
**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/ 0146/2018
High Court of Colombo
Case No. HCB/1946/2012**

Wanniarachchige Chaminda Dharsana
Fonseka

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 : **Anil Silva, P.C with Amaan Bandara**
For the Appellant.
Azard Navavi DSG, with Gayan
Madawage for the Respondent.

ARGUED ON : **24/01/2023**

DECIDED ON : **08/03/2023**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter referred to as the Appellant) was indicted 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 Piliyandala the Appellant being a Police Inspector attached to Piliyandala Police Station, being employed for the detection and prosecution of offenders, did solicit a gratification of Rs.10,000/- from a person

by the name of Haputantrige Jagath as an inducement or reward not to arrest and prosecute the said Haputantrige Jagath for selling Cannabis and thereby committed an offence punishable Under Section 16(b) of the Bribery Act.

2. At the same time and place and in the same transaction referred to in the first charge, the Appellant being a public servant with a Police Inspector of Piliyandala Police Station, did solicit a gratification in sum of Rs.10,000/- from Haputantrige Jagath and thereby committed an offence punishable Under Section 19(c) of the Bribery Act.
3. On or about the 10th of June 2011 at Piliyandala the Appellant being a Police Inspector attached to the Piliyandala Police Station being employed for the detection and prosecution of offenders did accept a gratification of Rs.10,000/- from a person by the name of Haputantrige Jagath as an inducement or reward not to arrest and prosecute the said Haputantrige Jagath for selling Cannabis and thereby committed an offence punishable Under Section 16(b) of the Bribery Act.
4. At the same time and place and in the same transaction referred to in the 3rd charge the Appellant being a public servant with a Police Inspector of Piliyandala Police Station, did accept a gratification in sum of Rs.10,000/- from Haputantrige Jagath and thereby committed an offence punishable Under Section 19(c) of the Bribery Act.

As the Appellant pleaded not guilty to the charges levelled against him, the trial proceeded, and the prosecution had called five witnesses and closed their case. As the prosecution had presented a prima facie case against the Appellant, the Learned High Court Judge had called for the defence. After making a statement from the dock, the Appellant had closed his case. After

considering the evidence presented by both parties, the Learned High Court Judge had found the Appellant guilty on charges 02nd and 04th and has imposed the following sentences on the Appellant on 24/05/2018:

1. For 2nd and 4th counts a fine of Rs.5,000/- each with a default sentence of 01-month rigorous imprisonment imposed.
2. For 2nd and 4th counts 5 years rigorous imprisonment each was imposed. Further the Learned High Court Judge has ordered the sentence to run concurrent to each other.
3. In addition, a fine of Rs.10,000/- has been imposed with a default sentence of 06 months rigorous imprisonment in terms of Section 26 of the Bribery Act.

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

The Learned President's 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 present outside the Court premises due to Covid 19 restrictions.

The following Grounds of Appeal were raised on behalf of the Appellant.

1. Did the Learned High Court Judge fail to consider the items of evidence which go to the testimonial trustworthiness of the prosecution witnesses.
2. Even if the prosecution evidence is believed in toto, has the prosecution proved that the Appellant solicited or accepted a gratification.
3. Has the Learned High Court Judge failed to consider the contradictions and omissions in the evidence of the prosecution witnesses according to the law.
4. Has the Learned High Court Judge failed to consider the matters favourable to the Appellant.

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5. Has the Learned High Court Judge by not considering the contradictions and omissions as well as matters favourable to the Appellant deprived the Appellant the substance of a fair trial.
 6. Has the Learned High Court Judge not considered the dock statement of the Appellant in accordance with the guidelines set out by Your Lordships Court.
 7. Has the prosecution not conducted the prosecution with a sense of fairness required from the prosecution.
 8. Has the Learned High Court Judge occasioned a miscarriage of justice by not adequately considering the written submissions tendered on behalf of the Appellant.
 9. Has the Learned High Court Judge failed to take into consideration the good character of the Appellant on respect of his testimonial trustworthiness as well as his liability.

Background of the case.

According to PW1, he knew the Appellant as a police officer attached to Piliyandala Police Station. PW1 was a small-scale Cannabis seller for which he was arrested by the Appellant several times and was convicted for trafficking Cannabis. The Appellant had used the witness as an informant to track down large scale Cannabis traffickers. The Appellant had compromised with the witness that he would not be arrested if PW1 provide information about large scale Cannabis sellers. Due to this deal the Appellant and PW1 were in close contact with each other.

As the Appellant started to build a house, he had solicited Rs.10,000/- from PW1. As he was not having enough money to meet the demand of the Appellant, decided to complain to Bribery Commission. After the complaint, the raid was organized by the Bribery officials. As per the prior arrangement, PW1 with PW2 had gone to Kudamaduwa sub road to hand over the money to the Appellant. PW2 is the decoy in this case. The Appellant had come to Kudagamawa sub road with another police officer named Sampath and

accepted the money from PW1. At that time, the police officer Sampath had alerted the Appellant about a vehicle which had come to the scene. Having thrown the money to a nearby paddy field, the duo had escaped from the scene by a motor bike in which they had come to accept the money.

PW2, the decoy also confirmed the evidence given by PW1.

According to PW3, after the incident the Appellant was not to be traced on the date of incident. He had surrendered to the court subsequently.

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.”

As the raised grounds of appeal are interconnected, all grounds will be considered together in this appeal.

The assessment of the credibility of witnesses primarily depends on the testimony given by them either for the prosecution or for the defence during the examination-in-chief, cross examination and re-examination. Additionally, the trial judge’s observation of the witnesses during their testimony was very important in helping him reach his decision. In this case the Learned High Court had considered the evidence of all the prosecution witnesses, evaluated their evidence extensively and was satisfied himself that their evidence passed the test of consistency and the test of probability.

The Appellant had used PW1 as a whistle blower to arrest large scale narcotics dealers. Hence, the Appellant had not taken any action to stop PW1's narcotics business. This shows their relationship was very cordial without any animosity. Further, no contradiction or omission was marked on the evidence of PW1, who is very important witness in this case.

In this case, it is common ground that the Appellant was a police officer coming under category of a public servant. The prosecution had proven that the Appellant being a public servant did solicit and accepted the gratification as disclosed by PW1. The Appellant was found guilty of only the 2nd and the 4th counts after the Learned High Court Judge found the prosecution's evidence to be very persuasive. The relevant portion of the judgment is reproduced below:

(Page 377 of the brief.)

ඒ අනුව 01, 03 වෝදනා සම්බන්ධයෙන් එම අංශයට අදාළ ප්‍රබල සාක්ෂි ඉදිරිපත් වී නැති බව තීරණය කරමි. එසේ වුවද 02, 04 වෝදනා ඔප්පු කිරීමට මුදල අයැද සිටීම සහ භාර ගැනීම කිසිදු නිල කටයුත්තක් කිරීම සම්බන්ධයෙන් බව ඔප්පු කිරීමේ අවශ්‍යතාවයක් නැත. හුදෙක් රජයේ සේවකයෙකුට කටයුතු කරමින් තුටු පඩුරක් ලෙස මුදලක් අයැද සිටීම හෝ භාර ගැනීම ඔප්පු කිරීම ප්‍රමාණවත් වේ. මෙම නඩුවේ දී රු. 10,000/-ක මුදල පැමිණිලිකරගෙන් අයැද සිටීම සම්බන්ධයෙන් ඒකාකාරී සාක්ෂියක් පැ.සා.01ගේ හෙළිදරව් වී ඇත. පැ.සා. 04 ද රු.10,000/- අයැදීම සම්බන්ධයෙන් තහවුරු කිරීමක් සිදු කර ඇත. අල්ලස් එකට පැමිණිලි කිරීමේ දී මෙසේ රු. 10,000/-ක මුදලක් ඉල්ලා සිටි බව ඒකාකාරීව හෙළිදරව් කර ඇත. එසේම විත්තිකරු රු. 10,000/- මුදලක් වැටලීම සිදු කල අවස්ථාවේ භාර ගැනීම තුළින් මෙම ඉල්ලා සිටි මුදල 10,000/- ක් බව තහවුරු වී ඇත.

After receiving the complaint from PW1, the Bribery Officials had meticulously planned the raid. Although PW1, PW2 and PW3 were in three places, their evidence is very well connected to each other. The Learned High Court Judge in his judgment carefully considered the evidence led by both parties to come to his conclusion. Hence, the Learned High Court had been satisfied with the credibility of the witnesses who had given evidence on behalf of the prosecution.

The Appellant admitted that he obtained the services of PW1 as an informant. On the date of the incident, the Appellant had gone to Kudamaduwa where he was building a house. According to him, he had received a call from PW1 regarding an information pertains to drugs. When he went and met the complainant to obtain the information, he saw a van coming in that direction. Having thought that this may be a trap to arrest him, he fled the scene immediately with his pillion rider. He denied that he accepted any money on that day as claimed by PW1.

On analysing the dock statement of the Appellant, he had gone to the place of incident upon called by PW1 to pass an information. This clearly indicates that good cooperation had existed between the Appellant and PW1. The conduct of the Appellant after running away from the scene and not reporting to his police station clearly strengthens the prosecution's story. Further surrendering to court thorough an Attorney-at-law, further strengthens the prosecution's version. Being an experienced police officer, he failed to even to inform to his higher officers why he decided to surrender to the court. His conduct has been highly suspicious in this case.

The conduct of the accused before and after the crime is also very relevant as circumstantial evidence. From the circumstantial evidence available before it, the court can draw inference and arrive at its conclusion.

Learned High Court Judge in his judgment has very extensively considered the stand taken by the Appellant in his judgment. The Learned High Court had given plausible reasons as to why he rejected the dock statement of the Appellant. The relevant portion is re-produced below:

(Pages 382-383 of the brief.)

විත්තිකරුට කිසියම් හෝ ඇතිවූ තැනි ගැන්මක් හෝ වෙනයම් හේතුවකට මෙසේ එම ස්ථානයෙන් පලා ගියේ නම් ඔහු ඒ ආසන්නයේම ඇති පිලියන්දල පොලිස් ස්ථානයට යා යුතු වේ. එසේ සිදු කර නැත. සාමාන්‍ය කටයුතු අතරේ රාජකාරියේ යෙදෙන පොලිස් පරීක්ෂකවරයෙකු මෙසේ පලා යාම විය නොහැකි මෙන්ම එසේ පලා ගියේ නම් පොලිස් ස්ථානයට නොයාම දැඩි අස්වාභාවික

ක්‍රියාකලාපයක් වේ. එම දිනයේ අවසානය තෙක් සහ ඉන් පසුව නැවත ඔහු පොලිස් ස්ථානයට ගොස් නැත. ඔහු අධිකරණයට භාර වී ඇත. අල්ලස් එකේ නිලධාරීන් දුටු පමණින් තමාට එරෙහිව අල්ලස් චෝදනාවක් ඇති බව හෝ අල්ලස් චෝදනාවක් සම්බන්ධයෙන් තමාව අත්අඩංගුවට ගන්නා බවට උපකල්පනයක් මත නිගමනයකට එළඹීම දැඩි අස්වාභාවික ක්‍රියාවක් වේ. විත්තිකරු ප්‍රකාශ කරන ආකාරයට ඔහු පැ.සා.01ගෙන් මුදල අයැද සිටියේ හෝ මුදලක් භාර ගත්තේ නැති නම් අල්ලස් එකේ වෑන් එක දුටු පමණින් තමාව අසත්‍ය ලෙස චෝදනාවකට අත්අඩංගුවට ගැනීමට එම අය එන බවට ඒ සැණින් ක්ෂණිකයකින් අනුමතියකට පැමිණීම හෝ එවැනි සිතුවිල්ලක් මතු වීම විත්තිකරුගේ ස්ථාවරය සමඟ කිසිසේත්ම ගැළපෙන්නේ නැත. ඒ අනුව මෙම විත්තිවාචකය විත්තිකරුගේ පසු ක්‍රියාකලාපය සමඟ සලකා බැලීමේ දී දැඩි විය නොහැකි විත්තිවාචකයක් බව තීරණය කරමි. ඒ අනුව විත්තිකරුගේ මෙම ප්‍රකාශය ඒකාකාරී භාවයකින් තොර පසු සිතුවිල්ලක් මත ගෙන ඇති විය නොහැකි විත්තිවාචකයක් බව ඒ අනුව තීරණය කරන අතර විත්තිකරුගේ මෙම ප්‍රකාශය කිසිසේත්ම පිළිගත නොහැකි අසත්‍ය විත්තිවාචකයක් බව තීරණය කොට සම්පූර්ණයෙන් බැහැර කරමි.

The Learned President’s Counsel strenuously argued that the Learned High Court Judge had failed to take into consideration the good character of the Appellant.

In **Gunawardena v. The Attorney General [1980] 2 SLR 25** the court held that:

“Where the evidence establishes the guilt of the accused beyond reasonable doubt, it cannot be said that there was misdirection on the part of the trial judge for failure to consider the evidence of good character of the accused”.

In this case the evidence presented by the prosecution is overwhelming. No contradictory position existed among the prosecution witnesses. The Learned High Court Judge had considered the inter se and per se contradictions of prosecution witnesses and held that the prosecution had adduced cogent, consistent, and believable evidence. Therefore, I conclude that the grounds of appeal raised by the Appellant have no merit.

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 2nd and the 4th charges in the indictment against the Appellant beyond reasonable doubt.

Therefore, the appeal is dismissed, and the conviction and the sentence are 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