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

In the matter of an Appeal made under 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 Case No.
CA/HCC/ 0416/2017
High Court of Colombo
Case No. HCB/1828/2010**

Nanayakkara Liyanage Thusara Viromi

1st Accused-Appellant

vs.

The Director General
Commission to Investigate
Allegations of Bribery or Corruption
No.36, Malalasekera Mawatha,
Colomb0-07.

Complainant-Respondent

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

COUNSEL : **Gayan Perera with Praba Perera and
Panchali Ekanayake for the
Appellant.**
**Ruvini Wickramasinghe,
Deputy Director General of the
Bribery Commission for the
Respondent.**

ARGUED ON : **31/10/2022**

DECIDED ON : **02/12/2022**

JUDGMENT

P. Kumararatnam, J.

The above-named 1st Accused-Appellant (hereinafter referred to as the Appellant) was indicted along with the 2nd accused by the Director General of the Bribery Commission in the High Court of the Western Province holden in Colombo on the following charges:

1. On or about the 03rd of January 2008 at Colombo the Appellant having solicited a gratification of Rs.500000/- from a person by the name of Herath Mudiyansele Lalija Herath in order to get a benefit from the Government, that is to assist him in proceeding to Canada to get a Canadian job opportunity through Sri Lanka Foreign Services Agency which is an offence punishable under Section 20(b) (iv) of the Bribery Act.

2. At the same time and place and in the same transaction referred to in the first charge the Appellant having accepted a gratification of Rs.300000/- from a person by the name of Herath Mudiyansele Lalija Herath in order to get a benefit from the Government, that is to assist him to proceed to Canada to get a Canadian job opportunity through Sri Lanka Foreign Services Agency an offence punishable under Section 20 (b) (vi) of the Bribery Act.

The 2nd accused who was the Secretary to the Chairman of the Sri Lanka Foreign Employment Bureau Agency (Pvt) Ltd was indicted for aiding and abetting the Appellant to accept the gratification of Rs.300000/- from Herath Mudiyansele Lalija Herath.

At the very outset the 2nd accused had pleaded guilty and she was sentenced to 01-year rigorous imprisonment suspended for 05 years with a fine of Rs.5000/- with a default sentence of 03 months simple imprisonment.

After the trial, the Appellant was found guilty for both counts and the Learned Judge of the High Court of Colombo has imposed the following sentences on the Appellant on 28/09/2017:

1. For every count a fine of Rs.5,000/- with a default sentence of 01-month rigorous imprisonment imposed.

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2. For every count 5 years rigorous imprisonment imposed. Further the Learned High Court Judge has ordered the sentence to run concurrent to each other.
 3. In addition, a fine of Rs.300000/- has been imposed with a default sentence of 06 months rigorous imprisonment.

Being aggrieved by the aforesaid conviction and the sentence the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter in his absence due to the Covid 19 pandemic. At the hearing, the Appellant was waiting outside the Court premises due to Covid 19 restrictions.

On behalf of the Appellant the following Grounds of Appeal were raised.

1. The Learned Trial Judge has failed to evaluate or take in to consideration the major infirmities of the case of the prosecution.
2. The Learned Trial Judge has failed to evaluate the major contradictions, between the evidence of the complainant and that of the officers of the Bribery Commission who participated in the raid in the alleged incident of accepting the said gratification from the first witness.
3. The Learned High Court Judge has failed to give the benefit of doubt created by the uncorroborated evidence of the driver of the three-wheeler.
4. The Learned High Court Judge has failed to consider that the evidence available in the present case is not sufficient to convict the accused appellants under solicitation and acceptance of the gratification.

Background of the case.

PW1 is a police officer who was attached to the Commission to Investigate Allegations of Bribery or Corruption when this raid was conducted. He had received a complaint from a person called Gamini Perera stating that the

Appellant was soliciting a bribe amounting to Rs.500000/- in order to assist him to obtain a Canadian job opportunity through the Sri Lanka Foreign Services Agency. As the Appellant asked PW2 Gamini Perera to bring any other person who wishes to proceed to Canada under the same modus operandi, PW2 had passed the information to the Bribery Commission who organized the raid by using PW1 as the decoy. Accordingly, PW2 had accompanied PW1 and had introduced him to the Appellant as his friend to get the assistance from the Appellant to fly to Canada. On the day of the raid, both PW1 and PW2 had met the Appellant at the Foreign Employment Agency at Kirimandala Mawatha. The Appellant had directed PW2 to proceed upstairs on his own of the said office and to meet the 2nd accused who aided and abetted the Appellant to accept the gratification Rs.300000/- from PW1. As per the instructions and directions, PW2 had come downstairs and met the Appellant in a three-wheeler and had handed over Rs.300000/- to the Appellant inside the three-wheeler. The Appellant was caught red handed along with the money which had been provided by the Bribery Officers.

The prosecution had called five witnesses and marked productions P1-8 and closed their case. When the defence was called, the Appellant made a dock statement and closed the case.

As the 1st, 2nd and 4th grounds of appeal are interconnected, these grounds will be considered together in this judgment. The Counsel for the Appellant contends that the Learned Trial Judge has failed to evaluate the infirmities, contradictions and sufficiency of the evidence in the prosecution case.

In a criminal trial, it is incumbent on the prosecution to prove the case beyond reasonable doubt. There is no burden on the Appellant to prove his innocence. This is the “Golden Thread” that was discussed in **Woolmington v. DPP [1935] A.C.462**. In this case Viscount Sankey J held that:

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the

prisoner's guilt..... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal.”

After receiving the complaint from PW1, the Bribery Officials had meticulously planned the raid and arrested the Appellant. The Learned High Court Judge in his judgment carefully considered the evidence led by both parties to come to his conclusion. He had considered the inter se and per se contradictions of prosecution witnesses and held that the contradictions highlighted are not forceful enough to undermine the prosecution case. Hence, he was satisfied with the credibility of the witnesses who had given evidence on behalf of the prosecution.

Furthermore, the evidence presented by the prosecution is overwhelming. No contradictory position existed among the prosecution witnesses. As the prosecution had adduced cogent, consistent and believable evidence it passes the probability test. Therefore, I conclude that the grounds raised under 1st, 2nd and 4th are devoid of any merit.

In the 3rd ground of appeal, the Counsel for the Appellant contended that the Learned High Court Judge has failed to give the benefit of the doubt created by the uncorroborated evidence of the driver of the three-wheeler.

It is a well-established rule of law that it is not necessary to call a certain number of witnesses to prove a fact. However, if court is not impressed with the cogency and the convincing nature of the evidence of the sole testimony of the witnesses, it is incumbent on the prosecution to corroborate the evidence as stated in **Sunil v. AG [1999] 3 SLR 191** where it was held:

“It is trite law that the trial judge who hears a bribery trial is entitled to convict on the sole testimony of a prosecution witness without any corroboration provided he is impressed with the cogency, convincing

character of the evidence and the testimonial trustworthiness of the sole witness.

It is an incorrect statement of the law to hold that a reasonable doubt arises on the mere fact that the prosecution case rested on the uncorroborated evidence of a solitary prosecution witness.”

According to PW4, the three-wheeler driver, on the date of the incident the Appellant had come to the Foreign Services Agency at Kirimandala Mawatha, Narahenpita entered the office and returned in about 30 minutes time and got in to the three-wheeler. Once she sat inside the three-wheeler two persons had come beside and spoken to her. During the conversation the Appellant had with the two persons, he overheard that the Appellant inquiring as to whether the money was counted.

PW1 and PW2 had gone up to the three-wheeler to hand over the money to the Appellant. According to PW1, he was the person who gave the money to the Appellant. Both PW1 and PW2 in their evidence corroborated the evidence of PW4 very well. Further, without receiving money, the Appellant would not have asked whether the money was counted. PW4 is an independent witness who knew the Appellant for about two years before this incident. Considering the evidence of PW4, there is no doubt created on the prosecution case. Hence, this ground also sans any merit.

The Appellant in her dock statement stated that two unknown persons had dropped a cash bundle on her lap when she was seated in the three-wheeler. But there is not an iota of evidence which surfaced to corroborate that either PW2 or the officers from the Bribery Commission had any sinister motive to fabricate a Bribery case against the Appellant. Unless the Appellant communicated her movement to PW2, they would not have gone to the Foreign Services Agency at Kirimandala Mawatha on that day on that particular time. Further, the independent witness, PW4 had confirmed that the Appellant had gone inside the Foreign Services Agency at Kirimandala

Mawatha 30 minutes before she was arrested. Hence, the position taken by the Appellant during the trial had strengthened the prosecution case.

The prosecution had proven that the Appellant had committed the above-mentioned wrongful acts not for the purpose of doing an official act but for the preservation or abuse of official powers.

When considering the totality of the evidence it is clear that the prosecution has proven the charges in the indictment against the Appellant beyond reasonable doubt.

Therefore, the appeal is dismissed and the conviction and the sentence affirmed.

The Registrar of this Court is directed to send a copy of this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL