

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of Section 331 (1) of the Code of Criminal Procedure Act No. 15 of 1979, read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka and Section 11 of the Special Provisions Act No. 19 of 1990.

Commission to Investigate Allegations of Bribery or Corruption

Complainant

-Vs-

Court of Appeal No:
CA/HCC/0041/2025

High Court of Colombo Case No:
HCB/34/2018

Thenne Kumbure Gedara Abeysinghe Banda
Guruwela, Laggala,
Pallegama.

Accused

AND NOW BETWEEN

Thenne Kumbure Gedara Abeysinghe Banda
Guruwela, Laggala,
Pallegama.

Accused-Appellant

-Vs-

The Director General,
Commission to Investigate Allegations of
Bribery or Corruption.

Complainant-Respondent

Before : **P. Kumararatnam, J.**
Pradeep Hettiarachchi, J.

Counsel : Neranjan Jayasighe with Randunu Heellage and
Pravindika Kularathne for the Accused-Appellant

: Anusha Sammandapperuma with Kavini De Silva and
K. Sivasubramaniyam for the Respondent

Argued on : 27.02.2026

Decided on : 11.06.2026

Pradeep Hettiarachchi, J

Judgement

1. This appeal arises from the judgment dated 22.10.2024, delivered by the Learned High Court Judge of Colombo. The Accused-Appellant (hereinafter referred to as “the Appellant”) was indicted before the High Court of Colombo on the following counts;
 - a. The Accused-Appellant, being a police officer between 11.08.2017 and 15.08.2017, solicited a sack of rice worth Rs. 2200/- from the virtual complainant and thereby committed an offence punishable under Section 16(b) of the Bribery Act No. 02 of 1965;
 - b. In the same transaction, being a public servant, the Accused-Appellant, by soliciting the said sack of rice, committed an offence punishable under Section 19(c) of the said Act;

- c. On 16.08.2017, the Accused-Appellant accepted a sack of rice from the virtual complainant and thereby committed an offence punishable under Section 16(b) of the Bribery Act No. 02 of 1965; and
 - d. On 16.08.2017, the Accused-Appellant, being a public servant, accepted a sack of rice from the virtual complainant and thereby committed an offence punishable under Section 19(c) of the Bribery Act No. 02 of 1965.
2. At the trial, five witnesses testified for the prosecution. Subsequently, the Appellant gave evidence.
3. At the conclusion of the trial, the Learned Trial Judge found the Appellant guilty of four counts. The Appellant was accordingly convicted and imposed 4 years' rigorous imprisonment for each count to run concurrently and a fine of Rs. 5000/- for each count. The Accused-Appellant was further ordered to pay Rs. 2200/- as a fine under Section 26 of the Bribery Act.
4. Aggrieved by the said conviction and sentence, the Appellant has preferred the present appeal on the following grounds;
 - a. The evidence of the prosecution witnesses fails the test of credibility;
 - b. The evidence of the prosecution witnesses fails the test of probability;
 - c. Learned High Court Judge has failed to analyze the evidence of the defence, and the Learned Trial Judge has erred in law in rejecting the evidence of the Appellant.
5. I shall now consider the first and second grounds of appeal, as the Appellant challenges the strength of the prosecution's evidence. In doing so, I will examine whether the Learned Trial Judge failed to give due consideration to the infirmities in the prosecution's evidence and failed to analyze the prosecution's evidence in terms of the test of credibility and the test of probability, as contended by the Appellant.

6. At the trial before the High Court, the prosecution primarily relied on the evidence of PW1, Anura Bandara Ranathunga, the complainant. His evidence may be briefly summarized as follows:
7. According to PW1, he is presently engaged in farming and that, at the time of the alleged incident, he was involved in sand mining in the Mahaweli River. During his testimony, PW1 stated that he could not accurately recall the date on which the complaint was made to the Bribery Commission.
8. PW1 further testified that several cases had been instituted against him by police officers attached to the Wilgamuwa Police Station for alleged violations of the conditions stipulated in the permit issued to him.
9. It is also evident from PW1's evidence that officers of the STF, together with the officers attached to the Wilgamuwa Police Station, conducted a raid a month ago, during which PW1's tractor was taken into custody. Thereafter, both PW1 and the driver of the tractor were produced before the Magistrate's Court by the Appellant in connection with the said allegations.
10. The evidence further reveals that a complaint was made to the Bribery Commission on 14.08.2017 via telephone. Following this complaint, PW3 contacted PW1, who informed him that the Appellant had solicited a sack of rice from him.
11. Accordingly, officers of the Bribery Commission proceeded to Laggala and met with PW1, who provided a statement regarding the alleged solicitation of a sack of rice by the Appellant. Thereafter, acting on the instructions of PW3, PW1, together with PW2, proceeded to the Wilgamuwa Police Station on 15.08.2017 to meet the Appellant.
12. Upon meeting the Appellant, PW1 inquired as to the quantity of rice required by him. According to PW1, the Appellant responded that he required 25kg of rice.

Thereupon, PW1 informed the Appellant that he would provide the rice on the following day and left the Police Station.

13. On 16.08.2017, acting upon the instructions of PW3, PW1 proceeded to Hettipola town and met PW3. Thereafter, PW1 telephoned the Appellant and informed him that he was in town. In response, the Appellant requested that PW1 remain in town until his arrival.
14. Thereafter, officers of the Bribery Commission procured a sack of rice and proceeded, together with PW1 and PW2, to meet the Appellant.
15. After a short while, the Appellant arrived on a motorcycle. PW1 testified that, acting upon the Appellant's instructions, he and PW2 placed the sack of rice on the fuel tank of the said motorcycle.
16. At that moment, officers of the Bribery Commission approached the scene, apprehended the Appellant, and subsequently arrested him after informing him of the allegations against him.
17. Thereafter, PW1, together with PW3, proceeded to the Naulla Police Station, where PW1 made a statement regarding the incident.
18. Evidently, the testimony of PW1 is fraught with a substantial number of infirmities that significantly undermine the credibility and reliability of PW1.
19. PW1 testified during the cross-examination that he was not on good terms with the Wilgamuwa Police Station due to the fact that a lot of legal actions were taken by the said police officers against him.

“ප්‍ර: මහත්මයා විශේෂ කාර්යය බලකායන් එක්ක ආපු පොලීස් කණ්ඩායමකුයි, නවත් විල්ගමුව පොලීසියේ කණ්ඩායමකුයි එක්ක ආපු කණ්ඩායම් දෙකම ට්‍රැක්ටර් රථ ගණනාවක් අත්අඩංගුවට ගත්ත?

උ: එහෙමයි.

ප්‍ර: මහත්මයා දැන් එහෙම අත්අඩංගුවට අරගෙන විල්ගමුව පොලීසිය තමයි ඒ අත්අඩංගුවට ගන්න රථ වැලි එක්කම තිබ්බේ?

උ: එහෙමයි.

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ප්‍ර: ඒක හින්දා තමුන් විල්ගමුව පොලීසියේ අයත් එක්ක තරහයි?

උ: එහෙමයි. (vide page 182 of the Appeal Brief)

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ප්‍ර: මහත්මයා තමුන්ලගේ ඒ විශේෂ කාර්යය බලකායෙන් අත්අඩංගුවට ගන්න එදා විල්ගමුව පොලීසි කණ්ඩායමෙන් අත්අඩංගුවට ගන්න ඒ සියලුම නීතිවිරෝධී කටයුතු සම්බන්ධයෙන් උසාවියට ගිහිල්ල තමුන්ලව ඉදිරිපත් කරේ මේ වින්නිකාරයා?

උ: එහෙමයි.” (vide page 184 of the Appeal Brief)

20. It should be noted that the evidence suggests the existence of strained relations between PW1 and the officers attached to the Wilgamuwa Police Station. Having regard to the prior interactions between them, including the institution of legal proceedings against PW1, these circumstances cannot be disregarded and constitute a relevant fact in evaluating the totality of the evidence.

21. Furthermore, PW1 was unable to specify the exact date on which the alleged solicitation was made by the Appellant, and also his evidence was devoid of material particulars relating to the alleged demand for gratification. It is also noteworthy that there is no evidence that the Appellant sought to contact PW1 or visit his residence after the alleged request was made. These circumstances give rise to serious doubts as to the prosecution's narrative and render the alleged solicitation inherently improbable.

“ප්‍ර: දැන් මහත්මයා මේ කඩෙන් හාල් මිටියක් ගන්න කියල මේ වින්නිකාරයා කිව්වද?

උ: හාල් මිටියක් ඉල්ලුවා පමණයි.

ප්‍ර: හාල් මිටියක් ඉල්ලුවා. වෙන මුකුත් විශේෂයෙන් කිව්වේ නැහැ?

ප්‍ර: නැහැ.

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ප්‍ර: කවදද ඉල්ලුවේ කියල තමුන් දන්නේ නැහැ?

උ: දිනය මතක නැහැ.

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ප්‍ර: දැන් තමුන් කියන ආකාරයට ඒ භාල් මිටිය ඉල්ලුවට පස්සේ ඒ භාල් මිටිය ගන්න හෝ තමුන්ව හොයාගෙන ආවද, කවදාහරි තමුන්ගේ ගෙදරට හරි කොහොටහරි ආවද?

උ: ගෙදරට අවේ නැහැ.” (vide page 172 of the Appeal Brief)

22. Furthermore, the Appellant did not alight from the motorcycle, nor is there any evidence that he directed PW1 and PW2 to place the sack of rice on any particular part of the motorcycle. In these circumstances, the act of placing the sack of rice on the fuel tank appears to have been initiated by PW1 and PW2 themselves rather than pursuant to any express direction given by the Appellant.
23. These circumstances materially detract from the probability of the prosecution narrative and cast doubt on the version of events advanced by PW1.
24. Further, the following contradictions were elicited and duly marked during the cross-examination of PW1.
25. It is significant that, in the statement made to the Bribery Commission, PW1 stated that the Appellant had requested him to grind a sack of rice and place the same at his residence. However, during the cross-examination, PW1 stated he could not remember the Appellant making such a request. “උබ හෙට භාල් මිටියක් කොටලා ගෙදර තියපන්” (1D1, marked in evidence at vide page 189 of the Appeal Brief)
26. A further contradiction is apparent between the statement made by PW1 to the Bribery Commission and his testimony before the court. In his statement to the Bribery Commission, PW1 stated that he had previously possessed the Appellant’s telephone number, but that it had been deleted from his mobile phone.

27. However, during his testimony before the court, PW1 stated that he had shown the Appellant's telephone number to the officers of the Bribery Commission. “මේ සාජන් මහත්මයාගේ ටෙලිෆෝන් අංකය මගේ ෆෝන් එකේ තිබුණා, නමුත් දැන් ඒක ඩිලීට් වෙලා” (1D2, marked in evidence at page 192 of the Appeal Brief). This contradiction relates to a material circumstance surrounding the alleged communication between PW1 and the Appellant and, therefore, casts serious doubt on the accuracy of PW1's recollection of events and further undermines the reliability of his testimony.
28. Further, according to the evidence of PW8, Dammika Dileesha, the Coordinating Investigator of Mobitel (Pvt) Ltd., who testified that PW1 made a call to the 1954 hotline service on 14.08.2017. PW8 further testified that, on 16.08.2017, PW1 made only two telephone calls to the Appellants.
29. Significantly, the telephone records revealed that, prior to 16.08.2017, the Appellant had not made any calls to PW1. Accordingly, it is an admitted position of the prosecution that the Appellant had never contacted PW1 by telephone before that date.
30. Furthermore, save for the two telephone calls made by PW1 to the Appellant on 16.08.2017, there is no evidence of any prior telephonic communication between them. The said telephone records were produced and admitted in evidence in terms of Section 420 of the Code of Criminal Procedure Act.
31. The telephone records produced through PW8 are wholly inconsistent with the version of events advanced by PW1. While PW1 testified that the Appellant had contacted him on several occasions, including prior to the present raid, the telephone records do not support that assertion.
32. This inconsistency assumes particular significance as it relates to the circumstances surrounding the alleged solicitation and subsequent arrangements, thereby materially affecting the credibility and reliability of his account.

33. Accordingly, when the evidence of PW1 is considered as a whole, the inconsistencies and improbabilities therein cast serious doubt on the credibility and reliability of his version of events. Thereby, it is unsafe to sustain the conviction against the Appellant on the basis of his testimony, as it did not appear to reflect a truthful or reliable account of the alleged events.
34. The next witness to testify on behalf of the prosecution was PW2, Jeewan Ravihara, an officer attached to the Bribery Commission, who acted as the decoy in the present case.
35. PW2 testified that, on 15.08.2017, he, together with other officers of the Bribery Commission, proceeded to conduct investigations into the allegation made by PW1. Accordingly, they arrived in Wilgamuwa and met PW1. Thereafter, they proceeded to Watuwathanna Wewa, where PW3, the chief investigating officer, recorded the statement from PW1 regarding the alleged solicitation made by the Appellant.
36. Upon recording the statement, PW3 inquired from PW1 whether he was willing to assist the Commission in its investigation. Upon obtaining his consent, PW3 requested PW1 to identify an officer whom he considered suitable to accompany him when meeting the Appellant. PW1 accordingly selected PW2 for that purpose.
37. PW3 thereafter instructed PW2 to accompany PW1 and ascertain from the Appellant the particulars of the alleged gratification that had been solicited.
38. Pursuant to those instructions, PW2 and PW1 proceeded to the Wilgamuwa Police Station and met the Appellant. According to the evidence of PW2, during the course of the conversation, the Appellant instructed PW1 to bring a sack containing 25kg of rice to the town on the following day.
39. As PW1 informed the Appellant that he had deleted the Appellant's telephone number from his mobile phone, the Appellant made a missed call to PW1's phone in order to enable future communication between them.

40. Thereafter, PW2 and PW1 left the police station and reported the details of the said conversation to PW3.

41. PW2 further testified that on 16.08.2017, he, together with other officers of the Bribery Commission, again met PW1. Acting on the instruction of PW3, PW1 telephoned the Appellant; however, the call could not be connected.

42. Thereafter, PW1 left to attend to personal matters. Upon his return, he informed PW3 that the Appellant tried to contact him by telephone. However, during the cross-examination, PW2 testified that PW1 did not receive any telephone call from the Appellant on 16.08.2017.

“ප්‍ර: එකකට හරි අන්සාර් කලාද පැමිණිලිකාරය නමුත් කියන විදියට?

උ: ඔහු 16 වෙනිදා කතා කලේ නැහැ ස්වාමිනි. 16 වෙනිදා පැමිණිලිකරුට ඇමතුම් අවේ නැහැ සැකකරයාගෙන්. 16 වෙනිදා සැකකරුගෙන් පැමිණිලිකරුට ඇමතුම් අවේ නැහැ ස්වාමිනි.

ප්‍ර: 16 වෙනිදා සැකකරුගෙන් පැමිණිලිකරුට ඇමතුම් අවේ නැහැ නේද?

උ: ඔව් ස්වාමිනි.” (vide page 268 of the Appeal Brief)

43. Accordingly, a material inconsistency arises between the evidence of PW1 and PW2 with regard to the alleged telephone communication from the Appellant.

44. Following this information, PW3 instructed PW1 to make a further call to the Appellant. During that conversation, the Appellant informed PW1 that he had come to the town on another matter and instructed him to bring the sack of rice.

45. Thereafter, the officer proceeded to the NSR stores and purchased a sack containing 25kg of rice. PW3 then instructed PW2 to accompany PW1 in order to meet the Appellant and carry out the operation.

46. Accordingly, PW2 and PW1 proceeded to Wilgamuwa town with the sack of rice. Upon their arrival, PW1 telephoned the Appellant, who instructed them to remain in the town until his arrival.

47. After a short while, the Appellant arrived at the location on a motorcycle. He called PW1 and instructed him to place the sack of rice on the fuel tank of the motorcycle. And further, according to the evidence of PW2, there was a discussion between PW1 and the Appellant regarding the filing of cases against PW1. However, according to PW1, there was no evidence that there had been any discussion as to the purpose for which the rice was given to the Appellant.

Evidence of PW1:

“ප්‍ර: එතකොට අබේසිංහ මහත්මයා මොකක්ද කිව්වේ?

උ: අරන් එන්න කිව්වා.

ප්‍ර: ඊට පස්සේ?

උ: මමයි, ජීවන් මහත්මයායි දෙන්නා භාල් මිටිය අරන් ගිහින් බයිසිකලේ උඩින් තිබ්ව.” (vide page 141 of the Appeal Brief)

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“ප්‍ර: එතොකොට අබේසිංහ මහත්මයා මොකද කිව්වේ?

උ: මොනවත් කියන්න බැරි වුණා. ඊට පස්සේ අල්ලගන්නා.” (vide page 142 of the Appeal Brief)

Evidence of PW2:

“ප්‍ර: ඊට පසු මහත්මයා සහ පැමිණිලිකරු කැබ් රථයෙන් බැහැලා ඒ ස්ථානයට ගියාට පස්සේ මොකද වුණේ?

උ: එම ස්ථානයට ගියාට පස්සේ පැමිණිලිකරු සැකකරුට කිව්වා සර් භාල් කොටා ගන්න බැරි වුණා කඩෙන් අරගෙන ආවේ කියලා, නඩු දන්නේ නැහැ නේද සර් කියලා ඇහුවා, නැහැ නැහැ එහෙම කරන්නේ නැහැ අපරාදේ නේද කඩෙන් ගන්න එකට කියලා කිව්වා.” (vide at pages 227-228 of the Appeal Brief)

48. In my opinion, the above-mentioned inconsistencies that exist in the evidence given by PW1 and PW2 are not confined to minor or peripheral matters, but strike at the

very root of the prosecution’s case, namely, the sequence of the events and their probability.

49. I shall now consider the final ground of appeal; it was contended that the Learned High Court Judge failed to properly analyze and evaluate the evidence adduced by the defence and consequently erred in law by summarily rejecting the evidence of the Appellant without adequate consideration.

50. In this regard, it was clearly elicited during the evidence of PW1 that a strained relationship existed between PW1 and the officers attached to the Wilgamuwa Police Station. However, the Learned High Court Judge failed to give due consideration to the existence of this strained relationship. In the circumstances, the possibility that PW1 may have been motivated to make a false allegation against the Appellant cannot be entirely ruled out. The existence of such animosity provides a plausible motive for the fabrication of the allegation and ought to have been carefully considered when assessing the credibility and reliability of PW1’s testimony.

51. Further, there exists a material contradiction between the evidence of PW1 and PW2 concerning the alleged conversation that took place between the Appellant and PW1 at the Wilgamuwa Police Station on 15.08.2017. The inconsistencies in their respective accounts cast doubt on the accuracy and reliability of their testimony regarding this crucial aspect of the prosecution’s case. Accordingly, the Learned High Court Judge ought to have carefully considered these contradictions when assessing the credibility of the witnesses and the weight to be attached to their evidence.

Evidence of PW1:

“ප්‍ර: හම්බන්තොට රිට් පස්සේ මොකක්ද කලේ?”

උ: මම ඇහුවා හාල් කොච්චරක්ද ඕන කියල

ප්‍ර: එතොකොට අබේසිංහ මහත්මයා මොනවා හරි කිව්වද?

උ: 25 ක් විතර කිව්වා.” (*vide* age 132 of the Appeal Brief)

Evidence of PW2:

“ප්‍ර: ඉන් පස්සේ මහත්මයා ඔය සාජන් අබේසිංහ නිලධාරියා ආවට පස්සේ එතැනදී මොකක්ද වුනේ?

උ: එතැනදී ස්වාමීනි, පැමිණිලිකරු සැකකරුට කිව්වා සර් කිව්ව විදියට හාල් ටික කොට ගන්න බැරි වුන සර් ඒකයි නියෙන ප්‍රශ්නය මොකද සර් කරන්නේ කියලා.

.....

ප්‍ර: ඊට පස්සේ අබේසිංහ කියන නිලධාරියාගේ පිළිතුරු වුනේ මොකක්ද?

උ: ඊට පස්සේ සාජන් මහත්මයා කිව්වා කමක් නැහැ එහෙම නම් හෙට අරගෙන එන්න කියලා කිව්වා.” (vide page 215 of the Appeal Brief)

52. Moreover, the evidence of PW1 and PW2 is contradictory with regard to the purpose of the alleged solicitation. This inconsistency relates to a material fact and raises serious doubts as to the reliability of the prosecution’s version of events.

53. Further, the Learned High Court Judge erred in concluding that the Appellant failed to provide any explanation regarding the events alleged to have occurred on 15.08.2017, as testified by PW1 and PW2. However, a careful perusal of the Appellant’s evidence reveals that he had clearly stated that, prior to 16.08.2017, he had never met PW1 except in the course of official raids, and that he had never made any telephone calls to PW1. This aspect of the Appellant’s testimony was not duly considered in arriving at the impugned finding.

54. Unfortunately, the aforesaid infirmities, together with the material inconsistencies in the prosecution evidence, appear to have escaped the attention of the Learned High Court Judge.

55. In the aforesaid circumstances, I conclude that it is not safe to affirm the conviction against the Appellant.

56. For the reasons set out above, we allow the appeal and we proceed to quash the conviction and sentence imposed on the Appellant by the Learned High Court Judge of Colombo.

57. Accordingly, we acquit the Appellant of all the charges levelled against him.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree

Judge of the Court of Appeal