

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

In the matter of an Appeal in terms of the section 331 of the Code of Criminal Procedure Act No. 15 of 1979 and in terms of the Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA No: CA/HCC/ 0383/2017**  
**HC: Colombo: HCB 1858/2010**

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

**Complainant**

**Vs.**

Hewa Asurathcharige Sunanda  
Priyadarshana.  
Vineetha, Thalalla South, Kottegoda,  
Matara.

**Accused**

**And now between**

Hewa Asurathcharige Sunanda  
Priyadarshana.  
Vineetha, Thalalla South, Kottegoda,  
Matara.

**Accused- Appellant**

**Vs.**

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

**Complainant-Respondent**

**Before:**

**N. Bandula Karunarathna J. P C/A**

**&**

**R. Gurusinghe J.**

**Counsel:** Nalin Ladduwahetty, PC with Thusitha Ranasinghe, AAL, Kavithri Ubeseckara, AAL and Rajith Samaraseckara, AAL for the Accused-Appellant

Dushmanthee Rajapakshe, Assistant Director General and Gayan Madduwage, Assistant Director Legal for the Complainant-Respondent

**Written Submissions:** By the Accused-Appellant on 18.07.2018

By the Complainant-Respondent 06.08.2018

**Argued on :** 14.02.2023

**Decided on :** **13.03.2023**

#### **N. Bandula Karunarathna J. P C/A**

This appeal is from the judgment, delivered by the learned Judge of the High Court of Colombo, dated 31.08.2017, by which, the accused-appellant, was convicted and sentenced to 5 years rigorous imprisonment for each charge and fined Rs. 5,000/- for each charge and in default, 12 months imprisonment.

Further under section 26 of the Bribery Act, it was ordered to pay a sum of Rs.10,000/- and in default, 12 months' imprisonment.

The 01<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> sentences were imposed concurrently, except the default sentences for fines and the default sentences for the compensation, a two 5-year terms should be served consecutively.

The accused-appellant was indicted by the Commission to Investigate Bribery or corruption in the High Court of Colombo in Case No. HCB 1858/2010 on 4 separate Counts under sections 16 (b) 19 (c) of the Bribery Act for soliciting and accepting a bribe of Rs. 10,000/- from one Jayasinghe Mudiyanseckara Kumarasinghe.

The indictment was served on the appellant on 29.11.2010 and the Appellant pleaded not guilty. The case was fixed for Trial.

The trial was commenced on 23.01.2012 and the following 8 witnesses were testified on behalf of the prosecution:

- i. Jayasinghe Mudiyanseckara Kumarasinghe (The virtual complainant) (PW 1)
- ii. Police Sargent Jayaweera (decoy) (PW 2)
- iii. Police Sub Inspector Gunawardena (PW 3)
- iv. Jayasinghe Mudiyanseckara Sanjeevani (PW 4)
- v. Abeykoon Jayaseckara Mahendra Bandara (PW 5)

- vi. Ganithage Vimalasena (PW 6)
- vii. Weerakoon Mudiyansele Kudachchige Nandana Ruwan Rathnayake (PW 8)
- viii. Sherly Reyency Aron (PW 9)

After closing of the Prosecution case by testifying eight (8) witnesses and marking documents from P 1 to P 9, the defence was called by the learned High Court Judge. For the Defence, the accused-appellant gave a dock statement and the defence case was closed.

After the conclusion of the trial the learned trial Judge delivered the judgment on 31.08.2017 by convicting the Accused for all four counts and imposed the said sentences. Being aggrieved by the said judgment the accused had preferred this appeal to this Court.

The complainant was a farmer who had been developing a land more than 20 years and the accused-appellant came to the said land and informed him to pay Rs. 10,000/- if not he will prosecute him in the Magistrate Court under the Forest Ordinance. Thereafter, the farmer complained to the Bribery Commission and the raid was conducted using a decay. The appellant was arrested when he solicited Rs. 10,000/- on the 24.01.2009.

For the defence case the accused-appellant gave a dock statement denying the charges levelled against him. In his Dock statement the accused-appellant has denied the allegation against him.

When this appeal was taken up for argument before this court the learned President's Counsel for the accused-appellant indicated that the appellant is not challenging the conviction but requested to consider, a non-custodial sentence as his only child is a student in grade 9. His wife is also not well. The mother cannot look after the child as she is alone at home and therefore, she needs the support of the accused-appellant to look after the child.

Considering the situation, the accused-appellant was granted bail due to the reasons mentioned in the bail application. When this matter was taken up the learned counsel for the respondent has no objection regarding the discretion of this court on sentencing policy. The accused-appellant requested from the court to consider for a non-custodial sentence and mitigatory circumstances were mentioned by the learned counsel for the appellant.

As the appellant is having a child who is studying in grade 9 and needs special attention, it is our view that he should be given a non-custodial sentence enabling him to go back to the society and stay with his family. The learned counsel for the appellant informs courts that he has no previous conviction and the appellant is repenting about this unfortunate incident. He is 49 years old and he is already been punished as he has lost his job.

The learned counsel for the respondent informs court that the Bribery Commission has no objection for a non-custodial sentence.

The learned President's Council on behalf of the accused-appellant had indicated that he is requesting from this court to consider leniency on the sentence and the appellant will never commit any other offence hereafter.

We are of the view that the accused-appellant will suffer for the rest of his life for his mistakes and it is fair to impose a non-custodial sentence, considering the circumstances of this case.

We impose the following sentences for the accused-appellant;

- (i) Six months rigorous imprisonment for each count and those 2 years combined sentence is suspended for 7 years.
- (ii) A fine of Rupees 4,000 with a default sentence of 3 months imprisonment for each count.
- (iii) Further we impose Rupees 5,000 as a penalty in terms of Section 26 of the Bribery Act.

Appeal dismissed.

Sentence altered.

**President of the Court of Appeal**

**R. Gurusinghe J.**

**I agree.**

**Judge of the Court of Appeal**