

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

The Director General
Commission to Investigate Allegations of
Bribery or Corruption.
Malalasekera Mawatha
Colombo 07.

COMPLAINANT

Vs

Bamunu Arachige Amaradasa
No. 08, Dikhenawatte
Polgasowita.

ACCUSED

CA Case No. 190/2008

HC. (Colombo) Case No. 1525/04

AND NOW BETWEEN

Bamunu Arachige Amaradasa
No. 08, Dikhenawatte
Polgasowita.

ACCUSED – APPELLANT

Vs

The Director General
Commission to Investigate Allegations of
Bribery or Corruption.
Malalasekera Mawatha
Colombo 07.

COMPLAINANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Riyanze Arsakularatne P.C. for the
Accused – Appellant

A. Navavi S.S.C. for the
Respondent.

ARGUED ON

: 14th December, 2017

DECIDED ON

: 12th January, 2018

L. Jayasuriya J.

The accused appellant (hereinafter sometimes referred to as the appellant) was indicted for soliciting a sum of Rs. 40,000/= between the period of 02.10.2002 to 11.10.2002 from one Kumudu Kumari for taking steps to discharge one Ajith Kumara from a case in Magistrate's Court in Maligakanda under section 16 (b) of the Bribery Act. He was also charged under section 19 (c) of the said Act for soliciting a sum of Rs. 40,000/= from the said Kumadu Kumari during the course of the same transaction while being a public servant.

After trial the appellant was convicted on both charges and sentenced to a term of 3 years of imprisonment for each count to run concurrently. This appeal is from the said conviction and the sentence.

The story of the prosecution is that when Prosecution Witness No. 1 Kumudu Kumari visited her brother on 30.09.2002 in the remand prison she was given a copy of the Government Analyst Report by one Piyadasa and was told that it is a negative report and that he could be released if

she met the appellant. She has gone to meet the appellant on 01.10.2002 and the appellant has promised to help her to get the brother released from charges for a sum of Rs. 100,000/=. However the said amount had been reduced to Rs. 40,000/= after bargaining.

The witness has testified that although the said report was a negative report the Magistrate has called for a finger print report and the appellant solicited a sum of Rs. 40,000/= for the purpose of submitting the said report to court.

The appellant has suggested that to facilitate the process the case to be called by a motion on the 04.10.2002 but the witness had not been able to find the money by 04.10.2002. When she met the appellant in court he had asked whether she brought the money and she had told him that she will find the money before the next calling date. Thereafter she has complained to the Bribery Commission and a raid was organized on the 09.10.2002.

The team sent by the said Commission had included Prosecution Witness No. 4 and No. 5. Prosecution Witness No. 1 has gone with the decoy and had met the appellant, the appellant had asked her to wait near the canteen. According to Prosecution Witness No. 1 the appellant has felt suspicious of the decoy (Prosecution Witness No. 4) and had asked the witness to bring the money on the 11th of October on which date the case was to be called. However the Bribery Commission has not pursued the matter thereafter.

The appellant whilst giving evidence under oath has admitted that he met Kumudu Kumari on few occasions and discussed about her brother's case and ways of getting him released. He has not admitted soliciting a sum of Rs. 40,000/=. Therefore the only matter in dispute is the fact as to whether the appellant solicited the said sum of Rs. 40,000/=.

According to Kumudu Kumari the solicitation has taken place on the 01st of October which falls outside the period referred to in the indictment. The learned counsel for the appellant argued that the Judgment of the Learned High Court Judge is only a narration of evidence and that the evidence had not been analyzed and the Learned High Court Judge has failed in his duty.

On a perusal of the judgment we find that he has merely narrated the evidence given before him and has failed to analyse the evidence. Further the evidence of the main prosecution witness is not cogent and not consistent.

For the afore stated reasons we decide to set aside the judgment dated 29.01.2008 and allow the appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I Agree.

JUDGE OF THE COURT OF APPEAL