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

In the matter of an application in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No. SC Appeal No.138/19

Leave to Appeal No. SC(SPL) LA 132/2017

Court of Appeal Case No. CA 277/2007

Colombo High Court Case No. HC B 1384/2002

1. The Director General,
   Commission to Investigate Allegations of Bribery or Corruption,
   No.36, Malalasekara Mawatha,
   Colombo 07.

COMPLAINANT

-Vs-

1. D. B. Sugath Gnanasiri
   Kohelanwala,
   Madawela,
   Ulpatha, Matale.

ACCUSED

AND BETWEEN

1. D. B. Sugath Gnanasiri
   Kohelanwala,
   Madawela,
   Ulpatha, Matale.

ACCUSED-APPELLANT

Vs.

1. The Director General,
   Commission to Investigate Allegations
   of Bribery or Corruption,
   No.36, Malalasekara Mawatha,
   Colombo 07.

COMPLAINANT-RESPONDENT

AND NOW BETWEEN

1. The Director General,
   Commission to Investigate Allegations
   of Bribery or Corruption,
   No.36, Malalasekara Mawatha,
   Colombo 07.

COMPLAINANT-RESPONDENT-APPELLANT

Vs.

1. D. B. Sugath Gnanasiri
   Kohelanwala,
   Madawela,
   Ulpatha, Matale.

ACCUSED-APPELLANT-RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
KUMUDINI WICKREMASINGHE, J. AND
ACHALA WENGAPPULI, J.

COUNSEL: Azard Navavi, SDSG (now appointed Additional Solicitor General and President's Counsel) for the Complainant-Respondent-Appellant.

Rienzie Arsecularatne, PC with Chamindri Arsecularatne, Thilina Punchihewa, Udara Muhandiramge and Pasindu Gamage for the Accused-Appellant-Respondent.

WRITTEN SUBMISSIONS: Complainant-Respondent-Appellant on 02nd August 2019
Accused-Appellant-Respondent on 5th September 2023
Complainant-Respondent-Appellant on 11th July 2025

ARGUED ON: 30th August 2024

DECIDED ON: 22nd January 2026

THURAIRAJA, PC, J.

1. The instant case is an appeal from the judgment of the Court of Appeal dated 05th May 2017, whereby the judgment of the High Court of Colombo, dated 12th September 2012, which found the Accused-Appellant-Respondent guilty of several charges under the *Bribery Act No. 2 of 1965,* was set aside.

FACTUAL MATRIX

2. The Complainant-Respondent-Appellant in the instant case, the Director General of the Commission to Investigate Allegations of Bribery or Corruption (hereinafter the "Appellant"), filed an indictment containing eight charges in the High Court of Colombo

against D.B. Sugath Gnanasiri, the Accused-Appellant-Respondent (hereinafter the "Respondent").

3. The Respondent was the *Grama Niladari* of No.155A, Sirisangabo Grama Niladari Division at the material time—a post which falls within the meaning of the "public servant" in terms of Section 90 of the *Bribery Act*.

4. Pursuant to a complaint made by the Virtual Complainant—who was also the 1st prosecution witness in the High Court case (hereinafter PW1)—the Appellant had conducted a successful raid and arrested the Respondent for soliciting and accepting gratification from the said Virtual Complainant to issue a recommendation report for the purpose of an application to register a business name. Three officers attached to the Bribery Commission had participated in the said raid, whilst one of them acted as the decoy with PW1. It was following this arrest that the Respondent had been indicted before the High Court, as forementioned.

5. The charges contained in the said indictment against the Respondent are as follows:

   i. *That on the 06th January 1998, in Polonnaruwa, he, being a public servant, namely a Grama Niladhari, solicited a gratification of Rs. 5,000/- from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report for an application for registration of a business name, an offence punishable under Section 19(b) of the Bribery Act.*

   ii. *That at the same time, place and in the course of the same transaction, he, being a public servant, namely a Grama Niladhari, solicited a gratification of Rs. 5,000/- from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report for an application for registration of a business name, an offence punishable under Section 19(c) of the Bribery Act.*

iii. *That at the same time, place, and in the course of the same transaction, he, being a public servant, namely a Grama Niladhari, accepted a gratification of sum of Rs. 3,000 from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report to an application for registration of a business name, an offence punishable under Section 19(b) of the Bribery Act.*

iv. *That at the same time, place, and in the course of the same transaction, he, being a public servant, namely a Grama Niladhari, accepted a gratification of Rs. 3,000 from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report to an application for registration of a business name, an offence punishable under Section 19(c) of the Bribery Act.*

v. *That during the period from 06th January 1998 to 18th February 1998, at Polonnaruwa, he, being a public servant, namely a Grama Niladhari, accepted a gratification of Rs. 1,000 from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report for an application for registration of a business name, an offence punishable under Section 19(b) of the Bribery Act.*

vi. *That during the same time period referred to in the 5th count, at Polonnaruwa, he, being a public servant, namely a Grama Niladhari, accepted a gratification of sum of Rs. 1,000/- from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report to an application for registration of a business name, an offence punishable under Section 19(c) of the Bribery Act.*

vii. *That on or around 18th February 1998 at Polonnaruwa, he being a public servant namely a Grama Niladhari accepted a gratification of sum of Rs. 1,000/- from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report to an application for registration of a business name, an offence punishable under Section 19(b) of the Bribery Act.*

viii. That during the same period referred to in the 7th count, at Polonnaruwa, he being a public servant namely a Grama Niladhari accepted a gratification of sum of Rs. 1,000/- from Keerakotuwe Gedara Rohan Wijenayake for giving a recommendation report to an application for registration of a business name, an offence punishable under Section 19(c) of the Bribery Act.

6. The Respondent pleaded "not guilty" following the arraignment of charges, and the case was accordingly fixed for trial. During the trial, the prosecution led 6 witnesses, and the Respondent made a dock statement.

7. Subsequent to the trial, the learned High Court Judge convicted the Respondent on 1st, 3rd, 5th, and 7th counts and sentenced him to four years of rigorous imprisonment for each count to serve concurrently and ordered a fine of Rs. 2500/- for each count with a default sentence of one year imprisonment. The learned judge further ordered to recover the bribe received by the Respondent, Rs. 5000/-, as a fine with a default sentence of six months imprisonment.

8. Being aggrieved by the above decision, the Respondent appealed to the Court of Appeal. The Court of Appeal considered, *inter alia,* the following arguments, canvassed on behalf of the Respondent:

    a. That the learned High Court Judge has failed to evaluate or take into consideration the infirmities of the case for the prosecution; and

    b. That the learned High Court Judge has failed to consider the major contradictions that existed between the evidence of PW1, the Virtual Complainant, and the officers of the Bribery Commission who participated in the raid.

9. While holding that the High Court had erred in its finding that the case for the prosecution was proven beyond reasonable doubt, the Court of Appeal has further found the following, among other things:

    a) That there are major contradictions between the prosecution witnesses;

    b) That the said contradictions were substantial and affect the credibility of the prosecution witnesses;

    c) That the said contradictions shake the very foundation of the prosecution's case as it raises questions as to the way the raid has been conducted; and

    d) That the learned trial Judge has failed to address his mind on the effect of said contradictions.

10. Accordingly, the appeal was allowed, and the Respondent was acquitted of all counts by the Court of Appeal.

11. The Appellant then preferred the instant appeal before this Court by Petition of Appeal dated 14th June 2017, and leave to appeal was granted on the following questions of law.

    a. Did the Court of Appeal err in acquitting the Accused-Appellant-Respondent from counts 1, 3, and 5 of the indictment by failing to consider the evidence led in support of those counts?

    b. Did the Court of Appeal fail to consider that the Accused-Appellant-Respondent in his dock statement admitted the physical acceptance of Rs. 1000/-?

12. The Appellant argues that said contradictions are not of a substantial nature and that PW1's testimony cannot be rejected in its entirety on that basis. Accordingly, the contention of the Appellant in the instant appeal was that the contradictions highlighted by the Court of Appeal did not affect the case for the prosecution.

13. The Respondent's contention throughout had been that the Appellant carried out the raid on false information provided by the PW1 in bad faith and that he never solicited or accepted any gratification from the PW1. The Respondent further contends that the aforementioned contradictions are fatal to the prosecution's case and that the prosecution has accordingly failed to prove its case beyond reasonable doubt.

ANALYSIS

14. In the instant case, as previously noted, the Respondent had been arrested during a raid conducted by a team of three officers attached to the Bribery Commission pursuant to a complaint by PW1.

15. The Prosecution relied on the testimony of PW1 and the testimonies of W. M. W. Munasinghe, the Divisional Secretary of Thamankaduwa (PW4), Ruwan Prasanna Fernando, the Assistant Manager of Seylan Bank-Polonnaruwa (PW5) and W. H. M. Ashoka Malani Jayasinghe, the Clerk of the Divisional Secretariat of Polonnaruwa (PW6), to establish the 1st to 4th charges.

16. In addition to the above, in order to establish the 5th to 8th charges, the Prosecution relied upon the testimonies of two officers who participated in the raid (PW2 and PW3) to corroborate the testimony of PW1, the Virtual Complainant.

17. During the trial, while the Prosecution witnesses testified that the Respondent accepted money during the raid,[1] their statements as to where the other officers participating in the raid were positioned at the Virtual Complainant residence are, in fact, contradictory *inter se* to a certain degree.[2]

[1] Marked "X2" pg 57,58 attached to the Petition dated 17th June 2017

[2] Marked "X2" pg 86 attached to the Petition dated 17th June 2017

Did the Court of Appeal err in acquitting the Respondent of Counts 1, 3, and 5 of the Indictment?

18. As stated above, the 1st to 4th counts were established by the Prosecution relying solely on the testimonies of PW1, PW4, PW5, and PW6. The testimonies of the officers of the Bribery Commission were not relied upon to establish the said charges.

19. As contended by the Complainant-Respondent-Appellant in their written submissions dated 11th July 2025, the above counts have no direct connection to the raid conducted.

20. The Court of Appeal, however, has found that the contradictions *inter se* the Virtual Complainant (PW1) and the raiding officers (PW2, PW3) shed light upon the credibility of the testimony of the Virtual Complainant (PW1), resulting in the finding that the said witness cannot be considered a credible witness.

21. In ***Fraad v. Brown & Company Limited***,[3] the Privy Council stated that,

> *"It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because the Courts of Appeal recognize the priceless advantage which a judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance."*

22. As opined by Sisira de Abrew, J. for the Court of Appeal (as His Lordship was then) in the case of ***Dharmasiri v. Republic of Sri Lanka***,[4]

[3] 20 NLR 282, at p. 283

[4] [2010] 2 Sri L.R. 241, at p. 246

"Credibility of a witness is mainly a matter for the trial Judge. Court of appeal will not lightly disturb the findings of trial Judge with regard to the credibility of a witness unless such findings are manifestly wrong. This is because the trial Judge has the advantage of seeing the demeanour and deportment of the witness..."

23. As observed in ***Alwis v. Piyasena Fernando***,[5] *"[i]t is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal..."*

24. As held in ***Renuka Subasinghe v. Attorney-General***,[6]

"It is well established that findings of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed on appeal. The findings of this case are based largely on credibility of witnesses. An appellate court can and should interfere even on questions of facts although those findings cannot be branded as "perverse" unless the issue is one of credibility of witnesses keeping in mind that the trial Judge is better equipped to adjudicate on facts as the trial judge is the one who has the priceless advantage and the privilege of observing the demeanour and the deportment of the witnesses."

25. In ***State of Uttar Pradesh v. Anthony***[7], D.A. Desai, J. opined that,

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to

[5] [1993] 1 Sri L. R. 119, at p. 122

[6] [2007] 1 Sri L.R. 224, at p. 231- 232 (CA)

[7] 1985 AIR 48 (SC) [10]

scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief…"

26. The above position, often cited by courts sitting in appeal, I must observe, is a generally sound proposition of law in spite of whether the matter is of civil or criminal in nature. However, needless to explain, in criminal matters, it is a principle that applies with some vigour, as any conviction or acquittal is generally dependent upon the credibility of witnesses.

27. In the instant case, the contradictory statements referred to by the Court of Appeal relate to the placement of the raiding officers who participated in the raid. As per the Virtual Complainant (PW1), IP Liyanarachchi (PW3) and the other raiding officer took positions inside the Virtual Complainant's house. In contrast, as per PW2 and PW3, the said officers were positioned outside the Virtual Complainant's house and only entered the said house after the decoy (PW2) signalled them to arrest the Respondent.

28. However, the learned Senior Deputy Solicitor General contends that the said discrepancy on the placement of the raiding officers at the time of the raid has no impact on the 1st, 3rd, and 5th counts, and, moreover, he contends that this contradiction is not one that discredits the entirety of the Virtual Complainant's (PW1) testimony with regards to the said counts.

29. As this Court has constantly held, an appellate court should not interfere with the Trial Judge's findings, with regard to the credibility of the witnesses, unless it transpires a manifest lack of credibility of the witnesses or if the finding of the Trial Judge is so clearly

perverse. Where it becomes necessary to consider the credibility of witnesses, especially with reference to purported contradictions, omissions or the like, the court must do so pragmatically, keeping in mind that it is in the human nature to forget, misspeak and err, particularly with the passage of time.

30. As P.R.P. Perera, J. observed in ***Samaraweera v. The Attorney-General,***[8] with reference to the maxim *falsus in uno falsus in omnibus* [he who speaks falsely on one thing will speak falsely upon all],

> *"Where however the maxim set out above is applicable it must be borne in mind that all falsehood is not deliberate. Errors of memory, faulty observation or lack of skill in observation upon any point or points, exaggeration or mere embroidery or embellishment must be distinguished from deliberate falsehood. Nor does it apply to cases of testimony on the same point between different witneses. (Vide The Queen v. Julis (1) C. C. A .).*
>
> *In any event this maxim is not an absolute rule which has to be applied without exception in every case where a witness is shown to have given false evidence on a material point. When such evidence is given by a witness the question whether other portions of his evidence can be accepted as true may not be resolved in his favour unless there is some compelling reason for doing so.*
>
> *As contended for by Counsel, even if this maxim is applicable in the present case, I am unable to agree with the contention that credibility of witnesses could not be treated as divisible and accepted against one and rejected against another."*

31. As held by F. N. D. Jayasuriya , J., in ***Wickremasuriya v. Dedoleena and Others***,[9]

[8] [1990] 1 Sri L.R. 256, at p. 260-261 (CA)

[9] [1996] 2 Sri L.R. 95, at p. 107 (CA)

"…After a considerable lapse of time, as has resulted on this application, it is customary to come across contradictions in the testimony of witnesses. This is a characteristic feature of human testimony which is full of infirmities and weaknesses especially when proceedings are held long after the events spoken to by witnesses; a judge must expect such contradictions to exist in the testimony. The issue is whether the contradiction or inconsistency goes to the root of the case or relates to the core of a party's case. If the contradiction is not of that character, the court ought to accept the evidence of witnesses whose evidence is otherwise cogent, having regard to the Test of Probability and Improbability and having regard to the demeanour and deportment manifested by witnesses. Trivial contradictions which do not touch the core of a party's case should not be given much significance, specially when the 'probabilities factor' echoes in favour of the version narrated by an applicant…"

32. Clearly, our law assesses the credibility of witnesses very practically. However, it is by no means a feature only known to our law.

33. The case of ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat***,[10] held that, *"Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be given too much* importance."

34. In ***State of Uttar Pradesh v. M. K. Anthony***[11] it was held that,

"Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit

[10] AIR 1983 SC 753

[11] AIR 1985 SC 48

rejection of the evidence as a whole. … Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals…"

35. Considering the aforementioned authorities, I am in agreement with the contention of the learned Senior Deputy Solicitor General that the said contradictions considered by the Court of Appeal are insufficient to completely refute the credibility of PW1.

36. In the circumstances where the material fact to be proven was the acceptance of the money offered, for which all the witnesses maintained a consistent position, the said contradiction is only a trivial fact which by no means shakes the case for the prosecution. Accordingly, I take the view that the decision of the Court of Appeal to interfere with the findings of the Trial Judge with regard to the 1st and 3rd charges was unwarranted. Accordingly, I answer the first question of law in the affirmative.

Did the Court of Appeal fail to consider that the Respondent in his dock statement admitted the physical acceptance of Rs. 1000/-?

37. Upon careful perusal of the Respondent's dock statement, it is apparent that although he does not admit to accepting a 'bribe', he does acknowledge having received the money offered by the Virtual Complainant.

38. It is my considered view that a public officer should not accept any amount of money in respect of a duty performed within his official capacity, unless duly authorised to do so.

39. As was discussed in detail above, whereas the charges against the Respondent have been established through the Prosecution Witnesses beyond reasonable doubt, I see no merit in dealing with the second question of law in detail at this juncture.

40. Hence, I answer the second question of law in the affirmative.

CONCLUSION

41. Considering the foregoing reasons and the answers given above to the two questions of law, the Appeal is allowed. The Judgment of the Court of Appeal is set aside, and the conviction of the Respondent by the High Court on the 1st, 3rd and 5th counts are affirmed.

42. The sentence by the High Court is accordingly reinstated with respect to the above counts. The Accused-Appellant-Respondent is hereby sentenced to four years of rigorous imprisonment for each count, the 1st 3rd and 5th to serve concurrently and is ordered to pay a fine of Rs. 2500/- for each count, with a sentence of one-year rigorous imprisonment in the event of default.

43. The bribe of Rs. 5000/- received by the Accused-Appellant-Respondent shall also be recovered as a fine, with sentence of six months' rigorous imprisonment in the event of default.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT