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. 5 of 1979, read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka

CA-HCC-21/2020

HC of Colombo Case No:

HCB 07/2019

The Director General

Commission to Investigate

Allegations of Bribery or Corruption

No. 36, Malalasekara Mawatha

Colombo 07.

Complainant

Vs.

Hewa Batagodage Jagath

Accused

And Now

Hewa Batagodage Jagath

Accused-Appellant

Vs.

The Director General

Commission to Investigate

Allegations of Bribery or Corruption

No. 36, Malalasekara Mawatha

Colombo 07.

Complainant-Respondent

Before : **B. Sasi Mahendran, J.**

Amal Ranaraja, J

Counsel: Mohan Sellapperuma with Kumar Ekanayake and Kaumadee Fernando for the Accused-Appellant

Udara Karunatilaka, SSC with S.M. Sabry for the Complainant-Respondents.

Argued On: 19.03.2025

Written

Submissions: 04.04.2025 (by the Accused-Appellant)

On 19.01.2021 (by the Complainant-Respondent)

Judgment On: 20.05.2025

JUDGMENT

B. Sasi Mahendran, J.

The Accused-Appellant (hereinafter referred to as the Accused) was indicted before the High Court of Colombo on four counts for the offence of soliciting and accepting a bribe from one S.K. Thivanka Lahiru Rupasinghe on 02.06.2016 punishable under Section 19(b) and (c) of the Bribery Act.

The Prosecution led evidence through 6 witnesses and marked the documents P1 – P27 and closed its case. The Accused made a dock statement in defence.

At the conclusion of the trial, the Learned High Court by judgment dated 13.03.2020 found the Accused guilty of all four counts and sentenced him to undergo 5 years of rigorous imprisonment for each charge but to run concurrently. Further, he imposed a fine of Rs. 5000/- for each count in default 1 year of rigorous imprisonment. In addition, he ordered the recovery of the gratification said to have been accepted by the Accused as a fine imposed by court in default another year of rigorous imprisonment. Further, a compensation of Rs. 25,000/- was ordered to be paid to PW1, in default 1 year of rigorous imprisonment.

The Accused, being aggrieved by the said conviction and the sentences, has now preferred an appeal in this Court.

The grounds of appeal as urged by the Accused in his Written Submission, are as follows;

1. The charge regarding 'solicitation and acceptance of bribe' has not been proved beyond reasonable doubt,
2. The Learned Trial Judge erred in law by failing to appreciate the improbability of the evidence of PW1,
3. The Learned Trial Judge has failed to consider that the material infirmities, in the prosecution's case and the Learned Trial Judge has not dealt with the 'inter se' contradictions in evidence between the complainant and the decoy,
4. The Learned High Court Judge has acted contrary toas he encroached into the role of the prosecutor and thereby denied a fair trial to the Accused.

The facts and circumstances of the case are as follows;

According to PW1, the victim, he bought a land situated in Gandarawatte South, Devinuwara with regard to which Deed of Transfer No. 14441 was executed. As stated by PW1, he paid Rs. 17,000 as stamp duty on 02.01.2015. PW1 states that he received a letter from the Accused who was a senior assessor of the Provincial Revenue Department of the Matara Branch requiring PW1 to come to the said office on 01.07.2016 to investigate regarding stamp duty of the said Deed. Accordingly, PW1 met the Accused at the said office and PW1 was conveyed that the correct amount of stamp duty for the said Deed was higher than the amount PW1 had already paid, i.e. Rs. 17,000/-. Further, the Accused had indicated that PW1 had to pay an additional amount of Rs. 32,000/-. Thereafter, PW1 has requested the Accused that, "එහෙම කරන්න එපා මහත්තයා.....පුළුවන්නම් මොනවා හරි දෙයක් කරලා දෙන්න."

Then, PW4 namely Denzil, one of PW1's friends also came to the Accused's office and told the Accused to do something as PW1 is his friend. Thereafter, the Accused

had asked whether the PW1 could bring 10,000/- to which the PW1 agreed. Thereafter, the Accused filled out the bank slip and asked PW1 to deposit Rs. 5250/- to the Department otherwise PW1 will have to pay Rs. 32,000 more. In the meantime, he had asked his wife to deposit the money. According to PW1, since there was no reference number in the said bank slip, his wife could not pay the money.

When PW1 asked PW4, to where this Rs. 10,000 needed to be paid, PW4 replied that it was for the Accused. On that basis, the Accused had come to the conclusion that it was a bribe and informed the Bribery Commission of this incident. The Commission set up a raid and asked PW1 to hand over the alleged money to the Accused in front of the decoy namely Gayan, PW2. Thereafter, both PW1 and PW2 to the Accused's office but the Accused was not there. Thereafter, they went back to the van where the officers of the Commission were there and informed PW3 that the Accused was not there. Then, PW3 gave PW1 the money and asked him to hand over the money to the Accused. Then they approached the Accused in his office. Then PW1 told the Accused that they could not deposit money as there was no reference number and the Accused filled out another form and PW1 told the Accused that he brought the money that the Accused had asked for.

On page 134 of the brief;

> "පුරවලා දුන්නට පස්සේ මම කිව්වා මහත්තයා අර ඉල්ලපු රුපියල් 10,000/- ගෙනාවා කියලා. ඊටපස්සේ ආ ඒක දෙන්න කියලා ඒ මහත්තයා ඉල්ල ගත්තා."

Thereafter, PW1 had taken the money from his purse and gave it to the Accused. PW1 firmly states that the money was given to the Accused's hand and the Accused himself took the money and kept it in a diary.

On page 135 - 136 of the brief;

> "ප්‍ර: තමුන් මේ දුන්න 10,000/- ඒ බටගොඩ මහත්තයාගේ අතට ගත්තද?
>
> උ: ඔව්
>
> ප්‍ර: අතට අරන් ඔහු මොකද කලේ?

උ: අතට අරන් මේසේ උඩ තිබුණා ඩයරියක් වගේ එකක්. ඒකේ අස්සට දැම්ම.

ප්‍ර: ඒ සල්ලි අතට අරගෙන ඒ බටගොඩ මහත්තයාගේ මේසේ උඩ තිබ්බ පොතක් යටින් තිබ්බා?

උ: තිබ්බා

ප්‍ර: ඒ පොය්හ මොකද්ද කියල තමන්ට මතකද?

උ: ඒ පොත නිල පාට පොතක් වගේ. නිල පාට පිටකවර්යක් තියෙන පොතක්.

ප්‍ර: ඊටපස්සේ තමුන් මොකද කලේ?

උ: ඊටපස්සේ අපි එතන පොඩි වෙලාවක් හිටියා. එත් එක්කම අල්ලස් එකේ මහත්වරු ඇවිල්ලා ඒ මහත්තයගෙන් ගත්ත සල්ලි කොහෙද කියල ඇහුව."

Thereafter, the officers of the Commission came in led by I.P. Gunewardhena, PW3.

The PW1 indicated that the money was given as a bribe for the work Accused had done.

According to him, he did not see any signal given by Gayan, the decoy and that he waited outside after the officers went inside the Accused's office. The PW1 was firm that the given money was kept in a diary.

During the cross-examination, PW1 indicated that he had paid Rs. 17,000/- as stamp duty which was told to him by the Notary. Further, he admitted that he indicated to the Department that he had paid Rs. 27,000/- as stamp duty. He was consistent that the Accused had asked him to pay another Rs. 32,000/-. Further, he indicated that he asked the friend as to whom the Rs. 10,000 needed to be paid.

Further, PW1 stated that originally he was asked to pay Rs. 32,000/ and later it was brought down to Rs. 5250/-.

We observe that during the cross-examination, the question was put to PW1 whether he had shown the earlier receipts to the Accused, and this witness replied that since it had been 3 years from the incident, he was unable to remember.

On page 182 of the brief;

> “ප්‍ර: තමුන් අලුත් රිසිට්පත් කුවිතාන්සිය දුන්නද පැ. 05 කියන එක පුරවපු එක මේක හරිද කියලා බලන්න?
>
> උ: අවුරුදු 3කට කලින් වෙච්ච සිද්ධියක් නිසා සෑම දෙයක්ම හරියටම අකුරටම මතක නැහැ ස්වාමිනි.
>
> ප්‍ර : අවලංගු රිසිට්පත දුන්නද කියලා අහන්නේ තමුන්ගෙන්?
>
> උ : මතක නැහැ ස්වාමිනි.”

It shows that as a prudent man, there is no necessity for him to remember all the nitty-gritty details of the incident. The reason is that due to the lack of skill in observation upon any point that he thinks is unnecessary.

I am reminded of the observation made in Bhoginbhai Hirjibhai vs. State of Gujarat AIR 1983 SC Page 753 at page 755 observed thus;

> “ By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.”

I hold that this trivial contradiction does not affect the credibility of this witness.

On the other hand, he will remember what is important, which should have always been in his memory, because that incident would not fade from his memory. In the instant case, he was disturbed that the Accused had demanded money from him. Then, he was instructed by the Bribery Commission to go with another person to hand over the money. So, PW1 will remember how he gave the money.

Why I emphasize this is that PW1 was so sure and confident about the fact that the Accused took money from him and kept it in his diary on his table. He was consistent with his evidence.

On page 182 of the brief

"ප්‍ර: තමුන්ට යෝජනා කරනවා තමුන් හරි උත්තරයක් දෙන්න නැත්තේ තමුන්ට ඉදිරියේදී තියෙන ප්‍රශ්න ගැන තමුන් ගරු අධිකරණයේ හගවන නිසා කියලා යෝජනා කරනවා?

උ : එහෙම අවශ්‍යතාවයක් නැහැ ස්වාමිනි.

ප්‍ර : ඊට පස්සේ තමුන් කියනවා මේ සල්ලි මේ විත්තිකරු තමුන් හිටිය කාමරය ඇතුලෙදි ඒ සල්ලි අතට ගත්තා කියලා?

උ : එහෙමයි ස්වාමිනි.

ප්‍ර : තමුන්ට යෝජනා කරනවා කිසිම අවස්තාවක මේ විත්තිකරු තමුන් දීලා ඔහුගේ අතට ගත්තේ නැහැ කියලා යෝජනා කරනවා?

උ : පිළිගන්නේ නැහැ ස්වාමිනි.

ප්‍ර ; තමන් කියනවා ඊට පස්සේ විත්තිකරු තමයි ඒක අතට අරගෙන පොත යටින් තිබ්බේ කියලා?
උ : එහෙමයි.

ප්‍ර : මම තමන්ට යෝජනා කරනවා ඒ තමන් ඒ කියූ කොටසත් ඒ කියන්නේ විත්තිකරු මුදල් අතට අරගෙන පොත යටින් තිබ්බයි කියලා කියන්නෙත් සම්පුර්ණ අසත්‍ය සාක්ෂියක් කියලා?

උ : එක මම ප්‍රතික්ෂේප කරනවා.

ප්‍ර : මම විත්තිය වෙනුවෙන් යෝජනා කරනවා තමා විසින් ඒ අවස්ථාවේදී දෙන ලද ඒ අවලංගු කිරීමේ කුවිතාන්සිය අවලංගු කිරීමේ සහ පසුව සකස් කරගත්ත එක ගැන අවධානය යොමු කරමින් ඔහු අලුත් කුවිතාන්සියේ නිවැරදි කිරීමක් කරන අවස්ථාවේ තමා මුදල් දෙකට නමලා හිමිට ඒ පොත යටින් තිබ්බා කියලා ?

උ : නැහැ."

When we consider the totality of the evidence, he was consistent on the point that the Accused demanded money from him, and the money was given to the Accused.

Even honest and truthful witnesses may differ in some details unrelated to the main incident because of the power of observation. We are mindful of the words uttered by His Lordship Sisira de Abrew J in Tikiri Banda Kulasekara v. The Republic of Sri Lanka, CA Appeal No: 96/2002, Decided on 12.11.2007, and held that;

> "Thus, there is a contradiction on this point. With regard to this contradiction, I must mention here that the prosecution cannot be expected to prove a case according to a mathematical formula and with 100% accuracy as the case must be proved by evidence given by human beings. These kinds of contradictions do occur when human witnesses give evidence. In my view, this is not a vital contradiction and no prejudice has been caused to the appellant by the failure on the part of the trial judge to consider it."

We hold that this contradiction does not go to the root of the case.

What is meant by solicitation of bribe?

According to Section 89 (a) of the Bribery Act reads as follows;

> "For the purpose of this Act –
>
> (a) A person solicits a gratification if he, or any other person acting with his knowledge or consent, directly or indirectly demands, invites, asks for, or indicates willingness to receive, any gratification, whether for the first-mentioned person or for any other person."

Section 19(c) of the Bribery Act places the burden on the Prosecution to establish two key elements beyond reasonable doubt: firstly, that the Accused-appellant was a state officer, and secondly, that he accepted gratification. Furthermore, this gratification should serve as an inducement or reward for the performance of any official act. The term "inducement" is explicitly mentioned in the section.

In the instant case, the Accused was a public officer attached to the Provincial Inland Revenue Department, Matara. The main allegation made by PW1 was that

the Accused had demanded Rs. 10,000 from him to reduce the amount of stamp duty to Rs. 5250 from the higher amount to be paid. Further, there is no dispute that PW1, the Complaint had originally paid an amount as stamp duty. According to the Counsel for the Accused, it was undervalued.

According to PW5, Godakandage Lal Kantha confirmed that the Accused was a public servant and that he had made entries that PW1 had to pay further Rs. 5250 as additional stamp duty. Therefore, the solicitation was for the reduced stamp duty. The fact remains that money was recovered from the Accused's table. But according to the Accused, he had never received money and without his knowledge, they kept it and went away.

According to PW2, Hapugoda Arachchi Kankanamge Gayan Prasad Chathuranga, the decoy who joined PW1, on 02.06.2016, on the instructions of PW3, PW2 went to the Accused's office with PW1, but he was not there. Thereafter, they went to the office again with the Rs. 10,000 and met the Accused. He had offered them to sit and PW1 explained the reason for him to come. Thereafter, when PW1 asked about the bribed money, the Accused asked him to give that money. According to this witness, after receiving the money, the Accused kept it in the diary.

On page 245 of the brief;

> "ප්‍ර: විත්තිකරු ඒ අවස්ථාවේ ඉල්ලූ මුදල ගැන කතා උනාද?
> උ: එහෙමයි. ඊට පස්සේ ඔකත් දුන්නට පස්සේ පැමිණිලිකරු කියනවා මහත්තයා ඉල්ලපු රු. 10000/- අරගෙන ආවා මොකද කරන්නේ කියලා.
>
> ප්‍ර : එතකොට විත්තිකරු මොකද්ද කිව්වේ ?
>
> උ : ඊට පස්සේ කියනවා රු. 10000- අරගෙන ආවානම් මට දීලා යන්න කියලා අතින් ඉල්ලා සිටිනවා.
>
> ප්‍ර : ඊට පස්සේ පැමිණිලිකරු මොකද කලේ?
>
> උ : ඊට පස්සේ පැමිණිලිකරු ගුනවර්ධන මහතා දීලා තිබුණු සල්ලි වාඩි වෙලා ඉන්න ගමන්ම දකුණු පැත්තේ පිටිපස්සේ පර්ස් එකෙන් එලියට අරගෙන දෙකට නමලා තියෙන විදියටම පර්ස්

එකේ දාලා තිබුණු විදියටම අතින් අරගෙන සැකකරුට ලබා දෙනවා.

ප්‍ර : සැකකරු මොකද කලේ?

උ : ඔහුගේ දකුණු අතින් අරගෙන මෙසේ දකුණු පැත්තේ තිබුණු ඇමතුම් දින පොත යටින් ඇමතුම් දිනපොත වම් පැත්තෙන් උස්සලා යටින් තියලා වහනවා.

ප්‍ර : කව්ද එහෙම කරන්නේ?

උ : සැකකරු

ප්‍ර : ඒ අවස්ථාවේදී එම ඇමතුම් දිනපොත තමන්ට මේ ගරු අධිකරනයේදෝ දැක්කොත් හදුනා ගන්න පුලුවන්ද?

උ : පුළුවන් ස්වාමිනි.''

Both PW1 and PW2 corroborate each other that the Accused himself took the money and kept it in the diary.

Both witnesses testify that the money (bribe) was handed over to the Accused and then how he kept that money.

It is true that the defence position was that the money was kept by PW1. Nevertheless, when we consider the evidence of PW1 and PW2, there is no discrepancy between their evidence, so there is no reason for us to disbelieve their evidence.

Further, we are also mindful that there is no reason for PW1 to implicate the Accused.

When we consider the probability of these witnesses, according to the evidence, all were seated. Without notice of the Accused, is it possible for PW1 to put the money inside the diary? Or is it possible for the Accused to put the money himself? According to PW3, the money was found in the diary on the table. This was not disputed by the Accused.

Therefore, there is no reason for us to disbelieve the evidence of PW1 and PW2 with regard to the accepting the gratification. There is ample corroboration to

support this conviction. Through these witnesses, the Prosecution has established that the Accused had accepted money for the work he had done.

The main argument put forward by the Accused was that the Learned High Court Judge had acted contrary to Section 165 of the Evidence Ordinance as he encroached into the role of the prosecution and thereby denied a fair trial to the Accused.

Under Section 165 of the Evidence Ordinance, a judge is vested with the power to put questions to a witness in order to discover or to obtain proper proof of relevant facts, which reads as follows:

> "**165.** The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:
>
> Provided that the judgment must be based upon facts declared by this Ordinance to be relevant and duly proved:
>
> Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131 both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, excepting the cases herein before excepted."

The object of this Section is that the Prosecution has to prove the case beyond reasonable doubt. Therefore, the Trial Judge should convince himself that the

evidence placed before him must establish the guilt of the Accused and the guilt must be established beyond reasonable doubt.

We are also mindful that the evidential value should be so strong which should have a high degree of probability. We are also mindful that a similar Section is available in the Criminal Procedure Code, Section 439, which reads as follows:

> "Any court may at any stage of an inquiry, trial, or other proceeding under this Code summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re- examine any person already examined: and the court shall summon and examine if his evidence appears to it essential to the just decision of the case."

Our Courts were guided by the sentiments expressed by Lord Greene M.R. in Yuill vs. Yuill, reported in 1945 1 ALL ER 183 at page 185, held that,

> "The other argument was to the effect that the trial was unsatisfactory owing to the fact that the judge took an undue part in the examination of witnesses. It was said that the judge put many more questions to witnesses than all the counsel in the case put together and that he in effect took the case out of counsel's hands to the embarrassment of counsel and the prejudice of his case. The part which a judge ought to take while witnesses are giving their evidence must, of course, rest with his discretion. But with the utmost respect to the judge it was, I think, unfortunate that he took so large a part as he did. I wish to say at once that having road the many pages of the transcript over which the judge's questions extend to the exclusion of counsel, often at the most critical points of the examination or cross-examination, I can find no trace whatever of any tendency to take sides or to press a witness in any way which could be considered undesirable. It is quite plain to me that the judge was endeavouring to ascertain the truth in the manner which at the moment seemed to him most convenient. But he must, I think, have lost sight of the inconveniences which are apt to flow from an undue participation by the judge in the examination of witnesses. It is, of course, always proper for a judge- and it is his duty- to put questions

with a vow to elucidating an obscure answer or when he thinks that the witness has misunderstood a question put to him by counsel. If there are matters which the judge considers have not been sufficiently cleared up or questions which he himself thinks ought to have been put, he can, of course, take steps to see that the deficiency is made good. It is, I think, generally more convenient to do this when counsel has finished his questions or is passing to a new subject."

Further on page 189

"I may further point out that an impression as to the demeanour of a witness ought not to be adopted by a trial judge without testing it against the whole of the evidence of the witness in question."

"There is one further consideration which is particularly relevant to the present case. A judge who observes the demeanour of the witnesses while they are being examined by counsel has from his detached position a much more favourable opportunity of forming a just appreciation than a judge who himself conducts the examination. If he takes the latter course he, so to speak, descends into the arena and is liable to have his vision, clouded by the dust of the conflict. Unconsciously he deprives himself of the advantage of calm and dispassionate observation. It is further to be remarked, as everyone who has had experience of these matters knows, that the demeanour of a witness is apt to be very different when he is boing questioned by the judge to what it is when he is being questioned by counsel, particularly when the judge's examination is, as it was. In the present case, prolonged and covers practically the whole of the crucial matters which are in issue."

Denning LJ has considered the above judgment in Jones vs. National Coal Board (1957) 2 W.L.R. 760 and held that

"Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we

have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question " How's that?" His object, above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role. Was it not Lord Eldon L.C. who said in a notable passage that "truth is best discovered by powerful " statements on both sides of the question"?: see Ex parte Lloyd. And Lord Greene M.R. who explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, " he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict" see Yuill v. Yuill.

Yes, he must keep his vision unclouded. It is all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth: and the less dust there is about the better. Let the advocates one after the other put the weights into the scales-the " nicely calculated less or more "- but the judge at the end decides which way the balance tilts, be it ever so slightly. So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties: see In re Enoch & Zaretzky, Bock & Co. So also it is for the advocates, each in his turn, to examine the witnesses, and not for the judge to take it on himself lest by so doing he appear to favour one side or the other: see Rex v. Cain, Rex v. Bateman, and Harris v. Harris, by Birkett L.J. especially. And it is for the advocate to state his case as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost: see Reg. V. Clewer. The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure;

to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. Lord Bacon spoke right when he said that: " Patience and gravity of hearing is an "essential part of justice; and an over-speaking judge is no well- "tuned cymbal."

The above judgments were considered by His Lordship Basnayake CJ in Queen v. David Perera 66 NLR 553 and held that;

"Judges would do well to bear in mind the words in the passages quoted above and endeavour to abide by the counsel contained therein. In the instant case it is difficult to escape the conclusion that the fact that there were limits to the power of a Judge to ask questions had escaped the attention of the learned Judge. Out of a total of 713 questions appearing in the transcript 293 are attributed to him. Not all those questions appear to be questions designed " to discover or to obtain proper proof of relevant facts ". Some of them were questions asked from the accused-appellant who gave evidence on his own behalf on matters of record in another proceeding against the accused-appellant's father-in-law without due proof of those matters. The accused was required to furnish an explanation for his conduct in not obtaining from his father-in-law the details about the cases against him for forgery or possession of counterfeit currency notes. The line of questioning followed by the learned Judge tended to show the accused-appellant in an unfavourable light and it is not unlikely that the jury inferred, from the fact that his father-in-law was involved in cases of forgery and possession of forged or counterfeit currency notes that the accused knew or had reason to believe that the notes which were in his possession were forged or counterfeit."

With the above judgments, this Court can come to the conclusion that the Judge has very wide powers of asking any question at any time, but the questions should not prejudice the accused person who has not had the benefit of a fair trial.

We are also mindful that our Courts have considered that there is a duty cast on the Judge to clear any doubt. Further, questions put by him aim to discover proper proof of relevant facts. The Judge has the power to intervene at any time by way of questions if he thinks it necessary to clear any doubts and he might ask further questions into the matters that he deems important. By putting a question, the Judge can observe their demeanor and form an opinion on whether the evidence is truthful in their testimony on the vital matters. However, that intervention should not be for one side. It should be fair to both sides. Further, the judge should avoid repetition. The main purpose of questioning is to clear the doubts and make up his mind where the truth lies.

Generally, our courts have held that the questions put forward by the judge should not be unfavorable to the Accused. At the end of the day, the Judge has to come to a conclusion whether the evidence placed was sufficient to prove the case.

In his written submission filed on 04.04.2025, the Accused has stated that the trial Judge himself asked a series of questions regarding the identification of the Accused.

When we peruse the evidence led on 19.09.2019, one of the questions asked by the Court is that (on page 95 of the brief), "මහත්තය එදා ගිහිල්ල හම්බවුන නිලධාරියා කව්ද කියල මතකද නම?". We observe that, when this question was asked, the witness had already mentioned the name of the Accused. Further, the Judge had asked questions about the place where the Accused and PW1 met. Another question was asked regarding Denzil after the witness informed the Court about him.

When we observe the questions asked by the Court, nothing new was revealed by the witness by answering such questions. In my opinion, those questions could have been avoided as those did not have any impact on the prosecution witnesses. We are also mindful that there were no leading questions asked by the Learned

Judge favouring the Prosecution. The Counsel for the accused had failed to establish that the questions asked by the Learned Trial Judge put the Accused in an unfavorable position. On the other hand, that he favours the prosecution to prove the guilt. I must say that most of the questions asked by the Learned Judge were repetitive and those could have been avoided. I hold that the questions asked by the Learned High Court Judge do not prejudice the Accused.

We further hold that the line of questioning adopted by the Learned High Court Judge indicates that either the witness had misunderstood the question put forward by the Prosecution Counsel, or that he needed a clear picture to ascertain the truth for him to come to a conclusion.

We hold that although the Learned High Court Judge had raised several questions, those questions do not create any doubt that the Accused was not given a fair trial.

We are mindful of Article 138 (1) of the Constitution, which reads as follows;

(1) "The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be 128[committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things 129[of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:

Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice."

This is an appeal where the Appellant has to satisfy this Court that the questions put forward by the Learned High Court Judge caused prejudice to the substantial rights of the Accused or occasioned a failure of justice.

The Accused had failed to establish that he was denied a fair trial from the questions asked by the Judge.

For the above-mentioned reasons, we dismiss the appeal and affirm the conviction.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL