

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

C.A.105-106/98  
H.C.Colombo case No.1135/95



1. Loku Bogahawattage Gedera  
Justin Weeraratne
2. Asarappulige Udulawathie  
Accused-appellants

vs.  
Director General,  
Commission to investigate  
allegations of bribery or  
corruption  
Respondent

BEFORE

: NANAYAKKARA, J. & BALAPATABENDI, J.

COUNSEL

: Dr.Ranjith Fernando with  
S.Munasinghe and R.Jayawardena for  
the appellants

Mallika Liyanage for the respondent

DATE

: 05.09.2003

Written submissions of both parties filed on: 05.09.2003

DECIDED ON

: 28.10.2003

NANAYAKKARA, J.

This is an appeal by the accused-appellants from a conviction entered in an action instituted under the Bribery Act.

The 1st accused-appellant who was a Grama Niladhari was charged with having accepted a bribe of Rs.15,000/- and Rs.12,000/- from R.Ratnasekera and Padmaseeli Ratnasekera (complainants) respectively for the purpose of procuring teaching appointments while the 2nd accused-appellant was charged with having solicited the said sums of money from the complainants and also with having aided and abetted the 1st accused in the commission of the offence.

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Of the ten charges contained in the indictment, four had been Specifically preferred against the 1st accused-appellant, while the rest had been preferred against the 2nd accused-appellant.

After trial the learned High Court Judge convicted both the accused-appellants on all charges framed against them and imposed a sentence of 2 years rigorous imprisonment on each accused-appellant in respect of each count. In addition to the term of imprisonment a fine of Rs.5000/- and a penalty was imposed on each accused-appellant. The terms of imprisonment were made to run concurrently.

According to the prosecution, it was the 2nd accused-appellant who had initiated the transaction by soliciting a sum of Rs.15000/- and Rs.12000/- from the complainants holding out a promise to secure some teaching appointments for them.

Thereafter the 1st accused-appellant along with the 2nd accused-appellant on a subsequent occasion had accepted the said sums of money from the complainants. The 1st accused-appellant had on this occasion is alleged to have issued 2 receipts (P2-P3) to the complainants, describing the transaction as a loan taken from them.

The two complainants thereafter had lodged a complaint with the Kobeigane Police and also with C.I.D. at Kuliypitiya regarding the transaction.

It appears thereafter the C.I.D. had instituted action against the accused-appellants at the Magistrate

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Court of Kuliyapitiya which had been subsequently withdrawn.

Many matters have been urged by the learned Counsel for the accused-appellants at the hearing of this appeal. It should be observed at the outset that the prosecution case suffers from serious infirmities.

The pivotal issue to be determined at this appeal is the nature of the transaction that is alleged to have occurred between the accused-appellants and the complainants. It was strenuously contended on behalf of the accused that the money obtained was a loan not a bribe as the prosecution has represented it to be.

The accused-appellants had never denied that they received the sums of money as alleged by the prosecution. Their position was that money was borrowed as a loan and not as a bribe.

The 1st accused making a statement from the dock had admitted having accepted the said sums of money as a loan from the complainants for the purpose of sending her cousin, 2nd accused abroad. She has also stated although she tried to settle the loan she could not do it expeditiously.

The 2nd accused-appellant too in his statement from the dock had stated that the 1st accused-appellant accepted the said sum of money as a loan from the complainants for the purpose of sending him abroad.

The perusal of the proceedings shows that the transaction alleged in the case had taken place in March



1992 and the Bribery Department had initiated investigations into it in the year 1993.

It is incomprehensible as to why the department took such a long time to initiate an inquiry into this matter. The inordinate delay in launching an inquiry into the alleged incident cast a serious doubt on the prosecution story.

A careful scrutiny of the proceedings shows, one Nishantha had been a witness to many of the events connected with the alleged transaction. Nishantha had been an attesting witness to the document marked P2 which described the whole transaction as a loan.

It is also incomprehensible as to why he was not cited and called as a witness. If he was named and cited as a witness, he could have thrown much light on the whole transaction. The failure of the prosecution to call this person who had been present at the transaction, and the events which preceded the transaction, throws a serious doubt on the veracity of the prosecution story. The failure of the prosecution to call an important witness also gives rise to the presumption under section 114 of the Evidence Ordinance.

It appears that a criminal case for cheating under the Penal Code had been instituted against the accused-appellants in respect of the same transaction prior to the institution of proceedings under the Bribery Act against the accused-appellants.

If this was a case of bribery as alleged by the

Judge of the Court of appeal

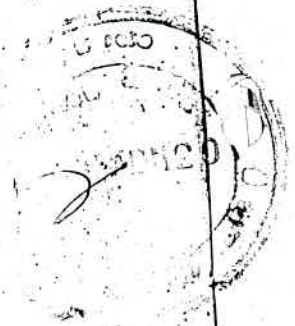
I agree

*Stey*

Balapatambdi, J.

Judge of the Court of Appeal

accused-appellants are acquitted.  
appeal is upheld and the conviction is set aside. The  
In view of the above mentioned circumstances, the  
beyond reasonable doubt.  
cannot be said that the prosecution has proved its case  
Taking the totality of evidence into account it  
that stance cannot be rightly rejected.



statement made by the 2nd accused-appellant strengthening  
sending the 2nd accused-appellant abroad and also the  
dock, that the money was borrowed for the purpose of  
the statement made by the 1st accused-appellant from the  
In the light of the above mentioned circumstances,  
as a loan.

transaction also clearly show that the money was accepted  
The receipts (P1-P2) issued in respect of the  
transaction.

prosecution had doubts in regard to the nature of the  
levelled against the accused-appellants shows that the  
initially. This very fact that a criminal charge was  
criminal charge was laid against the accused-appellants  
prosecution it is difficult to comprehend as to why