

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

In the matter of an application for leave to Appeal in terms of Section 15 of the Judicature Act read with Section 340 of the Code of Criminal Procedure Act No.15 of 1979 and Section 13(2) of the Commission to Investigate Allegations of Bribery or Corruption Act No.19 of 1994.

C.A.L.A Appeal No: CA(LA) 65/2007

High Court of Colombo Case No: B1399/2002

Director-General,

Commission to Investigate Allegations

Of Bribery or Corruption,

No.36, Malalasekera MW,

Colombo 07.

Accuser

Vs.

1. Yapa Hettipathirannehelage Kithsiri

Manjula Kumara Yapa,

Benawatte, Pannala.

2. Wijesinghe Mudiyanseelage udaya

Sri Rohana Parakrama,

No. 241, Negombo Road,

Pahalagala Yaya, Pannala.

3. Boradeniya Ralalage Jayanthi
Kumari, Koongolla Watta,
Karanthipopola, Kuliypitiya.

Accused

And Now Between;

Director-General,

Commission to Investigate Allegations

Of Bribery or Corruption,

No.36, Malalasekera MW,

Colombo 07.

Complainant-Appellant

Vs.

1. Yapa Hettipathirannehelage Kithsiri
Manjula Kumara Yapa
Benawatte, Pannala.

2. Wijesinghe Mudiyanseelage udaya
Sri Rohana Parakrama
No. 241, Negombo Road,
Pahalagala Yaya, Pannala.

Accused – Respondents

BEFORE : L.U Jayasuriya J.

Deepali Wijesundera J.

COUNSEL : Saliya Pieris with A. Rathnasiri for the
Accused-Respondents.

Dilan Ratnayake D.S.G with Subhashini
Siriwardene for the Complainant-Appellant.

ARGUED ON : 14th December, 2016

DECIDED ON : 10th January, 2017

L.U Jayasuriya J.

The Applicant Appellant (hereinafter sometimes referred to as the Appellant) filed the leave to appeal application to appeal against the acquittal of the 1st and the 2nd Respondent by the High Court of Colombo.

The 1st Respondent was indicted in the High Court of Colombo;

- 1) For soliciting a gratification of Rupees 25,000/- from one Lalitha Inoka Irangani to perform an official act, an offense punishable under S.19(b) and S.19(c) respectively.
- 2) For accepting a gratification of Rupees 25000/- from the said Irangani, an offense punishable under S.19 (b) and S.19 (c) of the Bribery Act.

The 2nd Respondent was indicted in the High Court of Colombo for abetting the 1st Respondent in order to commit the above mentioned offences punishable under Ss. 19(b) and 19(c) of the Bribery Act.

The 3rd Respondent was indicted for abetting the 1st respondent in order to commit offences of accepting the gratification of Rupees 25,000/- punishable under Ss. 19(b) and 19(c) of the Bribery Act.

It is important to note that the Appellant is canvassing the Acquittal of the 1st and 2nd Respondents but is not pursuing the acquittal of the 3rd Respondent. Therefore, the finding of the learned High Court Judge with regard to the 3rd Respondent stands unchallenged.

The Counsel of the Appellant stated that there were no marked contradictions in the evidence of the prosecution witnesses but the learned High Court Judge has misled herself in believing that there is a contradiction in I.P. Liyanage's evidence and the decoy's evidence. He went on to say that both witnesses have said the same story. He further went on to say that, there is no contradiction but only a difference in explaining the incident, which would not become a contradiction.

Sundanam Pichchai Mary Theresa 2011. 2SLR 292 was cited in support of this argument.

The learned D.S.G argued that there is no requirement in law to corroborate a Police Officer's Evidence when he is a key witness and cited the judgment in **Devundorage Nihal Vs. A.G. 2001.1SLR 409.**

Referring to page 14 of this judgment, the counsel of the Appellant submitted that the learned High Court Judge has stated that the acceptance of the money has not been proven.

This court however, finds that this position is incorrect. The High Court Judge has merely stated that: “මුදල් සොයා ගත් බව පිළිගත නොහැක”. It is evident that a wrong inference has been drawn by the Appellant.

The Learned Counsel for the 1st and the 2nd Respondents referred to the facts of the case and submitted that the complainant’s husband was arrested by the 1st Respondent. It was further submitted that when the complainant met the 1st Respondent at the Police Station, she has given the telephone number which was the general number of the Police Station. The said telephone number was given by the 1st Respondent to the Complainant in order to inquire about the bracelet alleged to have been recovered from the complainant’s husband. The version of the prosecution is that the telephone number was given to the Complainant to facilitate the gratification.

In the event the telephone number was indeed given to facilitate the gratification, this court finds it questionable as to why the 1st Respondent gave the official telephone number of the Police Station.

The evidence of the decoy and the 4th witness who ran behind the 2nd Respondent differs at some point. The 4th witness says that the 1st Respondent crumbled and threw away the money (a sum of Rupees 25,000/-consisting of 1000 Rupee notes) while running. The decoy however, who ran behind the 1st Respondent has not seen the throwing away of the money.

The learned High Court Judge has observed the above discrepancy and has said that there remains a doubt on the part of the case of the prosecution.

E.R.S.R Coomaraswami in his Law of Evidence VOL II Book I at page 395, dealing with how the Police Evidence in Bribery Cases should be considered has stated as follows.

“In great many cases, the Police Agents are as a rule, unreliable witnesses. It is always in their interest to secure a conviction in the hope of getting a reward. Such Evidence ought therefore to be received with great caution and should be closely scrutinized particularly when their evidence is only the corroborating evidence of the accomplice.”

Therefore, this court is of the view that the learned High Court Judge has carefully evaluated the evidence placed before her and has come to the correct conclusion.

For the afore-mentioned reasons, this court decides to dismiss the application of the Appellant.

Application Dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.:

I Agree.

JUDGE OF THE COURT OF APPEAL