

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

In the matter of an Appeal under and in terms  
of section 331 of the Code of Criminal  
Procedure Code.

Director General,  
Commission to Investigate Bribery or  
Corruption,  
Colombo 7.

**Complainant**

**Court of Appeal Case No:**

**CA-HCC -283/2014**

HC of Colombo Case No:

B1629/2006

**Vs.**

Malliyawaduwala Gedara Gamini Premasiri

**Accused**

**AND NOW BETWEEN**

Malliyawaduwala Gedara Gamini Premasiri

**Accused-Appellant**

**Vs.**

Director General,  
Commission to Investigate Bribery or  
Corruption,  
Colombo 7.

**Respondent**

**Before:** Menaka Wijesundera, J.  
B. Sasi Mahendran, J.

**Counsel:** Dr. Ranjith Fernando with Champika Monarawila and Maleesha Meera for  
the Accused-Appellant  
Dilan Ratnayake, SDSG for the Respondent

**Written**

**Submissions:** 05.04.2022 (by the Accused-Appellant)

**On** 23.10.2018 (by the Respondent)

**Argued On :** 10.05.2023

**Decided On :** 10.07.2023

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**B. Sasi Mahendran, J.**

The Accused-Appellant (hereinafter referred to as the 2<sup>nd</sup> Accused) was charged for the act of aiding and abetting the 1<sup>st</sup> Accused in soliciting and accepting a bribe on the 21<sup>st</sup> of September 2005.

After the trial, the learned High Court Judge convicted both the Accused on all charges and gave a suspended sentence along with a fine. Being aggrieved by the said conviction and sentence, the 2<sup>nd</sup> Accused lodged a petition appeal to this court, It should be noted that the 1<sup>st</sup> accused did not challenge the said conviction.

The following grounds were urged by the counsel in his written submission.

1. Whether the Learned Trial Judge failed to appreciate that the appellant was the subordinate officer of the 1<sup>st</sup> Accused and was subject to follow any command of the 1<sup>st</sup> Accused. Therefore, whether the mere presence of the Appellant in such instance amount to abetment as defined in the Penal Code.
2. Whether the learned Trial Judge has adequately and correctly addressed the Appellant's evidence prior to rejecting it.

The facts and circumstances giving rise to this appeal are that:

According to Manik Seniviratnalage Danasena (PW1), he was informed by his wife Jayakodi Archilage Violet Nona (PW2) and his daughter P. Samudhra Jayathilaka (PW3) that both Accused police officers had visited PW1's household on the 21<sup>st</sup> September of 2005, on the evening when PW1 wasn't at home with the intention of searching PW1s house for the possession of illicit alcohol . They discovered the illicit alcohol from a shed by the river at PW1s house. where PW1 was asked to come to the Naramala Police station and meet one Meewawe(they had been referring to the 1<sup>st</sup> Accused) and also bring 30000/- LKR to avoid filing a case against him for possessing and producing illegal alcohol or to opt to bring 10000/- LKR for a much lesser punishment/trial. Further, according to PW3 the 2<sup>nd</sup> Accused had taken her national identity card.

Thereafter, PW1 discussed with his friend and decided to inform the matter to the Bribery Commission. On the following day that is dated the 22<sup>nd</sup> of September of 2005 they lodged a complaint. Thereafter, officers from the Bribery Commission arranged a plan to apprehend the Accused. On their direction PW1 along with the decoy PW8 Jayantha Samarawickrama Jayaweera, and the other officers traveled to Narammala Town. Thereafter PW1 and PW8 met with both the Accused at the Naramala police station. Upon seeing him the first Accused told him they have been waiting to meet him.

**On page 62 of the Brief:**

ප්‍ර - ඇවිල්ලා මොකද කිව්වේ?

උ - ආ උඹ හොරෙන් පැන්නා නේද අහුවෙනකම් සිටියේ කියලා කතා කලා.

Thereafter, the 1<sup>st</sup> Accused directed PW1 and the decoy to meet him at a shop nearby.

**On page 62 of the Brief:**

ප්‍ර - තමා එක්ක පලමුවෙනි විත්තිකරු හැර දෙවෙනි විත්තිකරු කලා කලාද ඒ අවස්ථාවේදී?

උ - නැහැ. ඊට පසු කතා කලා. අපි තුන් දෙනා හමු වුනාට පසු මෙතන කලා කරන්න බැහැ එහා පැත්තෙ කඩේ ගාවට යන්න කිව්වා.

Upon reaching the shop, the 1<sup>st</sup> Accused directed them towards another shop. PW1 and PW8 had thereafter entered the second shop and upon the arrival of the 1<sup>st</sup> and 2<sup>nd</sup> Accused, the 1<sup>st</sup> accused prompted in demanding the money. Later he agreed to accept the 5000/- LKR in the presence of the 2<sup>nd</sup> Accused. Thereafter, the 1<sup>st</sup> Accused asked PW1 and PW8 to head over to the gate of the police station along with the money in about 10 to 15 minutes. Thereafter upon PW1 and PW8's arrival, the 1<sup>st</sup> Accused requested that PW8 accompany him and that PW1's presence wasn't required. The 1<sup>st</sup> accused escorted PW8 to an unsolicited room situated at the back of the police station. After a period of 10 to 15 minutes PW8 informed PW1 that the 1<sup>st</sup> Accused fled from the scene after accepting the money before he was apprehended.

When we analyse his evidence, it was spontaneous of him to inform the bribery commission, his evidence was not shaken in the cross examination. Overall his evidence was consistent.

This evidence corroborated with PW8 where upon arriving at the town, the 1<sup>st</sup> and 2<sup>nd</sup> Accused arrived on a motorbike with a third person and upon stopping, the 1<sup>st</sup> accused questioned them regarding the money.

Thereafter, the 1<sup>st</sup> Accused instructed the witness to go to a nearby shop and upon residing in that shop, in the presence of the 2<sup>nd</sup> Accused, demanded the money from PW1 to settle the case. Later, when both PW8 and PW1 went to the police station, the 1<sup>st</sup> Accused took him behind the police station and into an unsolicited room, where the 2<sup>nd</sup> Accused joined them later. In front of the 2<sup>nd</sup> Accused, the 1<sup>st</sup> Accused took the money from PW8.

When we analyze the evidence, we can see that the 2<sup>nd</sup> Accused contribution is not merely being passively present. As the defence counsel harped that he was a Junior Officer to the 1st Accused therefore he only carried the orders from the 1<sup>st</sup> Accused and that he never had the intention.

The following evidence which was not challenged by the 2<sup>nd</sup> Accused establishes that not only was the 2<sup>nd</sup> Accused aware that the 1<sup>st</sup> Accused was taking a bribe, but his contribution was intentional from the beginning as opposed to being a mere presence.

## On page 159 of the Brief

ප්‍ර: 01 වන විත්තිකරු මුදල් බාරගන්න අවස්ථාවේ 02 වන විත්තිකරු කොහෙද හිටියේ?

උ : 02 වන සැකකරු මගෙන් ඇහුවා තව උමේ සාක්කුවේ මොනවාද නිබෙන්නේ කියලා. මම කිව්වා බුලත් විටක් නිබෙනවා කියලා. ඒකෙන් ටිකක් කාලා මටත් දුන්නා. වෙන මොනවද නිබෙන්නේ කියලා ඉන අතගාලා බැලුවා බෝම්බ නිබෙනවාද කියලා. මම කිව්වා එහෙම නැහැ කියලා.

It should be noted that as confirmed by PW10 Chief Inspector Mohamed Ramseen Noordeen's evidence, the 2nd Accused had not reported to duty on the fatal day in question, that is 22<sup>nd</sup> September 2005.

The main argument propounded by the counts for the accused was that the 2<sup>nd</sup> accused was a junior officer and mere passive presence particularly due to the unconvincing reasons without overt act or utterance would not establish the ingredients of the offence of aid and abetting.

Under Section 100 of the Penal Code a person abets the doing of a thing who

1. Instigates any person to do that thing; or
2. Engages in any conspiracy for the doing of that thing; or
3. Intentionally aids, by any act or illegal omission, the doing of that thing,

Section 102 of the Penal Code provides that “whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Court for the punishment of such abetment, be punished with the punishment provided for the offence”.

For convenience, I reproduce Section 100 of the Penal Code Explanation 3.

It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

The commission of abetment can only be sustained if it's conducted intentionally, as an innocuous motive doesn't exonerate the Accused when intentional assistance is established as found within the contents produced in this case.

The court is mindful of the Dictum of **Canekeratne J** in the case of **Wijeyeratne v. Menon 48 N.L.R. 164**;

“To bring a person within section 107 of the Penal Code the abetment must be complete apart from the mere presence of the abettor. It is necessary first to make out the circumstances which constitute abetment, so that, if absent, he would have been liable to be punished as an abettor and then to show that he was present when the offence was committed (Ratanlal, 16th Edition, Law of Crimes, page 250).”

In the case of **The King v. Kadirgaman 41 N.L.R 534 Howard CJ**, held that;

“We agree that on this evidence it would not be possible to hold that the appellant instigated the first accused to attempt the murder of Velupillai. On the other hand there was evidence on which the Jury could find that the case came within paragraph (2) and (3) of section 100. The act of the appellant in holding Velupillai and pinning his arms directly contributed to the commission of the offence by the first accused. More over there was evidence that Velupillai was lured by the decoy, Nannian Kandan, to the place where the assault was committed. Nagamuttu, the mother of Velupillai, also testified to events that took place on the previous day which clearly indicated the intention of the two accused to do Velupillai an injury. There is thus evidence that the first accused, the appellant and Kandan were acting in concert. The act of each of them was therefore an intentional aid in prosecution of the common object. This is not a case of mere presence at the scene of a crime. From the nature and effect of the facility given by the appellant his intentions must be presumed.”

With the above dictums, this court can assess the 2nd Accused course of conduct based on the evidence of PW8 and PW1.

This court is mindful in taking into consideration that the 2<sup>nd</sup> Accused had intentionally assisted the 1<sup>st</sup> Accused from the beginning to the end, that is from asking the bribe and to being present when the 1<sup>st</sup> Accused took the bribe.

Therefore we hold that the 2<sup>nd</sup> accused was not a mere presence but who intentionally assisted the 1<sup>st</sup> accused in accepting the bribe, the trial judge, has reached a conclusion by accepting evidence placed before him. Therefore there is no reason for us to disturb the findings of the trial judge.

We affirm the conviction and the sentence of the 2<sup>nd</sup> Accused, for the reasons given this appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera, J.**

I AGREE.

**JUDGE OF THE COURT OF APPEAL**