

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

In the matter of an Appeal in terms of 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/ 0037/2019
HC: Colombo: HCB 1955/2013

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

Complainant

Vs.

Basnayaka Mudiyanseelage Ranjith
Basnayaka
Moragasgoda,
Mahamukalan Yaya,
Ibbagamuwa.

Accused

And now between

Basnayaka Mudiyanseelage Ranjith
Basnayaka
Moragasgoda,
Mahamukalan Yaya,
Ibbagamuwa.

Accused- Appellant

Vs.

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

Complainant-Respondent

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Anil Silva, PC with Shaluka Veranga, AAL for the Accused-Appellant
Gayan Madawage, AAL with Udari Kumarihamy, AAL for the Complainant-Respondent

Written Submissions: By the Accused-Appellant on 02.03.2020
By the Complainant-Respondent 18.06.2020 & 05.04.2021

Argued on : 25.01.2023

Decided on : **27.01.2023.**

N. Bandula Karunarathna J.

This appeal is from the judgment, delivered by the learned Trial Judge of the High Court of Colombo, dated 08.01.2019, by which, the accused-appellant, was convicted and sentenced to 02 years rigorous imprisonment for each charge and fined Rs. 3,000/- for each charge and in default, 03 months simple imprisonment.

Further, he was ordered to pay Rs.5,000/- under section 26 of the Bribery Act and in default 04 months simple imprisonment.

The 01st, 2nd, 3rd and 4th sentences were imposed concurrently, except the default sentences for fines and the default sentence for the compensation 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 1955/13 on 4 separate counts under sections 16 (b) 19 (c) of the Bribery Act for soliciting and accepting a bribe of Rs. 5,000/- from one Dissanayaka Mudiyansele Thusitha Udayanga Kumara Dissanayaka.

The indictment was served on the appellant on 15.05.2013 and the appellant pleaded not guilty. The case was fixed for Trial.

The trial was commenced on 23.01.2015 and the following 9 witnesses were testified on behalf of the prosecution:

- (i) Dissanayaka Mudiyansele Thusitha Udayanga Kumara Dissanayaka alias Chamara alias Tiper Chamara (complainant) (PW 1)
- (ii) Saman Prasanna (PW 2)
- (iii) Walmini Arachchilage Wijerathne alias Palitha(PW 4)
- (iv) A.H.M.G.Abeysinghe (PW 3)

- (v) W.A.Samantha Rathnapala (PW 5)
- (vi) K.P.A.T.Ajantha Pushpa Kumari (PW 6)
- (vii) B.V.Ranjith Vitharana (PW 7)
- (viii) W.M.Premasiri Rathnayake (PW 9)
- (ix) S.R.Aron (PW 10)

After closing of the prosecution case by testifying nine (9) witnesses and marking documents from P 1 to P 8, the defence was called by the learned High Court Judge. The accused-appellant gave a dock statement for the defence and the defence case was closed after the evidence of Samarakoon Mudiyansele Tikiri Banda.

After the conclusion of the trial the learned trial Judge delivered the judgment on 08.01.2019 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 businessman who provides building materials such as sand, bricks, and timber, along with his two friends named Palitha Wijerathne and Samantha Rathnapala. The complainant has complained to the Bribery Commission on 22.06.2011 of the solicitation made by the accused-appellant. The police sergeant attached to the Gokarella Police Station objected to bail the two suspects who were in remand prison. The accused-appellant had given a call to Palitha Wijerathna's wife on 22.06.2011 and she had given the telephone number to the complainant.

When the complainant called the accused, on the same day the accused has solicited a sum of Rs.5000/- to release Palitha Wijerathne the next day, who was in custody at the moment of the raid conducted by the Gokarella Police, for cutting timber illegally using a mobile sawing machine. Therefore, the complainant had informed the Bribery Commission on the same day and a raid was organised. The accused was arrested after accepting a gratification of Rs. 5000/- from the complainant.

For the defence case, the accused-appellant gave a dock statement denying the charges levelled against him. In his dock statement the accused-appellant accepted that he has produced Palitha Wijerathne and Samantha Rathnapala to the learned Magistrate of Kurunegala, who was engaged in cutting timber illegally, and opposed for bail on the date which the suspects were produced. Then the learned Magistrate remanded these two suspects until 23.06.2011.

The accused-appellant accepted that he had given a call to the wife of Palitha Wijerathne. A relative also had given a call to the appellant regarding the permit of the land where the two personnel's were involved in cutting timber.

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 child is not well. The child is a mentally retarded boy and he needs special attention from his parents, as the appellant has to devote most of his time for the welfare of the sick child. 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 carefully.

Considering the situation, the accused-appellant was granted bail due to the reasons mentioned above. When this matter was taken up the learned counsel for the respondent had no objections regarding the discretion of this court sentencing the policy. The accused-appellant requested from 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 sick child at home who 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 as much as possible. The learned counsel for the appellant informed courts that he had no previous conviction and the appellant is repenting about this unfortunate incident.

The learned president's counsel 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 3,000 with a default sentence of 3 months imprisonment for each count. 1st, 2nd 3rd and 4th counts to run concurrently [Four Years rigorous imprisonment for all Counts].
- (iii) A penalty of Rupees 5,000/- was further imposed, in terms of section 26 of the Bribery Act.

Appeal dismissed.

Sentence altered.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal.