

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

In the matter of an Application for
Revision under Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka, read with the
provisions in chapter XXIX of the Code
of Criminal Procedure Act No. 15 of
1979.

C A (PHC) APN / 90 / 2015

High Court of Colombo

Case No. H C B 1904 / 2012

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

COMPLAINANT - PETIONER

-Vs-

Nihal Pushpa Kumara Nawarathne

Yatawarage,

No. 410/2/1,

Araliya Uyana Road,

Kosgoda,

Hidallana,

Ratnapura.

ACCUSED - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel : Wasantha Perera DSG for the Complainant - Petitioner.

U R De Silva PC for the Accused Respondent.

Argued on: 2017 – 06 - 27.

Decided on : 2017 - 09 - 27

JUDGMENT

P Padman Surasena J

The Accused Respondent (hereinafter sometimes referred to as the Accused) in this case was indicted by the Director General of the Commission to Investigate Allegations of Bribery or Corruption in the High Court of Colombo under several counts.

Learned High Court Judge has commenced, conducted and concluded the trial against the Accused, as he had pleaded not guilty to the charges when the same was read over to him. At the end of the trial learned High Court Judge by his judgment dated 2015-02-19 had acquitted the Accused from all counts in the indictment.

The Commission to Investigate Allegations of Bribery or Corruption who is the Complainant – Petitioner (hereinafter sometimes referred to as the Petitioner) has made this application to this Court seeking to revise the said judgment pronounced by the learned High Court Judge.

The submission made by the learned counsel for the Petitioner consisted of three arguments. They are as follows.

- i. That the learned High Court Judge had erred when she referred to a portion from the statement of the prosecution Witness No. 01 Ravindra Lasantha Pathinayake in the judgment.
- ii. That the contradiction¹ relied upon by the learned High Court Judge with regard to signaling Inspector Gunawardhana² by the decoy Police Sergeant 24040 Wijesinghe,³ does not exist as a contradiction according to the evidence.
- iii. That the finding by the learned High Court Judge⁴ that a bribery transaction of this nature occurred in the presence of another person is improbable, is not reasonable and therefore should not be permitted to stand.

Prosecution Witness No. 01 Ravindra Lasantha Pathinayake in the course of his evidence categorically stated⁵ that Police Sergeant 24040 Wijesinghe who acted as the decoy called someone from his mobile phone. According

¹ Referred to at page 33 of the judgment of the High Court Judge and at 287 of the brief.

² Prosecution witness No. 03.

³ Prosecution witness No. 02.

⁴ Referred to at page 19 of the judgment of the High Court Judge and at 273 of the brief.

⁵ Page 93 of the brief.

to him, it was immediately thereafter, that Inspector Gunawardhana⁶ had arrived in that place by the vehicle of the Bribery Commission. Even during the cross-examination,⁷ this witness had maintained the same position. It is not his position that the method used by the decoy to communicate with the Officer in Charge of this raid (IP Gunawardhana) was by way of signaling.

On the other hand, the position taken up by prosecution witness No. 2 PS Wijesinghe who acted as the decoy is that he signaled I P Gunawardhana waving his hand after the money was handed over to the accused. In the course of the cross examination this witness had confirmed that he never used his mobile phone to communicate to I P Gunawardhana about money being handed over to the accused⁸.

In the light of the above evidence, this Court is not inclined to form a view that the observation made by the learned High Court Judge was totally unwarranted.

⁶ Prosecution witness No. 03.

⁷ Pages 125-130 of the brief

⁸ Page 162 - 163 of the brief.

Prosecution Witness No. 01 Ravindra Lasantha Pathinayake in the course of cross-examination has admitted having stated in his statement that he informed the accused that a person from the company would come and meet the accused⁹. It appears that the learned defence counsel was prompted to confront this witness with his statement because he had taken a different position in his evidence. In such a situation, once the witness had admitted the confronted position with regard to a suggested discrepancy, that becomes an admitted contradiction. Thus, a reference to such a portion by the trial Judge cannot be faulted as that would be the only way to refer to that kind of admitted contradiction.

Admittedly, prosecution witness No. 2 PS Wijesinghe did not act as a person introduced to the accused by the virtual complainant. PS Wijesinghe had been observing the transactions between the virtual complainant and the accused, pretending as if he was working in the office of the virtual complainant. While this Court forms the view that it would not be improbable for that kind of transaction to take place in the given set of circumstances, this Court is not inclined to find fault with the observation made by the learned High Court Judge with regard to the said improbability

⁹ Page 109 of the brief.

as it is in the light of all the other relevant material that the learned High Court Judge had come to that conclusion. Thus, that must be treated as an observation made in the light of the facts and circumstances of this case. It would not be correct to extract and consider such observation in isolation to decide its viability in general.

Prosecution must bear in mind that the burden to prove the charges beyond reasonable doubt, would be fairly and squarely upon it. Until that is done, the accused must be presumed to be not guilty of the charges. This pre-supposes that when a reasonable doubt is created in the mind of the trial judge, the benefit of that doubt should be given to the accused. That is what the learned trial judge appear to have done in this case.

In these circumstances, this Court is of the view that it has no basis to interfere with the judgment dated 2015-02-19, pronounced by the learned High Court Judge of Colombo.

Thus, this Court decides to refuse this application. It should stand dismissed.

We make no order for costs.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL