

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

In the matter of an Appeal made under
Section 331 of the Code of Criminal
Procedure Act No.15 of 1979

Court of Appeal No.
CA/HCC/0174/2025
High Court of Colombo
Case No. HCB 2009/2014

Chandrasiri Balasooriya
A/D/6/40, Ranpokunagama,
Nittabuwa.

Accused-Appellant

Vs.

The Director General
Commission to Investigate Allegations
of Bribery or Corruption
No.36, Malalasekera Mawatha,
Colomb0-07.

Complainant-Respondent

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Neranjana Jayasinghe with Randunu
Heellage and Pravindika Kularathne for
the Appellant.**

**Anuradha Siriwardhana, Assistant
Director General of Bribery Commission
for the Respondent.**

ARGUED ON : **24/08/2026 and 25/08/2026**

DECIDED ON : **07/10/2026**

JUDGMENT

P. Kumararatnam, J.

The above-named Accused-Appellant (hereinafter after referred to as the Appellant) was indicted by the Director General of Bribery Commission in the High Court of the Western Province holden in Colombo on the following charges:

1. On or about 03.06.2011, the Accused-Appellant solicited Rs.50,000/- from Mohamed Jesmi (PW01) and thereby committed an offence punishable under Section 19(b) of the Bribery act.
2. On the same transaction the Accused-Appellant solicited Rs.50,000/- from Mohamed Jesmi and thereby committed an offence punishable under Section 19(c) of the Bribery Act.
3. On the same day and during the same transaction the Accused-Appellant accepted Rs.25,000/- from PW04 and thereby

committed an offence punishable under section 19(b) of the Bribery Act.

4. On the same day and during the same transaction the Accused-Appellant accepted Rs.25,000/- from PW04 and thereby committed an offence punishable under Section 19(c) of the Bribery Act.
5. On 17.06.2011 the Accused-Appellant accepted Rs.10,000/- from PW01 and thereby committed an offence punishable under section 19(b) of the Bribery Act.
6. On the same transaction the Accused-Appellant accepted the Rs.10,000 /- from PW01 and thereby committed an offence punishable under Section 19(c) of the Bribery Act.
7. On 03.06.2011 the Accused-Appellant accepted Rs.60,000/- from PW01 and thereby committed an offence punishable under section 19(b) of the Bribery Act.
8. On 03.06.2011 the Accused-Appellant accepted Rs.60,000/- from PW01 and thereby committed an offence punishable under Section 19(c) of the Bribery Act.

After the trial the Appellant was found guilty of 1st to 4th charges and he was acquitted from the 5th to 8th charges. The Learned High Court Judge of Colombo on 30/11/2023 has imposed the following sentences:

1. For every count a fine of Rs.5,000/- with a default sentence of 6 months simple imprisonment.
2. For every count 3 years rigorous imprisonment was imposed and each sentence was to run concurrently.

3. Additionally, a fine of Rs.25000/- was imposed subject to a default sentence of 06 months simple imprisonment.

Being aggrieved by the aforesaid conviction and sentence, the Appellant preferred this appeal to this court.

The Learned Counsel for the Appellant informed this court that the Appellant has given consent to argue this matter and he was present in court upon being granted bail pending appeal.

On behalf of the Appellant the following Grounds of Appeal are raised.

1. The Learned High Court Judge had failed to consider material contradictions in the evidence of the prosecution witnesses and thereby arrived at a wrong conclusion that the prosecution had proved the charges beyond reasonable doubt.
2. The Learned High Court Judge had failed to evaluate the dock statement of the Accused-Appellant, and thereby failed to adduce proper reasons in rejecting the dock statement.

Background of the case.

In this case PW01 Mohamed Jesmi, had started a hotel business renting a building from PW4, Mohamed Samath. On 03.06.2011, the Appellant who was the Assistant to an Engineer of the Water Board had visited PW1's hotel and inspected the water supply to the hotel. After inspection, the Appellant had informed PW1 that the water had been taken illegally to the said building. Immediately, PW1 had informed PW4 about the incident and PW4 had admitted the allegation. The Appellant informed PW1 that Rs.500,000/- would be payable to the Water Board by him. Upon hearing this, the Appellant had solicited Rs.50,000/- to adjust the amount payable to the Water Board. As per the request, Rs.25,000/- was paid to the Appellant by

PW4. On the same day the Appellant had provided the new estimate which amounted to Rs.124,656/-. PW1 was asked to pay Rs. 60,000/- within a week. The Appellant had then directed them to pay the balance of the new estimate and the balance of the solicited amount Rs.25,000/- within two weeks. According to PW1, he had given money to PW4, and PW4 had informed after about two days that he had paid Rs. 60,000/- to the Water Board.

When PW1 and PW4 were ready with the balance money, the Appellant had informed that he would be coming to the hotel to collect the same. Having felt suspicion regarding the transaction, PW4 had decided to complain to the Bribery Commission.

After the complaint, upon the Appellant's arrival to collect the money, PW1 had given Rs.70,000/- to him. At that time, the Bribery officials had arrested him and recovered the money from the Appellant's hand.

According to PW2, PS 31551 Liyanage, PW1 had informed that the Appellant had requested Rs.60,000/- being the balance payment of the estimate and Rs. 10,000/- from the balance solicited amount on the day of the raid. When the Appellant collected the money, he had counted the money and put the money into his trouser pocket. Upon seeing PW2 and PW3, the Appellant had thrown the money to the second shelf of the showcase which was in the hotel. As the Appellant refused to pick up the money from the shelf, PW3, SI/Wimalaratne had picked up the same from the second shelf.

Although PW1 had testified that PW4 had told him that Rs.60,000/- was paid to the Water Board, PW5, the Chief Engineer of the Water Board confirmed that no money was received by the Water Board. PW5 further confirmed that the estimate was prepared upon receiving correct information from the Appellant.

Considering the first ground of appeal, the Appellant contends that the Learned High Court Judge had failed to consider material contradictions in

the evidence of the prosecution witnesses and thereby arrived at a wrong conclusion that the prosecution had proved the charges beyond reasonable doubt.

The learned Counsel for the Appellant strenuously argued that although, the complainant stated that he was supposed to pay Rs.25000/- and Rs.64,656/- to the Appellant on the day of the arrest, in the complaint they had said that they had to pay Rs.70,000/- only. Considering this discrepancy, the Learned High Court Judge had acquitted the Appellant from count numbers 5-8.

Further, the complainant had said that Rs.60,000/- was paid to the Water Board through PW4 who was the owner of the hotel. Under cross examination at page 240 of the brief, the complainant admitted that he did not pay any money to the Water Board. PW5, the Engineer of the Water Board stated that the Board had not received any money from the complainant or any other person.

According to PW1, after receiving the money, the Appellant had the money in his hand when PW2 and PW3 had apprehended him. The relevant portion is re-produced below:

Page 172 of the brief

ප්‍ර - අල්ලස් කොමිසමේ නිලධාරී මහත්වරු ඒ මුදල් කොහේ තිබ්ලාද ගත්තේ?

උ - එයාගේ අතේම තියාගෙන ගනන් කර කර ඉන්දෙද්දී එයාගේ අතින්ම තමයි ගත්තේ.

However, according to PW3 and PW4 they had recovered money from the second shelf of the showcase as the Appellant had thrown the money and tried to run away from the scene. The relevant portions are re-produced below:

314 of the brief

ප්‍ර - මේ ආකාරයට විමලරත්න මහත්තයා රු. 70,000 ක මුදල ඉල්ලා සිටි අවස්ථාවේදී වූදිනයා මොකක්ද කළේ?

උ - වූදින එම මුදල් ටික අරගෙන එතන තිබුනා සෝ කේස් එකක්, ඒ කියන්නේ කෑම දාන සෝ කේස් එකක්. එකේ දෙවැනි තට්ටුවට විසි කරා උතුමාගෙනි. ඒ විදුරු සෝ කේස් එකක්. එතනට විසි කරා උතුමාගෙනි.

ප්‍ර - ඒ වෙලාවේදී විමලරත්න මහත්මයා මොකද්ද ගත්ත පියවර?

උ - ඒ විසි කරලා සැකකරු එම ස්ථානයෙන් පලා යන්න උත්සාහ කළා උතුමාගෙනි. ඊට පස්සේ විමලරත්න මහත්මයා මට කිව්වා ඇකියුස්ට් හැන්ඩ් කප් දාන්න කියලා.

ප්‍ර - දැන් ඒ මුදල විසි කරාට පස්සේ අර විදුරු සෝ කේස් එකේ දෙවැනි තට්ටුවට විමලරත්න මහත්මයා වූදිනයට මොකක් හරි කිව්වාද?

උ - එහෙමයි ගරු උතුමාගෙනි. වූදිනට කිව්වා එක අහුලලා දෙන්න කියලා. නැවත ඒ සල්ලි අරන් දෙන්න කියලා. ඔහු ප්‍රතික්ෂේප කලා ගරු උතුමාගෙනි.

ප්‍ර - දැන් ඊට පස්සේ මොකක්ද සිද්ධ වුනේ?

උ - ඊට පස්සේ එතනින් පැනලා දුවන්න හැදුවා.

376 of the brief

ප්‍ර - ඒ වෙලාවට විත්තිකරු විසින් ද මුදල් නෝට්ටු විසිකළේ?

උ - මා විසින් අල්ලස් කොමිසමේ නිලධාරියෙක් ලෙසට හඳුන්වා දීලා ඔහු විසින් ගත් මුදල් මා හට දෙන ලෙසට දැනුම් දුන්නා ඒ අවස්ථාවේදී.

ප්‍ර - ඒ අවස්ථාවේදී මුදල් විසි කළා කියලා කිව්වා නේද සාක්ෂිකරු?

උ - එහෙමයි උතුමාගෙනි .

ප්‍ර - කොහොටද විසිකළේ?

උ - ඔහු ඉදිරිපසට විසිකරනකොට මුදල් ඔහු ඉදිරිපස තිබුණු මා පෙර සඳහන් කල විදුරු සෝකේස් එකේ දෙවැනි තට්ටුව මත වැටුනා උතුමාගෙනි.

Although this is a glaring discrepancy between the evidence given by PW1, PW2 and PW3, this has escaped the attention of the Learned High Court Judge.

In **Kalinga Padmatilaka v The Director General of Commission to Investigate Allegation of Bribery or Corruption** SC Appeal 99/2007 decided on 30.07.2009 the Supreme Court held that:

“It has to be stressed here that credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the Judge. When witnesses make inconsistent statements in their evidence either at one stage or at 2 stages, the testimony of such witnesses is unreliable and in the absence of special circumstances, no conviction can be based on the testimony of such witnesses. On the other hand, one cannot be unmindful of the proposition that Court cannot mechanically reject the evidence of any witness”.

In **Gurcharan Singh V. State of Haryana** - Criminal Law Journal 1994 (2) 171 the Court held that:

“Where the material witnesses make inconsistent statements in their evidence on material particulars, the evidence of such witnesses becomes unreliable and unworthy of credence, thus making the prosecution case highly doubtful.”

These contradictions would be of importance in view of the fact that the Appellant had consistently taken the stance that no money was ever given to him and that nothing was recovered from him.

Although the above mentioned inter se contradictions were not marked, it is the duty of the Trial Judge to consider such evidence favourable to the Accused with utmost care.

At one point the Court had severely warned PW1 to tell the truth.

During the cross examination, PW3 SI/Wimalaratna had stated that they had recorded statements from several persons, however, the prosecution had not served copies of the same even though they had requested for. Even the Learned High Court Judge by his order dated 19.07.2019 had refused the said application. This clearly shows that the Appellant had not been afforded a fair trial.

Article 13(3) of the Constitution of Sri Lanka guarantees the right to a fair trial; which ensures that every charged person has the right to be heard in person or by a lawyer. It must be remembered at all times, that the “golden thread” of criminal law emphasises on the presumption of innocence of an Accused until his guilt is proven beyond a reasonable doubt.

In the **Queen v. K.A. Santin Singho** 65 NLR 447 the court held that:

“It is fundamental that the burden of proof is on the prosecution. Whether the evidence the prosecution relies on is direct or circumstantial, the burden is the same. This burden is not altered by the failure of the appellant to give evidence and explain the circumstances”.

In the case of **Officer - In - Charge, Police Station Udu Dumbura Vs. U.G. Sunil and Others** (SC/APPEAL/27/2019), decided on 05.06.2024 it was noted:

“It has been firmly established that, in a criminal case, that the charges against the Accused should be proved beyond reasonable doubt. Proof beyond a reasonable doubt generally means the Court must carefully consider the entirety of admissible evidence to such scrutiny to see

whether the ingredients of the charges are proved. If the Court is not satisfied the accused person must be acquitted.”

The case of **Dietrich v The Queen [1992] HCA 57** established that the right to a fair trial is an integral part of modern common law and due process.

In the second ground of appeal the Appellant contended that the learned High Court Judge had failed to evaluate the dock statement of the Accused-Appellant, and thereby failed to adduce proper reasons in rejecting the dock statement.

A dock-statement, though considered as evidence, is subject to the infirmity that it was not given under oath and thus cannot be subject to cross-examination.

In **Queen Vs. Buddharakkitha Thera and 2 Others** 63 NLR 433, it had been held that;

“the right of an accused person to make an unsworn statement from the dock is recognized by our law. That right would be of no value unless such a statement is treated as evidence on behalf of the accused subject however to the infirmity which attaches to statements that are unsworn and have not been tested by cross-examination.”

In **Queen v. Kularatne** 71 NLR 529 as follows;

“We are in respectful agreement, and are of the view that such a statement must be looked upon as evidence subject to the infirmity that the accused had deliberately refrained from giving sworn testimony, and the jury must be so informed. But the jury must also be directed that,

- (a) If they believe the unsworn statement, it must be acted upon,*
- (b) If it raised a reasonable doubt in their minds about the case for the prosecution, the defense must succeed, and*
- (c) That it should not be used against another accused.”*

In this case, the Learned High Court Judge had simply rejected the dock statement without giving any reasons for the rejection. In his judgment, at

Page 629 of the brief

වූදින 2011.06.03 වන දින සිද්ධිය බැහැර කරමින් සාක්ෂි ලබාදී ඇත. අදාළ සාක්ෂිය දිවුරුමකට හෝ ප්‍රතිඥාවකට යටත්ව ලබා දී නැත. හරස් ප්‍රශ්නවලට භාජනය වෙමින් සිදු කර නැත. වූදින තැනැත්තා සිද්ධිය බැහැර කර සාක්ෂි ලබාදී ඇත්තේ, පැමිණිලිකාර පාර්ශ්වයේ සාක්ෂිකරුවන් හරස් ප්‍රශ්නවලට භාජනය කිරීමේදී ඒ පිළිබඳව පැහැදිලි ආකාරයට එම සාක්ෂිකරුවන්ට කාරණා යෝජනා කර සිටින නැත. ඒ ආකාරයට වූදින තැනැත්තා විසින් ලබා දී ඇති සාක්ෂියේ ඇති ඌණතාවය කෙරෙහිද, සාක්ෂිය ඒකාකාරී නොවීම කෙරෙහිද අධිකරණයේ අවධානය යොමු වී තිබීම මෙසේ වාර්තා කර තබනු ලැබේ. එවිට එම සාක්ෂි පිළි නොගෙන බැහැර කිරීමට තීරණය කරනු ලැබේ.

The Learned High Court Judge had not only rejected the dock statement without giving reasons, but had also stated that the Appellant had not suggested his positions to the witnesses. This is a clear misdirection as the Appellant had fairly and squarely suggested his positions to the witnesses when they gave evidence. This is clearly reflected in pages 206,238,248,253,254,257,259, 289 and 290 of the case record.

Credibility refers to a witness' trustworthiness and reliability based on their consistency, accuracy and veracity.

Credibility evidence would consist of evidence admitted in order to strengthen or weaken the testimony of a witness or an accused. Such evidence to impeach a witness can be submitted at any point from the time the witness takes the stand. It is a standard rule that a witness would always make their credibility vulnerable to attack whenever they testify. It should be remembered that evidence that bolsters a witness's credibility would not be admissible until the credibility of that witness has been impeached.

Similarly, there will be no presumption of honesty among witnesses in a criminal trial. As such, when testimony is given, the trier of fact must determine whether such testimony is to be believed.

In the case of **K. Padmathilaka alias Sergeant Elpitiya v. The Director General of Commission to Investigate Allegation of Bribery and Corruption** [2010] BLR 67 the court held that:

“Credibility of prosecution witnesses should be subject to judicial evaluation in totality and not isolated scrutiny by the judge. When witness makes an inconsistent statement in their evidence either at one stage or two stages, the testimony of such witness is unreliable.....It is a cardinal principle that unreliable evidence cannot be rendered credible, simply because there is some corroboration material”.

In the case of **Joy Devaraj v The State Of Kerala** (2024) INSC 473 it was held:

“The threshold for disbelieving a witness is not mere discrepancy or inconsistency but material discrepancy and inconsistency, which renders the account narrated by the witnesses so highly improbable that the same may safely be discarded altogether from consideration.”

In this case, credibility of the prosecution witnesses has been clearly impeached at very material points as dealt in the judgment. Further, the Learned High Court Judge had misdirected himself in assessing the dock statement of the Appellant. Therefore, I conclude that the appeal grounds raised by the Appellant has merit. For the reasons stated above, I allow the appeal and set aside the conviction and sentence imposed on the Appellant. The Appellant is acquitted from all the charges.

The Registrar is directed to send this judgment to the High Court of Colombo along with the original case record.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL