servant.

The position of the appellant throughout has been that this was a political vendetta against him at the instigation of a government minister of the area as his wife's family members were strong supporters of an opposition political party. Replying to the allegation, it has been the stand of the PW-01 that it was true that the telephone number of the Bribery Commission was given to him by the minister concerned when he went and informed him that a bribe was demanded. However, it was his position that he was unaware of any political affiliation of the appellant, and his complaint to the Bribery Commission was

because of the demand by the appellant that a sum of rupees 10000/- needs to be given to him to get the land permit.

When called for a defence at the conclusion of the prosecution case, the appellant has chosen to make a statement from the dock. Making a lengthy statement, he has claimed that his wife who is a school teacher had to face political victimization because of her family members affiliation to an opposition political party. However, it appears that if such a victimization took place, it has happened in in the year 1994 some five years before he got married to her. There is nothing to say that he himself was a subject of such victimization as claimed.

The appellant has admitted that PW-01 came and met him in order to get a permit for the state land he is in unauthorized occupation. He admits having given his mobile phone number to PW-01, but claims that it was given as the land needs to be inspected and he did not want PW-01 to get inconvenienced. He claims that when PW-01 called him in the morning of the day of the incident, he wanted him to come to the secretariate so that the land can be inspected, but he did not come. He claims that he received another call from PW-01 at 12.15 pm while he was travelling to Weerapana area for field work, informing that he is in Akuressa and requesting him to collect the application from there. It has been his position that because of the request of the PW-01, he told him to come to Weerapana and hand him over the application as he did not want to inconvenience him. As he did not come as informed, the appellant admits that he gave him a call between 2pm and 2.30pm. To inform him that the matter can be attended on another day. However, claims that PW-01 convinced him to meet at Akuressa, which was on his way home. He admits meeting the PW-01 at Akuressa and says that he handed over the application marked P-01 to him. He says that after going through and satisfying that it was in order while still seated on his motorcycle, it was accepted by him and put to the small pocket of his motorcycle petrol tank cover to be taken with him. When he moved his motorcycle few feet from where it was while leaving, the

PW-01 shouted "හෝව් හෝව් පොඩ්ඩක් ඉන්න, පොඩ්ඩක් ඉන්න" which made him to stop the vehicle thinking that PW-01 wants to say something more to him. He claims it was at that instant the PW-01 came running towards him and pushed some object into the same small pocket of the petrol tank cover where he put the documents given by him. He admits the subsequent arrest of him by the officials of the Bribery Commission, but denies that he solicited and accepted any money as an inducement or reward from PW-01.

At the hearing of the appeal the learned President's Counsel for the appellant urged the following grounds of appeal for the consideration of the Court.

(a) Prosecution failed to prove the charges beyond reasonable doubt against the appellant.

(b) Defence put forward by the appellant has not been adequately considered by the learned High Court judge in the judgment.

(c) There is a misdirection as to the burden of proof.

(d) The learned High Court judge has not properly analyzed the motive for fabrication.

(e) The good character of the appellant has not been considered by the learned High Court judge.

As the grounds of appeal are interrelated, all the grounds urged will be considered together.

This is a unique situation where the appellant has admitted most of the factual events that took place between him and the PW-01 as stated above, except for the solicitation and the acceptance of the money.

It was the contention of the learned President's Counsel for the appellant that since the defence of the appellant was that the entire event was a fabrication because of a political animosity and at the instigation of a politician of the area, the trial Court needed to consider whether there was a basis for the defence of the appellant. It was his position that if it creates a reasonable doubt as to the

truthfulness of the evidence of the prosecution, the appellant needs to be given the benefit of the doubt.

It was contended further that the learned High Court judge failed to consider the defence fairly, in the equal footing and as a whole, hence, the rejection of the defence was a misdirection.

Another issue raised by the learned President's Counsel was that the learned trial judge has failed to take into account the appellant's evidence on his good behaviour as relevant and if taken as a whole, there was clearly a reasonable doubt in favour of the appellant.

The learned counsel for the respondent making her submissions was of the view that the stand of the appellant that this was a fabrication due to a political vendetta has no basis at all, and was a fanciful defence. It was her position that the prosecution has proved the case beyond reasonable doubt and the judgment of the learned High Court judge needs no interference under the circumstances.

Consideration of grounds of appeal: -

It is abundantly clear from the judgment that the learned High Court judge was well possessed of the legal principles that he should be mindful of in analyzing evidence in a criminal case. He has considered that the presumption of innocence is always with an accused throughout a criminal trial and an accused has no burden, but it is always with the prosecution to prove the charges beyond reasonable doubt. It is only after the prosecution has established a prima facie strong case against an accused, a defence would be called and considered, and an accused only has to create a reasonable doubt or at least give a reasonable explanation.

The learned High Court judge has drawn his attention to the value that can be attached to a dock statement of an accused as the appellant has only made a dock statement when called for a defence.

As considered, in the judgment of **The Queen Vs. D.G.DE.S. Kularatne and two others 71 NLR 529** it was held:

> …
>
> *(ix) That when an unsworn statement is made by the accused from the dock, the jurors must be informed that such statement must be looked upon as evidence, subject however to the infirmity that the accused had deliberately refrained from giving sworn testimony. But the jury must also be directed that,*
>
> *(a) If they believe the unsworn statement, it must be acted upon,*
>
> *(b) If it raises a reasonable doubt in their minds about the case for the prosecution, the defence must succeed.*

Even if the defence cannot be accepted, but cannot be rejected either, the benefit of that should go to an accused has also been considered before the evaluation of the evidence. A weak defence put forward by an accused does not mean that the case has been proved against him but, it is always with the prosecution to prove the case beyond doubt was another legal principle that has been taken in to account.

It is observed that the learned High Court judge has well considered the evidence of the prosecution to conclude that there are no material inconstancies in the evidence for which I find no reason to disagree.

Although it was the submission of the learned President's Counsel that the learned trial judge has failed to consider the defence of the appellant and the possibility of fabrication of the evidence, I am unable to agree either.

The appellant has only made a dock statement when called upon for his defence as against the evidence of the prosecution which was given under oath and was subjected to the test of cross examination. Defence evidence can only be considered with the mentioned infirmities in mind by the learned High Court judge. The claim that the incident was a political vendetta against him has no basis. I find that what may have had happened some years before even he got married to his wife, if it can be termed political victimization, has no

relevancy as claimed by the appellant. Contrary to the argument that the learned High Court judge has failed to adequately consider the defence of the appellant in equal footing, I find that it has been well considered given the value that can be attached to it and correctly rejected.

Besides that, as I stated before, the appellant has admitted that PW-01 met him in order to obtain a permit for his unauthorized land and he met him in the town of Akuressa on the day of the incident. Except for the taking of the money, he has admitted other factual evidence and has even admitted that the money was recovered by the officials of the Bribery Commission from where the PW-01 says the money was placed by the appellant after accepting.

Under the circumstances, I am of the view that what has to be considered in the appeal is whether there is any basis to doubt as to the evidence of PW-01 and the decoy (PW-10) that the money was accepted and placed in the pocket of the petrol tank cover by the appellant. I do not find any basis to disbelieve the witnesses, and the appellant's explanation that the money was forcibly inserted into the pocket by PW-01 after stopping him from leaving is a fanciful defence as contended by the learned Counsel for the respondent.

When the contention that the learned High Court judge has failed to consider the evidence of good character of the appellant is considered, at page 38 of the judgment (Page 335 of the brief) it becomes clear that it has been well considered by the learned trial judge. It has been rightly concluded that when an offence has been proved beyond reasonable doubt, character evidence is of no material relevance.

E.R.S.R. Coomaraswamy in his Book **the Law of Evidence-Volume 01 at page 681,** discuses the importance of character evidence in the following manner.

> Evidence of good character cannot have any effect on a case where there is proof beyond reasonable doubt. Thus, in **Gunawardana Vs. The Attorney General (1980) 2 SLR 25,** where the evidence established the guilt of the accused beyond reasonable doubt, the Court of Criminal

Appeal held that it could not be said that there was a misdirection on the part of the trial judge for failure to consider the evidence of good character of the accused. In this case **Tambiah, J.** after citing certain authorities, said:

> *"In criminal proceedings a men's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. It becomes of great importance in weighing the probabilities in doubtful cases; that is, when any reasonable doubt arises as to the guilt of the prisoner, evidence of good character may turn the scale in his favour. When however, the evidence against the accused is such as to clearly establish his guilt, no importance can be attached to evidence of good character; unless the object is to plead for a lenient sentence, or possibly the opposite."*

For the aforementioned reasons, I find no merit in the appeal. The appeal therefore is dismissed. The conviction and the sentence affirmed.

However, as the appellant has been in incarceration since the day of the sentence, namely, 07-12-2017, the sentence is ordered to run from the date of the sentence. The fine, the amount ordered to be paid under section 26 of the Act and the default sentences should remain the same.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal