

**IN THE COURT OF APPEAL OF THE DEMOCRATIC 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/0268/17

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

**COMPLAINANT**

**Vs.**

**High Court of Colombo**

**Case No:** HC/1889/2011

1. S. A. Subasinghe
2. Arugamage Wijethilake

**ACCUSED**

**AND NOW BETWEEN**

S. A. Subasinghe

**ACCUSED-APPELLANT**

**Vs.**

1. The Attorney General,  
Attorney General's Department,  
Colombo 12.
2. The Director General,  
Commission to Investigate Allegation of  
Bribery or Corruption,  
No. 36, Malalasekara Mw, Colombo 07.

**RESPONDENTS**

**Before** : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.

**Counsel** : Darshana Kuruppu with Sajini Elvitigala, Dineru  
Bandara and Buddhika Thilakarathna for the  
Accused Appellant  
: Anusha Sammandapperuma, Assistant Director  
Legal, for the Respondent

**Argued on** : 11-10-2022

**Written Submissions** : 11-10-2021, 23-07-2018 (By the Accused-Appellant)  
: 10-11-2021, 23-10-2018 (By the Respondent)

**Decided on** : 25-11-2022

**Sampath B Abayakoon, J.**

The first accused appellant (hereinafter referred to as the appellant) was indicted before the High Court of Colombo, along with another, for committing the following offences in terms of the Bribery Act.

1. That between 01-12-2005 and 23-02-2006 he being a government servant, namely a watcher at the Circuit Education Office of Kegalle demanded Rs. 10000/- as a gratification to perform an official duty from Mutugalpedige Dilani Menaka Pushpakumari for the purpose of admitting her child to K/Hettimulla Bandaranayake Junior School through its Principal, the second accused mentioned in the indictment, and thereby committed the offence of solicitation punishable in terms of Section 19 (b) of the Bribery Act.
2. At the same time and at the same transaction, being a government servant, soliciting a gratification as mentioned before and thereby committing an offence punishable in terms of Section 19 (c) of the Bribery Act.
3. At the same transaction, and on 23-02-2006, while serving in the above-mentioned capacity as a government servant, and for the purpose mentioned in count one, accepted a sum of Rs. 10000/- from the earlier mentioned Menaka Pushpakumari for the performance of an official duty and thereby committed an offence punishable in terms of Section 19 (b) of the Bribery Act.
4. At the same time and at the same transaction as mentioned in count three, the appellant accepted a sum of Rs. 10000/- for the purpose mentioned in the above counts and thereby committed an offence punishable in terms of Section 19 (c) of the Bribery Act.

The 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 8<sup>th</sup> counts are counts preferred against the 2<sup>nd</sup> accused mentioned in the indictment who was the principal of the school at the time of this incident.

After trial, the learned High Court Judge of Colombo, by his judgement dated 14-07-2017 found the appellant guilty for the four counts preferred against him, while the 2<sup>nd</sup> accused, indicted was acquitted of the 5<sup>th</sup> to 8<sup>th</sup> counts, as there was no evidence against the 2<sup>nd</sup> accused.

Accordingly, the learned High Court Judge sentenced the appellant for a term of two years rigorous imprisonment on count 1, and he was ordered to pay a fine of Rs. 3000/-, and in default, 3 months simple imprisonment was imposed.

On count 2, he was again sentenced to a period of two years rigorous imprisonment and to a fine of Rs. 3000/-, and he was ordered to serve a simple imprisonment period of three months in default.

The two sentences imposed were ordered to run concurrently, which means that his total period of imprisonment was 2 years.

Since the appellant was sentenced on count 1 and 2, the learned High Court Judge did not pass a sentence on count 3 and 4 for which he was convicted.

In addition to the above sentence, he was asked to pay the sum obtained as a bribe, namely Rs. 10000/- as a fine in terms of Section 26 of the Bribery Act. In default, he was sentenced to six months simple imprisonment as well.

Being aggrieved by his conviction and the sentence, the appellant preferred this appeal.

### **The Grounds of Appeal**

At the hearing of the appeal, the learned Counsel for the appellant formulated the following grounds of appeal for the consideration of the Court.

1. The learned High Court Judge has failed to consider the serious contradictions of the prosecution case.
2. The learned High Court Judge has failed to consider the solicitation and the acceptance of any gratification by the appellant was not proved beyond reasonable doubt.

3. The learned High Court Judge has considered inadmissible evidence led by the prosecution for the purposes of the judgement.

### **Facts In Brief**

PW-01 Menaka Pushpakumari was the person from whom the solicitation was supposed to have been sought. It was her evidence that she intended to admit her daughter to Bandaranayake Primary School at Hettimulla for year one but her application was unsuccessful. Since she has been asked to tender an appeal, she has done so. While the appeal was pending, she has inquired from several persons as to whether there is a way to admit her child to the school.

In this process, one of her friends has said that she can talk to her brother Asanka in this regard. After PW-01 went and met Asanka and informed of her need, he has introduced a person called Madanayake to her and through Madanayake she has come to know the appellant Subasinghe. Subasinghe has agreed to help her to admit the child to the school. It was her evidence that when she went for the inquiry in relation to the appeal preferred by her, the officials of the education office informed that her appeal would not be successful. When informed of this to the appellant, he has undertaken to speak to the principal of the school and get the child admitted, and had asked PW-01 to bring the child to school on the 30<sup>th</sup> or 31<sup>st</sup> of January 2006. She and the child have accompanied the appellant to the school principal and the principal has admitted the child to the school.

After the admission, the principal has asked PW-01 to pay Rs. 410/- for the school badge and the tie, which she has paid to the class teacher. It was her evidence that when the child was accompanied to the grade one class and while in the process of paying money for the tie and the badge, the class teacher mentioned about giving a willing donation to the school. It was also her evidence that after about a week after the admission of the child to school, the appellant

demanded and started harassing her asking for a gratification of Rs. 10000/- claiming that the principal had been asking for the said sum of money.

Although she has attempted to avoid the appellant, the appellant has continued to demand the money. After seeking some advice on the issue faced by her, she had made a complaint to the Bribery Commission on 22<sup>nd</sup> February 2006 which has resulted in the raid conducted on 23<sup>rd</sup> February 2006.

On the day where this incident has occurred, PW-01 accompanied by the decoy (PW-02) has gone to the Circuit Education Office to meet the appellant and has met him in front of the office. After coming near the security post where the appellant was posted, he has accepted the money. It was the evidence of PW-01 that when she first met the appellant in front of the education office, he questioned her asking “ඵූඹ භරිඳ?” which was a reference to the money he demanded. And after accepting the money, it was stated by the appellant that “ලෞක්කට ගෙනිහින් දුන්නහැකි අඳ”.

When she was subjected to cross-examination, it appears that the stand taken up by the appellant had been that she voluntarily offered to donate some money to the school as she was also an old girl. He has denied obtaining any money from PW-01. The defence has marked two contradictions in her evidence, namely, V-01 which refers to whether the principal asked her to sit down when she visited the school office, and V-02, which refers to whether the principal asked for the appeal number or not.

The decoy employed by the investigating officer namely Lalaja Herath has given evidence and corroborated the evidence of PW-01.

In this matter, the two persons mentioned by the PW-01 as the persons who introduced her to the appellant, namely Madanayake (PW-07) and Asanka (PW-08) also has given evidence on behalf of the prosecution. Although they have admitted that the appellant was introduced to PW-01 by them and the appellant agreed to help in the process of admitting the child to the school, they have denied that they are aware of the solicitation of a bribe. They have stated that

the PW-01 offered to make a donation to the school when this matter was discussed previous to the admission of the child to the school.

After leading the evidence of the main investigation officer, the prosecution has closed its case.

The learned High Court Judge who presided over the case then, has acquitted the 2<sup>nd</sup> accused indicted, without calling him for a defence in terms of section 200 of the Code of Criminal Procedure Act.

When the appellant was called for a defence, he has chosen to give evidence under oath. He has admitted that PW-01 along with Asanka and Madanayake came to his house and wanted him to assist PW-01 in order to admit her child to Hettimulla Bandaranayake Junior School. He has stated that in the resultant the discussion, PW-01 voluntarily indicated that since she is also an old girl of the school, she is in a position to donate Rs. 25000/- to the school.

It has been his position that he never agreed to help her, but later the child was admitted to school as a result of an appeal filed by PW-01. Giving evidence as to the incident that happened on the day where he was arrested, he has admitted that PW-01 along with another person came and met him outside the Circuit Education Office, where he was employed. It has been admitted that they accompanied him to the security post where he was stationed. It had been his position that the PW-01 informed him that she is unable to give Rs. 25000/- to the school, but can manage to give only Rs. 10000/- and wanted him to give that money to the school which he refused. Explaining further, it was his position that when he refused the request, PW-01 forcibly put the money into his pocket, at which point he was arrested by the Bribery Commission officials. He has denied that he solicited or accepted any money from PW-01.

### **The Consideration of The Grounds Of Appeal**

At the hearing of this appeal, it was contended by the learned Counsel for the appellant that there are serious contradictions in the evidence of PW-01 as to the incident which has created a doubt whether the appellant has in fact solicited any money. Pointing to the evidence that the alleged solicitation has been after the admission of the child to the school, it was his submission that there was a serious question as to the probability of the story of PW-01 and a question as to who solicited the money.

It was also the submission of the learned Counsel that although PW-02 who was the decoy has stated that he wanted the appellant to reduce the amount demanded as a bribe when he and PW-01 met the appellant, in the evidence of PW-01 she has not stated so, which he referred to as a contradiction *inter se* of the evidence of PW-01 and PW-02.

He was also of the view that the learned High Court Judge's determination that PW-07 Madanayake and PW-08 Asanka are partisan witnesses and thereby their evidence should not be relied upon was legally untenable. It was his position that their evidence should have been considered in favour of the appellant and not in the way the learned High Court Judge considered them.

It was the view of the learned Counsel for the respondent, that independently to the evidence of PW-07 and 08, the prosecution has proved the case beyond reasonable doubt against the appellant. It was her view that the learned High Court Judge was correct in deciding to disregard the evidence of PW-07 and 08. Relying on the provisions of Section 134 of the Evidence Ordinance and decided cases of our Superior Courts, it was the position of the learned Counsel that even the evidence of one solitary witness is sufficient in a criminal trial if that evidence is cogent and trustworthy. It was also her position that the evidence of PW-01 has been well corroborated by PW-02 and when considering the evidence in its totality, the prosecution has proved the case beyond reasonable doubt against the appellant.



As the grounds of appeal urged by the learned Counsel for the appellant are interrelated, the said grounds of appeal will be considered together.

Although it was the contention of the learned Counsel for the appellant that the mentioned contradictions are contradictions that goes onto the root of the matter, I find no basis for such a contention. As I have stated before, the two contradictions marked are contradictions in her statement made to the officials of the Bribery Commission regarding the fact whether the principal gave her a chair to sit and whether principal asked her the number of the application or not, which cannot be considered as material contradictions under any circumstances.

It is well established law that for a contradiction to be relevant in a case, such contradiction or contradictions should have the effect of shaking the core of the case and trivial contradictions should not be considered in such a manner when considering the totality of the evidence.

**Shiranee Thilakawardena J** in the case of **The Attorney General Vs Potta Naufar and Others (Ambepitiya Murder Case) (2007) 2 SLR 144** observed that;

*“...when faced with contradictions in a testimonial of a witness, the Court must bear in mind the nature and the significance of the contradiction.*

*...the Court must come to a determination regarding whether these contradictions were an honest mistake on the part of the witness or whether it was a deliberate attempt to mislead Court.”*

In his judgement, the learned High Court Judge has well considered whether the mentioned discrepancies and inconsistencies of the evidence for the prosecution can be considered material contradictions, and has come to a finding that they are not.

The learned High Court Judge has considered the judgement of **Kulathilake, J.** in **Bandara Vs. The State (2001) 2 SLR 63 at 69**. After having considered the principles laid down in **Bharwada Bhoginbhai Hirijibhai Vs. The State of**

**Gujarat (1983) A.I.R. S.C. 753** and **The Attorney General Vs. Visuwalingam 47 NLR 289** it was observed,

*“Our Courts have laid down the principle that the discrepancies and inconsistencies which do not relate to the core of the prosecution case ought to be disregarded especially when all probabilities factors echo in favour of the version narrated by a witness.”*

In this matter, the appellant has admitted the fact that PW-01 along with PW-07 and 08 came to his house and met him and requested his help to admit the child of PW-01 to the school. His position had been that PW-01 mentioned that she is willing to make a donation to the school, which is an incident said to have happened before the admission of the child to the school.

The allegation against the appellant was that it was after the admission of the child to the school he solicited a sum of Rs. 10000/- from PW-01, and accepted the same on 23<sup>rd</sup> February 2006.

In his evidence, the appellant has admitted that PW-01 and another person came and met him at the circuit education office. It had been his position that PW-01 wanted him to take Rs.10000/- and give it to the school as a donation which he refused, but PW-01 forcibly put the money into his pocket. By saying so, in reality the appellant has admitted under oath that the money was recovered by the Bribery Commission officials from his possession.

It is trite law that when an accused person takes up a position in challenge of the evidence adduced by the prosecution, that position has to be put to the relevant witnesses and confront them so that they can respond to the relevant position.

In the case of **Sarwan Singh Vs State of Punjab 2002 AIR Supreme Court iii 3652 at 36755,3656**, it was observed;

*“It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination it must follow that the evidence tendered on that issue ought to be accepted.”*

**Sisira de Abrew, J.** held in **Pilippu Mandige Nalaka Krishantha Kumara Thisera Vs A.G, CA 87/2005 decided on 17-05-2007** that;

*“...I hold that whenever evidence given by a witness on a material point is not challenged in cross examination, it has to be concluded that such evidence is not disputed and is accepted by the opponent subject of course to the qualification that the witness is a reliable witness.”*

However, in this action when PW-01 gave evidence the appellant has never taken up the position that she requested him to take money and hand it over to school or she forcibly put that into his pocket. This goes on to establish that what was stated by the appellant in his evidence was an afterthought, which has not created any doubt as to the credibility of the prosecution witnesses.

I find that the evidence of PW-07 and 08 has not created any doubt either, as to the credibility of evidence of PW-01. As admitted by both of them in their evidence and as stated by PW-01, it was they who have introduced PW-01 to the appellant. Their evidence also establishes that a request was made to the appellant to help in getting PW-01’s child admitted to the school. Being persons known to the appellant, it is understandable their attempts in whatever the way possible to help the appellant to come out of the accusations faced by him. Therefore, both of them not stating that the appellant demanded a gratification through them was not a matter that has created a doubt as to the totality of the prosecution evidence.

In fact, I find that their evidence other than the fact which they say that PW-01 offered to make a donation to the school are not in contradiction with the

evidence of PW-01. I do not find any reasons to disagree with the observations of the learned High Court Judge about the evidence of PW-07 and 08 for the reasons mentioned above.

I am not in a position to agree with the contention of the learned Counsel for the appellant that the prosecution has marked through the appellant certain portions of his statement to police which are confessionary in nature, and it has caused prejudice to him. The learned High Court Judge has well considered the portions of the statement marked when the appellant gave evidence before the trial court and has come to a conclusion that the defence put forward by the appellant has not created a doubt in the prosecution case nor it has offered a reasonable explanation. I do not find any part of the said markings by the prosecution that can be considered confessionary in nature, given the fact that they are actually admitted facts by the appellant in his evidence.

For the reasons as considered above, I find no basis for the grounds of appeal urged on behalf of the appellant as they are devoid of any merit.

Accordingly, the appeal is dismissed. The conviction and the sentence affirmed.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal