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

In the matter of an Appeal under and in terms of section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with Article 128 of the Constitution.

Director General,
Commission to Investigate Bribery and Corruption,
No. 36, Malalasekara Mawatha,
Colombo 07.

Complainant

SC. Appeal. No. 160/2017
Supreme Court (SPL) LA Application No: 177/2016
HC (Colombo) Case No: HC MCA 43/2014
Magistrate's Court Colombo 5940/01/12

Vs.

Munasinghe Mudalihamy Koralage Dissanayake
No. 50, Galkuruliya North,
Adigama.

Accused

And

Munasinghe Mudalihamy Koralage Dissanayake
No. 50, Galkuruliya North,
Adigama.

Accused – Appellant

Vs.

1. **Director General**
   Commission to Investigate Bribery and Corruption,
   No. 36, Malalasekara Mawatha,
   Colombo 07.

Complainant – Respondent

2. **Honourable Attorney General**
   Attorney General's Department,
   Colombo 12.

Respondent

AND NOW BETWEEN

Munasinghe Mudalihamy Koralage Dissanayake
No. 50, Galkuruliya North,
Adigama.

Accused – Appellant – Appellant

Vs.

1. **Director General**
   Commission to Investigate Bribery and Corruption
   No. 36, Malalasekara Mawatha,
   Colombo 07.

   Complainant – Respondent – Respondent

2. **Honourable Attorney General**
   Attorney General's Department,
   Colombo 12

   Respondent – Respondent - Respondent

BEFORE : **S. THURAIRAJA, PC, J.**
YASANTHA KODAGODA, PC, J.
ARJUNA OBEYESEKERE, J.

COUNSEL : Anil Silva, PC with Amaan Bandara for the Accused – Appellant – Petitioner - Appellant.
Azad Navavi, Senior Deputy Solicitor General for the Respondent – Respondent – Respondent.

ARGUED AND DECIDED ON : 21st November 2023

YASANTHA KODAGODA, PC, J.

This Judgment relates to an Appeal arising out of a judgment delivered by the High Court of Colombo exercising its Appellate jurisdiction in respect of a judgment and sentence pronounced by the Magistrate's Court of Colombo.

Following an Application seeking *Special Leave to Appeal* having been supported before this Court on 08.08.2017, this Court had been pleased to grant *Special Leave to Appeal* founded upon four questions of law contained in paragraph 13 of the Amended Petition dated 01.06.2017.

However, when this matter was taken up this morning for hearing, learned President's Counsel for the Appellant submitted that in view of the striking similarities as well as the overlap contained in the afore-stated four questions of law, ends of justice would be met if this Court were to consider consolidating the said questions of law and formulating the following question:

> "*Does the evidence led at the trial prove beyond reasonable doubt that the Accused – Appellant – Appellant had committed the offences he has been found 'guilty' of having committed?"*

Learned Senior Deputy Solicitor General representing the Complainant - Respondent – Respondent Director General of the Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as 'the CIABOC') agreed with the said proposal.

On a consideration of the questions of law in respect of which leave has been granted, this Court arrived at the finding that as suggested by learned President's Counsel for the Appellant, for the purpose of determining this Appeal, addressing the afore-stated composite question of law would suffice to ensure the delivery of justice.

In this matter, the Director General of the CIABOC had instituted criminal proceedings in the Magistrate's Court of Colombo against the Accused – Appellant – Appellant alleging that he had committed four offences. These offences are those contained in sections 19 (b) and 19 (c) of the then Bribery Act, and relates to two instances of solicitation and acceptance of a Bribe of Rupees Two Thousand (Rs. 2,000/=).

Furthermore, a consideration of the charge sheet reveals that both the afore-stated alleged solicitation and acceptance had related to a single instance where the virtual complainant in the case named Marasinghe Arachchige Dudly had sought the official services of the Accused who was the Grama Niladari of 611 D, Mahasembakkuliya Gramasevaka Zone, for the purpose of obtaining an endorsement which if given would have enabled him to have his

name duly entered in an official register depicting that he had become the permit holder of a state land which had previously been issued in favour of his late mother.

The prosecution's case is that Marasinghe Arachchiage Dudly had met with the Accused Grama Niladari of the area in which the afore-stated state land was situated, and had informed him that the permit holder of that land was his late mother, that she had passed away, and that therefore it had become necessary for him who was the 'nominee successor' of the permit held by his late mother to be formally recognised as the new permit holder.

In the circumstances, he requested an endorsement to be issued by the Accused Grama Niladari on the relevant document for the purpose of enabling him to meet with the Divisional Secretary of the relevant area to have his name formally entered in the 'permit register'.

The evidence of the virtual complainant is that the Accused Grama Niladari required him to produce certain documentation to attend to this matter, such as the Birth Certificate and the Death Certificate of the deceased mother. Accordingly, the virtual complainant had met with the Accused Grama Niladari together with the relevant documentation on a couple of occasions and the Accused Grama Niladari did not diligently attend to his matter notwithstanding the availability of the required documentation. On 04.01.2010, the Accused Grama Niladari solicited a bribe of Rs. 2,000 for the purpose of attending to the requirement of the virtual complainant. That instance of solicitation of a bribe, the prosecution submitted serves as the evidential basis for counts 1 and 2 of the charge sheet.

The virtual complainant has further testified that consequent to this incident, he telephoned the CIABOC and conveyed to the Commission information relating to the afore-stated instance of solicitation of the bribe. Thereafter, officials of the Commission had come and met him, interviewed and recorded his statement. As is customary in this type of instance, the officials of the Commission had set up a raid at which one officer of the Commission namely, Police Sergeant Guluwita was to act as the Decoy pretending to be one 'Sunil' the brother-in-law of the virtual complainant, and for another officer of the Commission namely Sub–Inspector Livera to be the Detection Officer cum Investigation Officer.

The position of the prosecution was that on 13.01.2010 the virtual complainant and Sergeant Guluwita had proceeded to the office of the Accused – Appellant while Sub-Inspector Livera had along with certain other officers of the Commission come up to the compound in which the office of the Accused Grama Niladari was situated and discreetly waited.

Thereafter, the virtual complainant had met the Accused who was seated at his office in front of his table and handed over the documentation, and requested that the necessary

endorsement be made. The Decoy Guluwita had been introduced as being the brother-in-law of the virtual complainant. Having partly attended to processing the Application of the virtual complainant, the Accused – Appellant is said to have re-solicited the bribe. Then, the as the virtual complainant attempted to hand over to the Accused Grama Niladari an envelope to which officials of the Commission had previously inserted Rs. 2,000, the Accused had handed over to the virtual complainant an envelope that he had with him to which the Accused required the virtual complainant to put the money. At that time the Accused was standing away from a location of the table. The virtual complainant walked a few feet away to end of the same room, took the money out of the envelope that was previously given to him by the Commission, showed the currency notes to the Accused by swinging it, and then placed the currency notes into the envelope given by the Accused, and brought it back. Having come near the table, he had tendered the envelope to the Accused – Appellant. The Accused – Appellant had accepted it and placed the envelope under a sheet of paper which was on top of the table.

There is a divergence in the testimony of the two witnesses at this stage. The position of the virtual complainant is that the envelope containing currency notes was placed by the Accused – Appellant under a sheet which was towards the end of the table. The position of Guluwita is that the Accused – Appellant had accepted the envelope containing the money, placed it under a sheet of paper which was on a cabinet located immediately next to the table.

Soon after the Accused accepted the envelope, a beckoning signal had been discreetly given by Guluwita which trigged off Sub – Inspector Livera along with certain other officers of the Commission to rush into the office room, and then ascertaining from the Decoy as to where the money was, and based on the information given, recovering the envelope containing the money.

The remaining part of the narrative of the prosecution relates to mere formalities pertaining to the raid and the investigation.

The virtual complainant Marasinghe Arachchiage Dudly, Sergent Guluwita and Sub – Inspector Livera were the key witnesses who testified for the prosecution.

Following the learned Magistrate having called for the defense, the Accused – Appellant opted to make a Dock Statement. The Dock Statement as it is to be expected contained a denial of both the instance of solicitation and acceptance of the bribe. However, the Accused admitted that the virtual complainant did seek his assistance relating to the matter pertaining to the land permit. He admits that the virtual complainant was asked by him to bring certain documents to attend to his matter, and that there were several previous visits by the virtual complainant. As regards the day on which he was arrested, the position contained in the

Dock Statement of the Accused – Appellant is that the virtual complainant and another person came to his office and handed over to him the relevant documentation. He started attending to the requirement of the virtual complainant. While he was attending to the matter, another officer (ostensibly a reference to Livera) came in, and demanded from him to handover the two thousand rupees that was accepted by him to attend to an official matter. At that stage, he had nothing to give because he had not accepted any money. The virtual complainant took out an envelope from his shirt pocket and handed it over to the police officer (Livera), and at that stage the police officer scolded the virtual complainant. Afterwards, he was arrested by officers of the CIABOC. He denied having solicited or accepted a bribe from the virtual complainant.

Learned President's Counsel for the Accused-Appellant submitted that due to the following reasons, both the learned Magistrate as well as the learned Judge of the High Court had not satisfied themselves whether the prosecution had proven its case beyond reasonable doubt and whether the dock statement of the Accused gave rise to, at the minimum, a reasonable doubt regarding the case of the prosecution.

First, he submitted that there exists a contradiction inter-se between the testimony of the virtual complainant and the testimonies of Guluwita and Livera as to where the money following its acceptance by the Accused was kept: whether it was kept under a sheet of paper on the table towards the edge of the table, or under a sheet of paper on top of a cabinet which was located next to the table.

In response to the afore-stated submission, learned Senior Deputy Solicitor General submitted that the evidence discloses that the cabinet referred to by the learned President's Counsel was immediately next to the table and its top was at the same elevation of the surface of the table. Therefore, he submitted that the difference in testimony between the witnesses can be attributed to a very natural factor of the virtual complainant not having either correctly observed or correctly recalled the exact location where the envelope was kept. He submitted that due to the lapse of time between the incident and the trial in Magistrate's Court, this type of variation is to be expected. He submitted further that the correct position of the prosecution is that following its acceptance, the envelope containing the money was kept by the Accused under a sheet of paper on top of the cabinet which was immediately adjacent the table.

It is the view of this Court that the position advanced in this regard by the learned Senior Deputy Solicitor General is quite plausible. It is to be noted that unlike the two officers of the Commission who had soon after the raid, while the events of the day were still fresh in their minds made notes relating to the raid and the detection (referred to as 'contemporaneous notes'), and had recourse to such notes to refresh their memory (permissible under section

159 read with 160 of the Evidence Ordinance), the virtual complainant had nothing to aid him to recollect what exactly happened over seven years ago. In the circumstances, this Court is of the view that the afore-stated purported contradiction *inter-se* does not give rise to a reasonable doubt regarding the case for the Prosecution. In this regard, this Court wishes to be guided by a recent pronouncement of this Court in ***Sivathasan vs The Attorney General*** *[(2021) 2 Sri L.R. 290 at pp. 304, 305, 313],* where in the Court observed the following:

> *"As regards the standard of proof to be satisfied in a criminal case, there is no doubt that the prosecution must prove its case beyond reasonable doubt. However, one must take a realistic and pragmatic view of what can be reasonably expected of a prosecution. It is important in my view to bear in mind that a prosecution cannot be expected to prove its case to a degree of mathematical accuracy or scientific certainty. The degree of accuracy and certainty that a prosecution can be reasonably expected to satisfy is much less. That is quite natural, as prosecutions have to rely primarily on human testimony, which is subject to inherent frailties associated with human observations, memory, recollection, and verbal articulation through oral testimony. …*
>
> *A reasonable doubt is a real or actual and a substantial doubt, as opposed to an imaginary or flimsy doubt that may arise in the mind of the decider of facts (judge or the jury, as the case may be), following an objective consideration of all the attendant facts and circumstances. It is a doubt founded on logical and substantial reasoning (well-founded) which a normal prudent person with not less than average intelligence and learnedness in men, matters and worldly affairs would naturally and inevitably develop in his mind following a comprehensive, objective, independent, impartial and neutral consideration of the totality of the evidence and associated attendant circumstances. It is a doubt that makes the case for the prosecution significantly less probable to have occurred than in the manner purported to have occurred.*
>
> *A reasonable doubt is not the type of doubt that arises due to incorrect, abnormal or unreasonable comprehension of testimonies and other material which amount to evidence presented at the trial, or due to irrational fear, inappropriate sympathy, or unjustifiable mercy. It is not a doubt that develops in the mind of an imbecile, indecisive or timid persons, or in a weak or vacillating mind. A shadow of a doubt, an imaginary doubt, a vague doubt or a speculative or trivial doubt should not be confused with a reasonable doubt. A reasonable doubt is not a doubt that a partisan individual with vested interests would entertain in his mind, or a doubt that such a person would advocate that purportedly exists."*

In view of the foregoing, I conclude that the difference in the narratives of the incident as provided by the virtual complainant on the one hand and the decoy and the detection officers on the other hand as regards the exact location at which the envelope containing the money

was kept, is not a significant inconsistency *inter-se* which penetrates into the core (root) of the case of the prosecution, and therefore does not affect the credibility and the testimonial trustworthiness of any of the three witnesses. Therefore, I hold that on that ground, a reasonable doubt does not arise regarding the case for the prosecution.

The second ground urged on behalf of the Accused-Appellant related to the consideration of the Dock Statement made by him. Learned President's Counsel for the Accused-Appellant submitted that both the learned Magistrate as well as the learned Judge of the High Court had failed to give proper consideration as required by law to the contents of the Dock Statement prior to rejecting it. He submitted that the Dock Statement made by the Accused should not have been rejected, and that the Dock Statement gave rise to a reasonable doubt regarding the case for the prosecution.

This Court wishes to observe that, as the law prevails to date, an Accused does have an entitlement at a criminal trial to choose (i) to remain silent, (ii) to give evidence under oath from the witness box, (iii) to make an unsworn statement from the Dock, or (iv) either or in addition or in the alternative to (i), (ii) & (iii), present oral evidence through other witnesses, present documentary evidence, and/or present technical evidence (i.e. contemporaneous audio – visual recordings and computer evidence). Thus, indeed in terms of the prevailing law, the Accused was certainly entitled to have made a Dock Statement. That is not in dispute.

Be that as it may, it is necessary for Court to view a Dock Statement from the governing objectives of the administration of justice, and in particular administration of criminal justice. The governing objective of the administration of criminal justice is to facilitate the conviction and imposition of punishment on persons who have committed offences, and in case due to a failure in the system, a person who has not committed an offence has been accused of having committed an offence, to facilitate his acquittal. Indeed, these two objectives are to be achieved while upholding the rule of law and the salient features expected from any civilised criminal justice system which would include *a fair and lawful trial*. Interpretation of provisions relating to law relating to criminal justice as well as an appreciation of evidence must necessarily be in consonance with achieving the afore-stated objectives of criminal justice which objectives are necessarily in public and national interest. Failure to do so would frustrate the very objectives of criminal justice system, and would render a situation where the people will lose faith in the criminal justice system and make the society unsafe. It is necessary for judges who are called upon to administer criminal justice to keep this in mind.

Indeed, a person accused of having committed an offence has an unfettered right to remain silent. That means there can be no compulsion on an accused person to incriminate himself or to give evidence which is exculpatory in nature. Be that as it may, an Accused also has the

entitlement to give evidence under oath from the witness box. If at a time when the Accused is being ably defended by counsel, he opts to make a Dock Statement which is an unsworn statement from the dock, in my view, a pragmatic and a realistic approach to criminal justice should necessitate the court to consider *inter-alia* as to why the Accused had opted to make a Dock Statement. The reasons are obvious. They are, (i) unwillingness to take an oath or affirmation before commencing to give evidence, (ii) unwillingness to face cross-examination, (iii) to prevent the contents of the Dock Statement being compared and contrasted during cross-examination with other exculpatory statements and admissible inculpatory statements.

Thus, while it is necessary to assess the credibility of the Accused and the testimonial trustworthiness that may be attributed to the testimony contained in a Dock Statement, when doing so, the trier of facts (the judge or the jury, as the case may be) must keep in mind the afore-stated factors which had prompted the Accused to make the Dock Statement. While the contents of a Dock Statement should indeed be treated as 'evidence', it is necessary to bear in mind that the evidential weight that may be attached to a Dock Statement is much less than the weight that may be attached to evidence given under an oath or affirmation.

In this case, when the officer of the Commission testified regarding the recording of the statement of the Accused – Appellant, no suggestions were made that his statement was fabricated or that all what the Accused said was not included in the statement that was recorded. In the circumstances, in my view, a question that looms large in the mind of any reasonable Judge should be, as to why the Accused opted to make a Dock Statement and thereby prevent the prosecutor from cross-examining him based on the contents of his statement made during the course of the investigation.

The second aspect with regard to a Dock Statement of an Accused is that, particularly in the light of the compelling case presented by the Prosecution, whether the position of the Accused contained in the Dock Statement is inherently probable. As analysed, considered and concluded by both the learned Magistrate and the learned Judge of the High Court, the position of the Accused-Appellant contained in the Dock Statement is inherently improbable. That is due to the reason that, if in fact officers of the Commission were motivated to fabricate a case against the Accused as he claims to have happened in this instance, there would have been no reason as to why the officers of the Commission would have waited till the Accused concluded attending to the requirement of the virtual complainant, in order to rush into the room of the Accused and demand that the money be returned. In fact, if there was collusion between the virtual complainant and officers of the Commission, it is highly improbable that when Inspector Livera asked for the money from the Accused, the virtual complainant would have, taken out the money from his pocket and handed it over to him.

This Court has carefully considered the contents of the Dock Statement of the Accused – Appellant and the corresponding portions of the impugned Judgments of the learned Magistrate and the learned Judge of the High Court containing consideration of the Dock Statement. Both from the perspective of assessment of credibility as well as assessment of testimonial trustworthiness, it is the view of this Court that both learned Judges have duly and fairly considered the contents of the Dock Statement in the light of the other evidence of the case for the prosecution, and justly decided to reject the said Dock Statement.

Once the Dock Statement of the Accused is rejected, it is necessary to revert back to the case for the Prosecution and see whether a reasonable doubt arises from the case for the prosecution and whether the Prosecution has proven its case beyond reasonable doubt. For the reasons previously stated, it is the view of this Court that such a reasonable doubt does not arise. Further, this Court is satisfied that the Prosecution has proven its case beyond reasonable doubt. In the circumstances, this Court answers the sole question of law in respect of which leave has been granted in the following manner:

> "*The prosecution has proved beyond reasonable doubt the case against the Accused – Appellant. In the circumstances the conviction of the Accused – Appellant must stand*".

This Court has also considered the sentence imposed on the Accused – Appellant. Though the learned Magistrate had found the Accused – Appellant '*guilty*' of having committed all four offences contained in the four counts, he had deemed it appropriate to impose punishment only with regard to the two counts arising out of the offences contained in section 19(b) of the Bribery Act. As regards those two offences, the learned Magistrate has imposed a term of six (6) months imprisonment and a fine of Rupees One Thousand Five Hundred (Rs. 1,500/=) together with a penalty of Rupees Two Thousand (Rs. 2,000/=). The Court has directed that the two terms of imprisonment should run consecutively.

Learned President's Counsel for the Accused – Appellant pleaded in mitigation of the sentence imposed on the Accused – Appellant on the basis that the Accused is a first-time offender. Learned Senior Deputy Solicitor General for the Respondent submitted that particularly in view of the fact that bribery and corruption are highly prevalent in Sri Lankan society, the sentence should serve as a deterrence. Therefore, he submitted that this Court should refrain from reducing the severity of the sentence. The view of this Court coincides with that of the learned Senior Deputy Solicitor General. Persons found '*guilty*' of having committed offences of bribery and corruption must be dealt with as severely as the law provides for. There cannot be any sympathy shown towards such convicts, particularly because of the very serious impact committing of such offences has on the interests of the public and the country. At grass-roots level (as in this case) bribery and corruption by the lower rungs of the public service causes inconvenience to the public, and affects the organised manner of the delivery of the services of the government to the people and public

administration. At higher levels of governance, bribery and corruption have more serious consequences which adversely affect policy formulation, decision-making, integrity of governance, macro-economic development, investor confidence and the reputation of the country. The integrity of governance is shaken by bribery and corruption at its very core. In fact, unless incidents of bribery and corruption is strictly controlled, if not eliminated totally, the entire future of this country is at stake. Therefore, in addition to preventive measures, strict criminal justice and punitive responses are warranted. Therefore, protection of public interest and the interests of the nation requires persons convicted of having committed the offences of bribery and corruption to be dealt with in a stringent manner. Judicial sentencing policy warrants the application of both retributive and deterrent sentencing measures. Ideally, there must be a reparative justice measure also included in the sentencing Order.

In the circumstances, this Court does not vary the sentence imposed by the learned Magistrate and affirmed by the High Court. In the circumstances, this Court while dismissing this Appeal, affirms the conviction and sentence imposed by the learned Magistrate.

This Court wishes to express its deep appreciation to both learned President's Counsel for the Appellant and learned Senior Deputy Solicitor General for the assistance both of them rendered in dispensation of justice.

This Appeal is dismissed. No order is made with regard to costs.

The Registrar is directed to forthwith communicate this Judgment to the High Court and to the relevant Magistrate's Court.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT