

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

Director General  
Commission to Investigate Allegations of  
Bribery or Corruption  
**Complainant**

SC Appeal 23/2015

HC Colombo HC MCA 59/2009  
M C Colombo 95046/2001

Vs

1. Ukwatta Liyanage Colvin  
Chandrasiri Dias
2. Sangaralingam Navaratnam

**Accused**

**AND**

Ukwatta Liyanage Colvin Chandrasiri Dias  
1<sup>st</sup> Accused-Appellant

Vs

Director General  
Commission to Investigate Allegations of  
Bribery or Corruption

**Complainant-Respondent**

Hon. Attorney General

**Respondent**

**AND NOW BETWEEN**

Ukwatta Liyanage Colvin Chandrasiri Dias  
**Accused-Appellant-Appellant**

Vs

1. Director General  
Commission to Investigate Allegations of  
Bribery or Corruption

**Complainant-Respondent-Respondent**

2. Hon. Attorney General

**Respondent-Respondent**

Before : Eva Wanasundera PC,J  
Sisira J De Abrew J  
Anil Gooneratne J

Counsel : Udaya Bandara for the Accused-Appellant-Appellant.  
Sunethra Jayasinghe Deputy Director General Bribery  
Commission for the complainant-Respondent-Respondent  
No appearance for the Attorney General

Argued on : 24.11.2015

Written Submissions

tendered on : By the Accused-Appellant-Appellant on 28.5.2015

Decided on : 10.3.2016

**Sisira J De Abrew J.**

The Accused-Appellant-Appellant (herein after referred to as the accused-appellant) was charged in the Magistrate's Court of Colombo for soliciting and accepting Rs.500/- from Nawala Hettiarchchige Priyantha. The 1<sup>st</sup> and 2<sup>nd</sup> counts were based on Section 19(b) and 19(c) of the Bribery Act for soliciting Rs.500/- and the 3<sup>rd</sup> and 4<sup>th</sup> charges were based on Section 19(b) and 19(c) for accepting Rs.500/-. The 2<sup>nd</sup> accused was charged with aiding and abetting the 1<sup>st</sup> accused (the accused-appellant). The Learned Magistrate, after trial, convicted both accused on all the

counts and the accused appellant, on the 1<sup>st</sup> count, was sentenced to one year rigorous imprisonment (RI) suspended for ten years and to pay a fine of Rs.1500/- . On the 2<sup>nd</sup> count he was ordered to pay a fine of Rs.1500/-; on the 3<sup>rd</sup> count he was sentenced to a term of one year RI suspended for ten years and on the 4<sup>th</sup> count he was ordered to pay a fine of Rs.1500/-. The 2<sup>nd</sup> accused on each count was sentenced to pay a fine of Rs.1500/-. Being aggrieved by the said convictions and the sentences, both accused appealed to the High Court. The learned High Court Judge by his judgment dated 16.12.2011, dismissed both appeals. Being aggrieved by the said judgment of the learned High Court Judge, The 1<sup>st</sup> accused (the accused appellant) has appealed to this court. The 2<sup>nd</sup> accused did not appeal to this court. This Court by its order dated 13.1.2015 granted leave to appeal on the following questions of law.

1. Did the learned High Court Judge err in law when he failed to consider the error committed by the learned Magistrate when he stated that the accused must be found guilty because the defence had failed to show any contradictions in the evidence of the prosecution witnesses and thereby shifting the burden of proof on the accused?
2. Did the learned High Court Judge err in law when he failed to consider the adverse inference drawn by the learned Magistrate from the conduct of the complainant when he fled the scene after the detection which is irrational and unwarranted in law?

3. Did the learned High Court Judge err in law in affirming the conviction when the learned Magistrate had failed to properly consider and evaluate the entire evidence placed before him?

Facts of this case may be briefly summarized as follows: Nawala Hettiarchchige Priyantha (hereinafter referred to as Priyantha) who was a labourer attached to the Urban Veterinary Surgeon Department, on 20.10.2015 went and requested the accused appellant, Grama Sevaka of the area, to issue a certificate to be submitted to his Department for the purpose of obtaining a loan. The accused appellant after examining the application form informed him that the application had been wrongly filled. Priyantha took the application form back to his office and informed the clerk who filled it that it had been wrongly filled. The clerk however did not accept the said accusation. When Priyantha around 11.20 a.m. on the same day went back to the accused-appellant's office and informed him that it had been correctly filled, he again examined the application form. Thereafter the accused-appellant and the 2<sup>nd</sup> accused discussed the matter and the 2<sup>nd</sup> accused told Priyantha that he had to pay Rs.1000/- to the accused appellant to get the job done. When Priyantha told him that he did not have Rs.1000/- , the accused-appellant told him to bring Rs.500/- between 2.30 p.m. and 3.00 p.m. and that he would be present in his office. Priyantha thereafter informed the Bribery Commission and officers of the Bribery Commission organized a raid. Priyantha around 2.30p.m. on the same day went to the office of the accused-appellant with Police Constable Silva who acted as a decoy. The accused-appellant examined the application form and at this stage the 2<sup>nd</sup> accused who was the aide of the accused-appellant

requested the amount of money in order to issue the certificate. At this stage Priyantha got Rs.500/- from the decoy and gave it to the 2<sup>nd</sup> accused who put it in the drawer of the accused-appellant. At this time the accused-appellant was seated near his table. After Rs.500/- note was put inside drawer of the accused-appellant, the 2<sup>nd</sup> accused closed the drawer. Thereafter on a signal given by the decoy, IP Seneviratne Banda recovered the Rs.500/- note from the drawer of the accused-appellant and arrested both of them. PC Silva, in his evidence, corroborated Priyantha. Deelipa Sampath who went with Priyantha, in his evidence corroborates Priyantha with regard to the acts of solicitation by the accused-appellant.

The accused-appellant called one Somawathi to give evidence on his behalf. She in her evidence says that on 20.10.2005 she came to the office of the accused-appellant in order to attend to her National Identity Card. While she was in the office of the accused-appellant, she observed two people who were behaving in a suspicious manner in this office as if they had come to do some unlawful act. She then informed an Air Force Officer who too had come to meet the accused-appellant about the suspicious behavior of the said men. She saw one of them putting something to the drawer of the table of the accused-appellant. The accused-appellant could not see it as he was, at this time, turning his back to the table. Thereafter the accused-appellant sat on his chair and called her. Then some people came and arrested the accused-appellant. This was the summary of evidence of Somawathi. This witness knew the accused-appellant personally. But when the two people were behaving in a suspicious manner inside the office of the accused-appellant she who knew the accused-

appellant personally did not inform him. When the above matters are considered, I am unable to place any reliance on her evidence. Thus the learned Magistrate was correct when he rejected her evidence. Both the accused did not give evidence or make any dock statement.

When I consider the evidence led at the trial, I hold the view that the learned Magistrate has come to the correct conclusion. At this stage it is pertinent to consider the 1<sup>st</sup> question of law which is reproduced below.

“Did the learned High Court Judge err in law when he failed to consider the error committed by the learned Magistrate when he stated that the accused must be found guilty because the defence had failed to show any contradictions in the evidence of the prosecution witnesses and thereby shifting the burden of proof on the accused?”

I have gone through the judgment of the learned Magistrate but he has not made such an observation. He has, in his judgment, observed that the contradiction and omissions marked by the defence were not capable of damaging the prosecution case. He has therefore decided to accept the complainant's evidence. He has, after considering the evidence, accepted the prosecution case. I am unable to find fault with the judgment of the learned Magistrate. When I consider the above matters the necessity to answer the 1<sup>st</sup> question of law does not arise.

I have gone through the evidence of the case and I hold the view that the learned Magistrate had come to the correct conclusion. In my view there are no reasons to interfere with judgments of the learned Magistrate

and the learned High Court Judge. In view of the above conclusion reached by me, I answer the 2<sup>nd</sup> and 3<sup>rd</sup> questions of law in the negative.

For the aforementioned reasons, I affirm the judgments of the learned Magistrate and the learned High Court Judge and dismiss the appeal.

*Appeal dismissed.*

Judge of the Supreme Court.

Eva Wanasundera PC, J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.

