

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

**In the matter of an application for Appeal under  
section 331 (1) of the Criminal Procedure Code  
Act No 15 of 1979.**

Director General,  
Bribery and Corruption Commission,  
No.36, Malalasekara Mw,  
Colombo 07.

**COMPLAINANT**

**CA/216/2011**

H/C Colombo B1605/05

Vs,  
Kaggoda Arachchige Dayalatha,  
Agricultural Quarters,  
Kiriwehera, Kandaketiya.

**ACCUSED**

**And,**  
Kaggoda Arachchige Dayalatha,  
Agricultural Quarters,  
Kiriwehera, Kandaketiya.

**ACCUSED-APPELLANT**

Vs,  
Director General,  
Bribery and Corruption Commission,  
No.36, Malalasekara Mw,  
Colombo 07.

**COMPLAINANT-RESPONDENT**

**Before** : **Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel** : **Neranjana Jayasinghe for the Accused-Appellant  
Wasantha Perera for the Respondent**

Argued On : 16.06.2015

Written Submission On: 27.07.2015

Order On : 23.09.2015

## **Order**

### **Vijith K. Malalgoda PC J (P/CA)**

The Accused-Appellant was indicted before the High Court of Colombo by the Commissioner General of Bribery and Corruption on four counts under section 19 (b) and 19 (c) of the Bribery Act 38 of 1974 as amended by Bribery (amendment) Act No 09 of 1980 for solicitation of Rs. 50,000/- and accepting Rs. 10,000.

After trial before the High Court, the Accused-Appellant was found guilty of all 4 counts and the High Court had imposed on each count 1 year rigorous imprisonment suspended for 5 years with a fine of Rs.5000/-, in default 3 months imprisonment with an additional forfeiture of Rs. 10,000/-.

Being dissatisfied with the above conviction and sentence the Accused-Appellant had preferred this appeal.

The prosecution version of this case can be summarized as follows;

The Accused-Appellant was working as the Grama Niladhari for the Grama Niladhari Division Badulu Oya- East Kandeketiya during the time relevant to this case.

The virtual Complainant Nadeeka Dissanayake was married to an Army Solider and the said husband went missing when he was working at Mulativu Camp and death certificate was also issued on him. Nadeeka was receiving a pension during this period and one condition for her to receive benefits from the Army was that she should remain single without getting married again. However it is in evidence that she was living together with one Palitha Karunarathne during this period and she had a child from the said Karunarathne.

During the early part of year 2000 Army had informed her that she is entitled to receive Rs. 185,000/- as compensation and wanted her to produce a certificate from the Grama Niladhari to the effect that she was not entered in to a marriage again.

Complainant position before the High Court was that, when she went and met the Accused-Appellant who was the Grama Niladhari of her division, she demanded Rs. 50,000/- in order to issue the said certificate. However the Accused- Appellant had issued the said letter on 07.01.2000.

Virtual complainant had received the cheque on 14.02.2000 and deposited it at the bank. Complainant had gone and met the Accused –Appellant with her mother and the said Palitha Karunarathne and gave Rs.10, 000/- to the Accused –Appellant and she was asked by the Accused to pay the balance but the complainant did not pay the balance to the Accused-Appellant.

The complainant had admitted that there was a rumor during this period in the village that the complainants missing husband had come back to the village. The Accused Grama Niladhari had visited the house of the complainant to inquire the above facts for several times and also informed the AGA of the rumor and requested him to stop the payment of her pension.

The position taken up by the complainant before High Court was that she never complained to the Bribery Department until the officers from the AGA's office visited her house in year 2003 to inquiry as to why she is not collecting her pension.

Complainant admits making two statements one to the officers of the AGA's office, and the other to the Bribery Commissioners Department.

In addition to the virtual complainant, her mother Anulawathy and her paramour Palitha Karunaratne were also called as witness for the prosecution.

Both Anulawathy and Karunaratne in their evidence referred to the acceptance of sum of Rupees 10,000/- by the Accused-Appellant but contradicted each other as to how the transaction took place.

According to the evidence of Nadeeka Dissanayake (86) she went with Palitha to give the money to the Accused-Appellant but under cross examination she admitted going with her mother and Palitha both (102). With regard to the person who carried the money, withness Palitha and Anulawathy contradicted each other.

According to Palitha it is Anulawathy who had the money at that time (127) but according to Anulawathy it is her daughter who had the money (144). There two witnesses contradict each other again with regard to the handing over the money to the Accused. According to Anulawathy the money was handed over to the Accused by her daughter in presence of all three witnesses including Palitha (145) in the verandah of the Accused's house. But according to Palitha the transaction took place inside the house of the Accused-Appellant and the witness did not see the transaction, even though he heard the conversation.

Counsel for the Accused-Appellant submitted the importance of the above contradictions, in the light of the delay in making the complaint to the Bribery Department. He further submitted that the Learned Trial Judge had erred in Law by failing to evaluate the evidence of the Prosecution witnesses. When the Prosecution concluded its case, the Accused-Appellant opted to give evidence on oath. During her evidence the Accused-Appellant took up the position that, on the request of the complainant she issued a certificate confirming that she lives single but since there was a rumor in the area, that her husband had

come to the village and that she was living with another, she informed AGA of the area of this position requesting him to suspend her pension temporarily about two months later.

In January 2001 she was transferred to a different division and therefore she was unaware of any steps taken subsequent to the initial suspension of the pension by the AGA on the request of the Accused-Appellant as well as on a letter received from the Army Head Quarters. In April 2002 she was transferred back to the same Garama Niladhari Division. Even during this period she had no contacts with the complainant and she never met her or made any request to cancel the suspension.

The Accused-Appellant in her evidence referred to the conduct of the AGA who assumed duties in mid 2002, alleging that it is this AGA who got the complainant to lodge a faults complainant against her. This court observed that the Accused-Appellant had taken up this position right throughout her defence and in fact complainant had admitted in her evidence, that the said AGA had visited her house on few occasions during the period she made statements to the officials of the AGA' office and Bribery Department.

The counsel for the Accused-Appellant submitted that the Learned High Court Judge has failed to consider the evidence given by the Accused-Appellant on oath in the light of several contradictions marked in the evidence of the lay witnesses.

In the case of *Chandradasa V. Queen* 72 NLR 160 the Court of Criminal Appeal concluded that it is the duty of the Trial Judge to place a defence, however weak and insubstantial it may appear to be fairly and adequately before the jury.

Even though the present case is not a jury trial, we observe that the Learned Trial Judge has a duty to consider the defence case; however it is weak, before coming to a conclusion. He should have at least rejected the defence case giving reasons for his rejection. In the present case we observe that the

Learned High Court Judge had narrated the evidence given by the Accused- Appellant (page 270-271) but failed to give reasons for the rejection of the said evidence.

In addition to the Accused-Appellant, the defence had called another witness on behalf of the defence. The said witness, who was attached to the AGA's Office as a Management Assistant, had given evidence based on the documents maintained at the said AGA's Office.

According to his evidence the complainant's pension was suspended with effect from 22rd March 2000, but by letter dated 29.03.2000 AGA had written to the complainant asking her to collect the pension. However the complainant by letter dated 5<sup>th</sup> April 2000 again made an appeal for the payment of her pension. Even though the Accountant of the AGA's Office had made specific order to pay the said pension to the complainant, she had not collected the said salary until 2004 where she had made another request for the payment of her pension.

When go through the said evidence, which is based on the documents maintained at the AGA's Office, the only conclusion this court can reach is that, the complainant for reason best known to her had decided not to collect the pension of her missing husband.

The Accused-Appellant was not functioning as the Grama Niladhari of the said division between January 2001 to April 2002, but even during the said period the complainant had not made any attempt to obtain her pension.

The Learned Trial Judge had only narrated the said evidence but failed to give reasons for the rejection of the said evidence.

This is an open inquiry commenced after three years to the alleged solicitation and acceptance. When considering the delay in marking the complainant along with the contradictions marked inter say between the lay witnesses; I am not in favour of accepting and acting upon the above evidence.

For the reasons adducted above I allow the appeal and set aside the conviction and sentence imposed by the Learned High Court Judge.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala**

I agree,

**JUDGE OF THE CUORT OF APPEAL**

Appeal allowed conviction and sentence set aside.