

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

Dissanayake Arachchilage Karunaratne

Accused – Appellant

Vs.

CA Appeal No: 123/2004
HC Colombo B 1401/2002

The Republic of Sri Lanka

Respondent

Before : Sisira de Abrew J &
Upaly Abeyrathne J

Counsel : Ranjith Abeysuriya with T. Rodrigo
for the accused appellant
Dilan Rathnayake SSC for the Attorney General.

Argued on : 5.05.2009 and 6.5.2009

Decided on : 11.06.2009



Sisira de Abrew J.

The accused appellant (the appellant) in this case was convicted for soliciting and accepting a bribe of Rs.4000/-. On the solicitation count he was sentenced to a term of three years rigorous

imprisonment (RI) and to pay a fine of Rs.5000/- carrying a default sentence of two years simple imprisonment. On the acceptance count he was sentenced to a term of three years RI. Learned trial judge directed that both terms of imprisonment should run concurrently. In addition to the above punishment he was ordered to pay a penalty of Rs.4000/- under Section 26 of the Bribery Act. According to the facts of this case, the appellant a development officer attached to the Divisional Secretary's Office at Yatiyantota solicited a sum of Rs.4000/- from Jayasinghe, the complainant in this case, to attend to a problem pertaining to his land. After complaining to the Bribery Commissioner's Department, a trap was organized and Jayasinghe gave Rs.4000/- to the appellant in the presence of the decoy. Soon thereafter the officers attached to Bribery Commissioner's Department came and arrested the appellant.

Learned President's Counsel for the appellant raised the following grounds of appeal as militating against the maintenance of the conviction.

1. Dock statement of the appellant has not been subjected to the necessary test namely whether it is sufficient to raise a doubt in the prosecution case.
2. The learned trial Judge failed to state whether he rejected the dock statement.
3. The learned trial Judge has not given reasons for the rejection of the dock statement.

I shall now consider the dock statement of the appellant. According to his dock statement, in the morning of the day of the incident, when he was working in his office Jayasinghe and another person came to



his office, offered him money and requested to attend to his land matter. He refused to attend to the matter as the area in which the particular land is situated was not within his purview. He did not accept money. Later, on several occasions Jayasinghe and the other person came to meet him. Around 12.30 p.m. when he was going to have his lunch Jayasinghe came and gave an envelope. At this time an officer came and arrested him saying that he had taken a bribe. He said due to political reasons he was falsely implicated in this case.

When the appellant refused to accept money offered by Jayasinghe in the morning, he should have known that it was a bribe. Then why did he allow Jayasinghe to come back to his office on several occasions on the same day. This observation shows the falsity of the dock statement. When I consider the dock statement and the above observation I hold that no reliance can be placed on the dock statement and it does not create a reasonable doubt in the prosecution case. The trial Judge in evaluating the dock statement must follow the following rules.

1. If the dock statement is believed it must be acted upon.
2. If the dock statement creates a reasonable doubt in the prosecution case the accused is entitled to succeed in his defence.
3. Dock statement of one accused should not be used against the other accused. Vide Kularathne Vs Queen 71 NLR 529.

In the instant case consideration of the third principle set out above does not arise since there is only one accused. Failure to observe first and the second principles above has not caused any prejudice to the accused as no reliance can be placed on the dock statement. This view is supported by the following judicial decision of the Supreme Court. Dharmawardene Vs



Director General, Commission to investigate allegations of Bribery and Corruption.[2003] 1SLR 64. In this case a clerk attached to District Court of Matale was convicted for soliciting and accepting a gratification of Rs.400/-. In appeal High Court Judge affirmed the conviction but observed that the Magistrate should have given more consideration to the evidence of the accused. It was contended that the High Court Judge should not have upheld the conviction in view of the culpable failure on the part of the Magistrate to have adequately and impartially examined the evidence of the accused. His Lordship Justice Gunasekare (with whom Justice Wigneswaran and Justice Weerasekare agreed) held: "On a careful analysis of the accused's evidence no reliance whatsoever could have been given to the evidence of the accused. Accordingly conviction of the accused should be affirmed."

I have earlier held that the failure on the part of the learned trial Judge to observe the 1st and the 2nd principles above had not caused prejudice to the appellant. I therefore applying the provisos to Article 138 of the Constitution and Section 334 of the Criminal Procedure Code reject the grounds of appeal urged by the learned President's Counsel.

For the aforementioned reasons, I affirm the conviction and the sentence and dismiss this appeal.


Judge of the Court of Appeal.


Upaly Abeyrathne J.

I agree.




Judge of the Court of Appeal.

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Chief Clerk
COURT OF APPEAL
COLOMBO