

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

In the matter of an appeal under and in
terms of the Section 331 of the Code of
Criminal Procedure Act.

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

Vs

1. Madawala Liyanage Sajith Rohitha
2. Karuppaiha Sellathurai

ACCUSED

CA Case No. 284/2009

HC (Colombo) Case No 1475/2004 AND NOW BETWEEN

1. Madawala Liyanage Sajith Rohitha

APPELLANT

Vs

The Director General
Commission to Investigate Allegations of
Bribery or corruption.

RESPONDENT

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Mahendra Kumarasinghe with
Isansi Dantanarayana for the
Accused – Appellant.

Shanil Kularatne DSG for the
Respondent.

ARGUED ON

: 29th June, 2017

DECIDED ON

: 22nd September, 2017

L.U. Jayasuriya J.

The first accused appellant was indicted in the High Court of Colombo under the following counts.

- (1). Solicitation of a bribe of Rs. 2,500/= from the complainant in order to issue a radio license and a gramasewaka certificate which is an offence under section 19 (b) of the Bribery Act.
- (2). Solicitation of a gratification of Rs. 2,500/= from the complainant which is an offence under section 19 (c) of the Bribery Act.
- (3). Acceptance of a bribe of Rs. 2,500/= from the complainant in order to issue a radio license and a gramasewaka certificate which is an offence under section 19 (b) of the Bribery Act.
- (4). Acceptance of a gratification of Rs. 2,500/= from the complainant which is an offence under section 19 (c) of the Bribery Act.

The second accused was indicted on the counts relating to the alleged abetment of the offence referred to in counts no. 3 and no. 4 and was tried in absentia.

After trial High Court had found the appellant guilty of all four counts and convicted for all four counts preferred against him. He was imposed one year RI and a fine of Rs. 5000/= carrying a default term of 6 months each for all the counts. This appeal is from the said conviction and the sentence.

According to the prosecution the complainant wanted to get the radio license renewed in order to get his daughter admitted to a school and had met the appellant on or about 20/07/1994. The appellant had demanded Rs. 3,000/= to attend to the above stated purpose and on being making a complaint, the officers of the Bribery Commission, had arrested the appellant and his assistant (second accused) after conducting a raid.

All the parties have agreed to adopt the evidence that has been lead before predecessor of the Judge who wrote the judgment. The first ground of appeal raised by the appellant was the credibility of the complainant. The counsel for the appellant submitted that the complainant is a man of lose morals.

This submission was made on the basis that he lived with another woman which is totally irrelevant to this case. The counsel for the appellant submitted that the complainant has given evasive evidence in cross examination and referred to page 74 of the brief.

Those question posed to the complainant were not relevant to the issue in hand. And the learned High Court Judge shouldn't have allowed those question and those question offend Section 5 of the Evidence Ordinance which provides that evidence can be lead of facts in issue and relevant fact only.

Learned counsel for the appellant also submitted that the money in question was given to the assistant of the appellant and not to the appellant himself, but I find that this money has been given on the direction of the appellant in the presence of the decoy and the complainant.

The counsel for the appellant further submitted that the evidence of the decoy amounts to confessionary nature and submitted such evidence is not admissible. At the time of the transaction appellant was not in the custody of the decoy or the investigating officer and therefore the words uttered by the appellant implicating him does not come under section 25 of the Evidence Ordinance.

Although the appellant's counsel argued that the learned High Court Judge failed to analyze the defence evidence, on a perusal of pages 189 and 190 I find it otherwise. The complainant himself has testified that he has no personal interest or animosity towards the appellant. He has stated that he never wanted to testify against the appellant.

On a perusal of the evidence I find that no contradictions were marked. Therefore one could say, that no doubt was created by the defence on the evidence of the prosecution.

For the afore stated reasons I am not inclined to set aside a well considered judgment. The judgment dated 26/03/2009 is affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL