

තෙන්නකෝන්, අ. වි., සිරිමාන, වි. සහ වෛත්‍යාලියම්, වි. ඉදිරිපිටදී ය
අභියාචක: ජී. ඒ. ජේ. රජයේ ජ. සහ වගන්තිකරු රජය
ගේ. 15/74-කොළඹ දී. අ. බි/179

අල්ලස් ගැනීම-මුද්‍රිතය: වෛද්‍යාංශ දෙකක් සම්බන්ධයෙන් වෛද්‍යා ලබා තිබීම-අනු
සන්දනය කරනු නොහැකිවීම නිසා පළමුවන වෛද්‍යාංශය පිළිබඳ පැමිණිලිකරුගේ
සාක්ෂි පිළිගනු නොලැබීම-එබඳු සාක්ෂි දෙවන වෛද්‍යාංශය සම්බන්ධයෙන් ද
පදනම් කොට තනා ගැනීම?

අල්ලස් පනතෙහි 19 වන වගන්තිය යටතේ මුද්‍රිතය වෛද්‍යා ලබා තිබෙන විටක
පැමිණිලිකරුගේ සාක්ෂිය අනුසන්දනය කිරීමට කිසිවක් නොවූ බැවින් ද එම අනු-
සන්දනය නොකළ බහුතරය නැති සාක්ෂිය මත මුද්‍රිතය වරදකරු කිරීම නුවණට හුරු
නොවන බැවින් ද දිසා විනිශ්චයකාරවරයා විසින් පළමුවන වෛද්‍යාංශය සම්බන්ධ-
යෙන් මුද්‍රිතය නිදොස් කරනු ලැබූ අවස්ථාවකදී-

එකම නඩු විභාගයකදී එකිනෙකට සම්බන්ධ එහෙත් වෙනස් වෛද්‍යා දෙකක්
පිළිබඳව මුද්‍රිතයකට විරුද්ධව නඩුවක් අසනු ලබන විටෙක එක වෛද්‍යාංශයක්
පිළිබඳව වරදකරු කිරීම, අනිත් වෛද්‍යාංශයට අදාළව නිදොස් කිරීමේ ආඥාවක්
කරනු ලැබීම නිසා ව්‍යාගත් වශයෙන් ප්‍රතික්ෂේප කරනු ලැබූ සාක්ෂි පිට පදනම් කොට
ගතයායි නොවන බැවින් අදාළ වෛද්‍යාංශය සම්බන්ධයෙන් ද මුද්‍රිතය නිදොස්
කළ යුතු බවට පිළිගනු ලැබේ.

කොළඹ, දිසා අධිකරණයෙහි නඩු තීන්දුවකින් පැන නැගෙන
අභියාචකයෙකි.

මුද්‍රිත-අභියාචක වෙනුවෙන් දයා පෙරේරා සහ වි. ජෝගනාදන් සමඟ
ජී. ආර්. එස්. ආර්. කුමාරස්වාමි.

රජය වෙනුවෙන් රජයේ නීතිඥ වි. වික්‍රමසිංහ.

1975 ජූලි 2. තෙන්නකෝන්, අ. වි.-

මෙම තබුවෙහි මුද්‍රිත-අභියාචකට විරුද්ධව වෛද්‍යාංශ දෙකක් සම්
බන්ධයෙන් වෛද්‍යා නගා තිබේ. ඒවා නම් :-

"1. 1973 අගෝස්තු මස 21 වන දින හෝ ඊට ආසන්න දිනයක තමා
රජයේ නිලධාරියකු වශයෙන් එනම් අක්කරෙසිපත්තු රෝහලෙහි
වෛද්‍ය නිලධාරියකු වශයෙන් රාජකාරි ක්‍රියාවක් එනම් අක්කරෙසිපත්තු
රෝහලට ඇතුළත් කරනු ලැබූ රෝගියකු වන මොහමඩ් ලෙබ්බේ
මේරියන් බිබිට ප්‍රතිකාර කිරීම හා හෙදකම් කිරීම යන රාජකාරි ක්‍රියාව
ඉටු කිරීමට පෙළඹවීමක් හෝ ප්‍රදානයක් වශයෙන් ඒ. මීරු ලෙබ්බේගෙන්
රු. 25 ක පරිතෝෂිකයක් ලබා ගත් බව හා ඒ මගින් අල්ලස් පනතෙහි
19 වන වගන්තිය යටතේ දඬුවම් ලැබිය හැකි වරදක් කිරීම
සම්බන්ධයෙන් වරදකරු වන බව.

2. 1973 සැප්තැම්බර් මස 3 වන දින හෝ ඊට ආසන්න දිනයක
අක්කරෙසිපත්තුහි දී එම ගනුදෙනුව කිරීමෙහිදී පූර්වෝක්ත ලෙස තමා
රජයේ භාවිතයකු වශයෙන් පූර්වෝක්ත රාජකාරි ක්‍රියාව ඉටු කිරීමට
පෙළඹවීමක් හෝ ප්‍රදානයක් වශයෙන් පූර්වෝක්ත ඒ. මීරු ලෙබ්බේගෙන්
රු. 25 ක පරිතෝෂිකයක් භාර ගත් බව හා ඒ මගින් අල්ලස් පනතෙහි
19 වන වගන්තිය යටතේ දඬුවම් ලැබිය හැකි වරදක් කිරීම සම්බන්ධයෙන්
වරදකරු වන බව."

අධිවෛද්‍යාච සමඟ තිබෙන සිද්ධි ප්‍රකාශයෙන් කියවෙන්නේ
අක්කරෙසිපත්තු රෝහලට ඇතුළත් කරනු ලැබූ රෝගියා එලෙස

රෝහලෙහි තමා භාවිතව නම් හා වඩා හොඳින් ප්‍රතිකාර කිරීම සඳහා රු. 25 ක මුදලක් වූදිනය විසින් එම රෝගියාගේ බැණ කෙනෙකු වන මීරු ලෙබ්බේ නම් අයගෙන් හෙවත් පැමිණිලිකරුගෙන් ඉල්ලනු ලැබූ බවය. මෙම අවස්ථාවෙහිදී රජයෙන් නම් අයකු එහි වූ බව පැමිණිලිකරු පැවසීය. පැමිණිලිකරු වන මීරු ලෙබ්බේ රෝහලෙහි දී වූදිනය හමු වූ බව ද වූදිනය තවත් රු. 25 ක මුදලක් ඉල්ලා සිටි බව ද ඒ මුදල දුන්නෙන් රෝගියා ඉක්මණින් සුවය ලබනු ඇතැයි ප්‍රකාශ කළ බව ද තවදුරටත් මෙම ප්‍රකාශයෙන් කියවේ. මෙම ඉල්ලීම කරනු ලැබූ අවස්ථාවෙහිදී අලියාර් නමැත්තකු එහි වී යයි සිද්ධි ප්‍රකාශයෙන් කියනු ලැබේ. අධිවෛද්‍යවරයාට අමුණ තිබෙන සාක්ෂිකරුවන්ගේ නම ලැයිස්තුවෙහි සාක්ෂිකරුවන් දෙදෙනාගේ නම ද සටහන්ව තිබිණි. එහෙත් ඔවුන්ගෙන් එක් අයකු වත් කැඳවනු ලැබූවේ නැත. පැමිණිලිකරු මීරු ලෙබ්බේගේ සාක්ෂි අනුසන්දනය කිරීමට කිසිවක් නොවූ බවත් පළමුවන වෛද්‍යවරයා සම්බන්ධයෙන් වූදිනය නිදහස් කළ උගත් දිසා විනිශ්චයකාරවරයා ඔහුගේ අනුසන්දනය නොකළ නම් සාක්ෂිය පිට වූදිනය වරදකරු කිරීම නුවණට හුරු නැතැයි එසේ හිඳවූ කරුණක් පැවසීය.

2 වන වෛද්‍යවරයාට සම්බන්ධයෙන් ප්‍රශ්නයට අදාළ දිනයෙහිදී අල්ලස් දෙපාර්තමේන්තුවෙහි "වැටලීම්" නිලධාරීන්ගෙන් අයකු වූ තීරණවෘත්තීය සහ සාක්ෂිකරුවා පෙනෙන හා ඇසෙන මාතලේදී රු.25 ක මුදලක් තමා හරහා ගත් බවට වූදිනයා පිළිගෙන තිබිණි. ඔහුගේ තර්කය වූයේ අත්කරෙහිපත්වූ රෝහලෙහි නොතිබුණේ වූ ද කල්මුණේ හෝ මඩකලපුව නගරවල පිටත කිබෙනු වියහැකි වූ ද ඖෂධයක් වන "කයිරුමොල්" නම් ඖෂධය රෝගියාට දිය යුතු බව නමා පැමිණිලිකරුට දැන්වූ බවය. රෝගියාගේ ශිරීච්ඡා පොරොත්වකින් වැදුණු පහරක් නිසා සිදුවූ තිබී තුවාලවල බරපතල ස්වභාවය නිසා එම බෙහෙත අවශ්‍ය බව වූදිනයා පැමිණිලිකරුට පවසා ඇත. තුවාලය පැස්සි හුව වී තිබුණු නමුත් සමට ගටත් ගැහෙන මොළොක් බවක් විය. ශරීරයෙහි වෙනත් තැන්වල බරපතල නොවූවත් යම් යම් තැලිම් විය. මෙම ඖෂධය තැලිම්වලට ඉතාම හොඳ ඖෂධය බව වූදිනයා ප්‍රකාශ කළේය. ඔහුගේ එම සාක්ෂිය, තැලිම්වලට හා බරපතල බැහිර තුවාල නිසා ඇති වන අත්දමේ තැලිම්වලට ඉතාම හොඳ ඖෂධය "කයිරුමොල්" බවට තමාම සහතික කළ වෛද්‍ය පක්ෂයේ සාක්ෂිකරු දොස්තර සිංහානායගම විසින් සනාථ කරනු ලැබිණි. වූදිනයාගේ තර්කය වූයේ පැමිණිලිකරු මෙම ඖෂධය රෝගියාට ලබා දෙන ලෙස තමාගෙන් ඉල්ලූ බව හා රු. 25 දෙනු ලැබූවේ ඒ කාර්යය සඳහා බවය.

මෙම වූදිනයට මෙම මුදල දෙනු ලැබූවේ කවර කාර්යයක් සඳහා දැයි සම්බන්ධයෙන් වෛද්‍ය පක්ෂයේ සාක්ෂිකරුවන් කිසිවකුගෙන් සාක්ෂි නොකියවේ. එහෙත් රෝගියාට හෙදකම් කරනු සඳහා මෙම මුදල දෙන ලෙස වූදිනයා කලින් අවස්ථාවකදී තමාගෙන් ඉල්ලීම් කළ බවට පැමිණිලිකරු කියා සිටි අනුසන්දනය කරනු නොලැබූ සාක්ෂිය නම් ඇත. මෙම සාක්ෂිකරු, ඔහුගේ අනුසන්දනය කරනු නොලැබූ සාක්ෂිය පිට වූදිනයා වරදකරු කිරීම නුවණට හුරු නැතැයි උගත් දිසා විනිශ්චයකාර වරයා විසින් දැනටමත් පවසනු ලැබීමට විෂය වූවෙකි. නල්ලසියා එ. ජෝරන් 54 න. කී. ව. 473 නඩුවෙහිදී ශ්‍රේෂ්ඨ ඩී., සම්බන්ධව එ. රජයේ අපරාධ තබු අධ්‍යක්ෂ මලයාට (1950 අ. අ. 458) රාජාධිකරණ නඩුවෙහි පූර්වාදර්ශය පදනම් කොට එකම නඩුවිභාගයකදී එකිනෙකට සම්බන්ධ එහෙත් වෙනස් වෛද්‍ය දෙකක් පිළිබඳව වූදිනයකට විරුද්ධව නඩුවක් අසනු

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ලබන විටෙක එක වෝදනාංකයක් පිළිබඳ වරදකරු කිරීම අතින් වෝදනාංකයට අදාළව නිදේස් කිරීමේ ආඥාවක් කරනු ලැබීම නිසා ව්‍යංගත්වයෙන් ප්‍රතික්ෂේප කරනු ලැබූ සාක්ෂි පිට පදනම් කොට ගතහැකි නොවන බවට විලිඛනි. එම නමුව අප ඉදිරියෙහි ඇති නමුවෙන් වෙනස් කොට දක්විය හැක්කේ නොවේ. එබැවින් දෙවන වෝදනාව සම්බන්ධයෙන් රාජකාරි ක්‍රියාවක් ඉටු කිරීමට පෙළඹවීමක් හෝ ප්‍රදානයක් වශයෙන් රු. 25 ක මුදලක් වූදිනයා භාර ගත්තේ යයි ඔප්පු කිරීමට වෝදක පක්ෂය අසමත්ව ඇතැයි සිතමු. එබැවින් අභියාචනය ජය ගනී; 2 වන වෝදනාංකය සම්බන්ධයෙන් වරදකරු කිරීම හා දණ්ඩන නියමය නිෂ්ප්‍රභ කොට වූදිනයා විදෝෂ කරමු.

සිරිමාන, වි.-මම එකඟ වෙමි.
වෛත්‍යලිංගම්, වි.-මම එකඟ වෙමි.

අභියාචනයට අවසර දෙන ලදී.

**පරිපාලන, වි., ඉස්මායිල්, වි. සහ මිරරත්න, වි. ඉදිරිපිට දී ය
එච්. සුමනදාස එදිරිව රජය**

ලේ. 26/74—බලපිටිය දි. අ. 465/53548

අපරාධ නීතිය—සාපරාධී ලෙස විශ්වාස භාරය කඩ කිරීම—ඔප්පු කළ යුතු අත්‍යවශ්‍ය අංග—දණ්ඩ නීති සංග්‍රහයෙහි 329 වන වගන්තිය.

සමුපකාර තොග වෙළඳ ගබඩාවක කළමනාකරු වූ අභියාචක, සමුපකාර සමිතියට භාර දී තිබූ භාණ්ඩ සම්බන්ධයෙන් සාපරාධී ලෙස විශ්වාස භාරය කඩ කළේ යයි වෝදනා ලබා වරදකරු කරනු ලැබීය.

සාපරාධී ලෙස විශ්වාස භාරය කඩ කිරීම පිළිබඳ නමුවකදී භාණ්ඩවල අඩුවක් තිබීම යන කරුණයට වූ කලී වංක ව්‍යාපාරණය ගැන අනුමිතියකට එළඹිය යුතු සාක්ෂියක් නොවන බව ද වංක ව්‍යාපාරණය භාර වෙතත් ආකාරයකින් එම හිඟය ඇති වී යයි යන ඉඩකඩ වෝදක පක්ෂය විසින් සම්පූර්ණයෙන් ඉවත් කළ යුතු බව ද පිළියනු ලැබීණි.

බලපිටිය දිසා අධිකරණයෙහි නඩු තීන්දුවකින් පැන නැගෙන අභියාචනයකි.

වූදින-අභියාචනා වෙනුවෙන් රොහාන් පෙරේරා සමඟ නිමල් සේනානායක. නීතිපති වෙනුවෙන් රජයේ නීතිඥ උපවංශ සාපා.

1975, ජූලි 14 පරිපාලන, වි.—

අභියාචක, මහ රිදීන්ඩ සමුපකාර තොග වෙළඳ ගබඩාවෙහි කළමනාකරු විය. 1967 අප්‍රේල් 29 වන දින සහ 1967 ජූනි 4 වන දින අතර කාලයෙහිදී සමුපකාර සමිතියෙන් ඔවුන්ට භාර දෙනු ලැබූ රු. 9,513.81 ක වටිනාකමින් යුතු භාණ්ඩ සම්බන්ධයෙන් දණ්ඩ නීති සංග්‍රහයෙහි 329 වන වගන්තිය යටතේ දඬුවම් ලැබිය හැකි වරදක් වන සාපරාධී ලෙස විශ්වාස භාරය කඩකළ බවට අභියාචකට හා බිල් ලිපිකරු වන 2 වන වූදිනයට විරුද්ධව වෝදනා නගා තිබිණි. අඩු වූ භාණ්ඩ අතරෙහි ප්‍රධාන අංගය වූයේ රු. 8,767.58 ක වටිනාකමින් යුතු භාණ්ඩ 131 ක් හා රු. 29 ක සිති තොගයකි.

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Liyanage
v.
The Attorney-General

COURT OF APPEAL.
COLIN-THOME, J. AND ATUKORALE, J.
C. A. (S. C.) 9/78-D. C. COLOMBO B/532.
FEBRUARY 27, 1979.

Bribery Act-Charges of solicitation and acceptance-Need for corroboration.

Held

- (1) In a trial under the Bribery Act on a charge of solicitation it is unsafe to allow a conviction to stand solely on the uncorroborated testimony of the complainant.
- (2) On the charge of acceptance however the trial judge's findings could stand because the evidence of the complainant had been materially corroborated by another witness.

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APPEAL from the District Court, Colombo.

R. I. Obeysekera, with D. M. S. Gunasekera for the accused-appellant.
Douglas Halangoda State Counsel for the State

Cur adv. vult.

April 3, 1979.

ATUKORALE., J.

The accused in this case- was indicted on two counts, namely:-

- (1) That on or about March, 1972 at Padiliyatuduwa, you did solicit a gratification of a sum of Rs. 1,000 from one W. D. Agnes Nona as an inducement or a reward for your furthering the securing of a benefit from the Government for the said W. D. Agnes Nona, to wit: an allotment of State Land, and that you are thereby guilty of an offence punishable under section 20 of the Bribery Act.

- (2) That on or about March, 1972 at the place aforesaid in the course of the same transaction, you did accept a gratification of a sum of Rs. 300 from one K. Iranganie as an inducement or a reward for your furthering the securing of a benefit from the Government for the aforesaid W. D. Agnes Nona, to wit, an allotment of State Land, and that you are thereby guilty of an offence punishable under section 20 of the Bribery Act.

After trial he was convicted on both counts and was sentenced by the learned District Judge to a term of 2 years' rigorous imprisonment on each count. He was also ordered to pay a fine of Rs. 500 in default 5 months' rigorous imprisonment on each count and in addition a penalty of Rs. 300 in default 3 months' rigorous imprisonment. The substantive jail sentences were to run concurrently whilst the default sentences were to run consecutively. He has appealed from this conviction.

Learned Counsel for the accused submitted to us that the conviction cannot stand and must be quashed, for the following reasons :

- (a) that the learned trial judge has failed to analyse and evaluate the evidence of the prosecution in the light of the vital contradictions in the evidence of the prosecution witnesses ;
- (b) that the evidence of the complainant was in fact uncorroborated although the learned trial judge has treated certain items of evidence as constituting corroboration ;

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- (c) that the learned trial judge has not brought his mind to bear on the belatedness of the complaint and its effect on the prosecution case.

The prosecution mainly relied on the evidence of 3 witnesses, Agnes Nona (the complainant) her daughter Iranganie and one Gamini. According to Agnes Nona somewhere in March 1972 the accused who was the Grama Sevaka, came to her house in connection with a complaint made by Rolin Nona, the occupant of the adjoining land about the flow of water to her land from the complainant's land. Agnes Nona then told the accused that there are 3 families residing in her allotment of land and that it was not sufficient for all of them and requested the accused to get her another allotment of Crown land. He promised to look into the matter. Several weeks later the accused came to her house and told her that there is a small block of Crown land at Raninadama and that he will be able to get that block for her but that he could not do it for nothing and that she will have to spend about Rs. 1,000 or Rs. 1,500 as he had to pay money to some departmental officers and for stamp fees and also for his travelling expenses. Agnes Nona told him that she did not have so much of money and that if

she had, she could have purchased a block of land and that she was able to give him Rs. 300. He agreed and told her that if she gave the money early he would be able to get the block of land soon. She raised the money in about 3 weeks' time by selling her cow for Rs. 225 and borrowing Rs. 50 from a beedi wrapper. She then one day went with her daughter Iranganie to the office of the accused at about 7.30 or 8 p.m. and met him. At that time witness Gamini was inside the room close to the accused assisting him to write up the ration books and the identity cards. When they were discussing about the transaction Gamini got up from the place where he was seated and went further and sat on the bed. Agnes Nona handed over Rs. 200 to Iranganie and asked her to hand it over to the accused. Iranganie took the money, counted it, went up to the accused and gave it to him. It consisted of a 100 rupee note and two 50 rupee notes. Agnes Nona got Iranganie to give the money to the accused thinking that if she gave it herself she may not get the land as she was an unlucky woman. She said Gamini saw the money being given to the accused. About 10 days later she and her daughter Iranganie again went to the accused's office and there her daughter handed over Rs. 100 to the accused. On that occasion too Gamini was present and he saw the money being given to the accused. Agnes Nona further stated that about 7 or 8 months later she met the accused who told her, "Don't fear. Member-mahatmaya also signed. Mr. Sooriya-aratchi also signad.

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You can get this soon." Member-mahatmaya is the ward member and Sooriya-aratchi is the Member of Parliament. There after since she did not receive any communication from the Government and she did not meet the accused, she went in search of him and learnt that he had been transferred to some other division. She then went to meet Gamini. She told him that the accused took Rs. 300 to get her a Crown allotment from Ranimadama and that she got neither the land nor the money nor is she able to trace the accused. Gamini told her that the accused was at Heiyantuduwa and promised to discuss this matter with the accused. She asked Gamini to some how or other obtain the money for her. Later she went to meet Gamini who told her that the accused agreed to return the money in instalments of Rs. 100. Several weeks later since she did not get any money she again went to meet Gamini who gave her a letter to be given to the accused. She, however, kept the letter with her without giving it to the accused thinking that she would lose the letter also. Thereafter she went again to the accused's office at Heiyantuduwa. When she got there, there were 4 persons who had come to see the accused in connection with a complaint. The accused ask her to be seated for a while. She said she cannot be seated any more and that she had come on several occasions but failed to achieve the purpose for which she came. He again asked her to wait for some time. After those persons left he told her that it is not good to discuss their transactions in the presence of others. Then she told him that she had lost both the money and the land and that a well and a house were being constructed on that land and that he is not doing his duty. The accused told her not to be concerned with wells and houses being built on other people's lands and so saying he took out a knife and kept it on the table. She took a few steps back and told him that it was money that she earned after much suffering and that she has lost the money and the

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land. Thereupon the accused warned her not to come to his office. Then she told him that she will not come to his office again and boarded a bus to Colombo. She went to the Fort Police Station and informed an officer there who asked her why she delayed so long and took her to the Bribery Commissioner's Office and handed her over there. She then made her complaint to the Bribery Department. Thereafter Gamini came to her house and told her that the accused had given him Rs. 100 to be given to her and requested her to accept it. But she refused in view of the fact that she had already complained to the Bribery Commissioner. Agnes Nona also stated that after investigations into her complaint had been made by the Bribery Commissioner the accused came to her house on a bicycle one

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day at night and asked her why she went so far and said " let us settle the transaction entered into by us. " He then asked her to collect the money before the Bribery Commissioner. She agreed but did not go. The accused then came to her house the following day. He said that he waited for a long time at the Bribery Department and asked her why she did not come. She then went to the Kadawata Police Station and made a complaint regarding this. The police warned her not to go anywhere at the invitation of any one in respect of this matter. The accused came to her house the next day also, and asked her whether she is not accepting the money. Then she informed him that she complained to the officers of the Bribery Department and that she did not want to discuss about this matter any further with him. The accused did not attempt to give her the money even on that occasion. Then he asked her whether she wants to go to courts without accepting the money. When she replied that what she wants is to get the money back through the officers and not to go to courts. He left saying " go to courts and see". Under cross-examination it was suggested to her that she was giving false evidence as she was angry with him owing to his close association with Rolin Nona and her husband Ebert (the occupants of the adjoining land). She denied this. She also denied that she abused the accused on one occasion saying that she did not received electoral lists.

Witness Iranganie (the daughter of the complainant Agnes Nona) herself gave evidence and stated that one day in March 1972 at about 6.30 p.m. she and her mother went to meet the accused at his office. The accused was in his office with Gamini. She was given some money by her mother to be handed over to the accused. She took the money, counted it and handed over the same to the accused. The amount was Rs. 200. She said Gamini saw the money being given to the accused.

On a later date she went again with her mother to the accused's office. On that occasion too she was given Rs. 100 by her mother to be given to the accused. She counted the money and gave it to the accused. Gamini was present on that occasion too and he saw the money being given to the accused. She said that at the time the money was paid the accused promised to get the allotments of land at Ranimadama. As her mother did not get the land her mother complained to the Bribery Commissioner's Department. Later the accused came to

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their house and asked her mother why she has gone so far, about this transaction and that if she told him earlier he would have refunded the money. He said that he was asked to and had made a statement to the

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Bribery Commissioner. He asked her mother to come to the Bribery Department the following morning to take the money. Her mother did not however go the Bribery Department. The following night the accused came to their house and asked her mother why she did not come to the Bribery Department. Her mother then told him that she has nothing to do with him hereafter and that she does not want the money back. Iranganie further stated that, she learnt from her mother that Gamini had come to their house. She also stated that her mother made a complaint to the Kadawata Police. Under cross-examination she stated that at the time she gave the money to the accused he accepted the same saying that if the money is paid soon like this he can get the land soon.

Witness Gamini giving evidence stated that in March 1972 he was assisting the accused in his work. He did not receive any payment from the accused and was helping him as a friend. He was present when Agnes Nona and Iranganie came to the accused's office in March, 1972. When they came he went a little distance away to allow them to speak to the accused. He did not hear what they spoke nor did he see Iranganie giving the accused anything. About a week or two later they came again and he saw money being kept on the table. He does not remember who kept the money but he saw 50 rupee notes. On that occasion too he did not hear what they spoke. Later on he asked Agnes Nona why money was given to the accused. She told him that it was to get an allotment of land. A few months later Agnes Nona met him and told him that she had given Rs. 300 to the accused but that she did not get the land and asked Gamini to get the money back for her. He then went to meet the accused and told him to return the Rs. 300 of "these innocent people.". He promised to return the same in instalments of Rs. 100. Later the accused sent a message to him to come to Heiyantuduwa. When he went there the accused gave him Rs. 100 to be given to Agnes Nona. Gamini came back and offered the money to Agnes Nona but she refused to accept the same. He then returned it to the accused. He said he was not certain as to the time when Agnes Nona and Iranganie came to the accused's office. He could not remember whether it was in the morning or in the evening but it was not at night.

Witness Abeygoonawardene during the course of his evidence stated that the accused was the Grama Sevaka of Padiliyatuduwa from 29.9.1971 to 31.12.1973 and that the accused had no authority to grant any Crown land to any applicant.

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At the close of the prosecution case the accused who, except on the first day was undefended was called upon for his defence. He made a statement from the dock. He denied having gone to the house of Agnes Nona in March, 1972 in connection with the discharge of his duties. If he did, it could have been proved by his diaries. He also said that he neither solicited nor accepted any money from Iranganie.

On a consideration of the prosecution evidence it is clear that the evidence of Agnes Nona on the 2nd count of the indictment, namely, the acceptance by the accused of gratification of a sum of Rs. 300 from Iranganie as an inducement or a reward for furthering the securing to Agnes Nona of an allotment of Crown land, has been materially corroborated by the evidence of Iranganie. Gamini's evidence that he saw money being placed on the accused's table on the second occasion by Iranganie and that later that the accused sent for him and gave him Rs. 100 to be given to Agnes Nona also supports the evidence of both Agnes Nona and Iranganie in respect of the 2nd count. The learned District Judge has accepted their evidence and I think there is ample evidence to support the verdict of the learned District Judge on count 2 of the indictment. The only material contradiction was that whilst Agnes Nona and Iranganie stated that Gamini saw the money being given to the accused at his office Gamini himself stated that he saw money being kept on the table and that too only on the second occasion. This contradiction has escaped the attention of the learned District Judge. But I do not think that in the light of the other evidence in the case it is of such a vital nature as to vitiate the finding of the learned District Judge on count 2. In regard to count 1 however the evidence of Agnes Nona is uncorroborated. The learned District Judge does not seem to have addressed his mind to this fact. I do not think it is safe to allow the conviction on count 1 to stand solely on the uncorroborated testimony of the complainant Agnes Nona particularly in view of the fact that the learned District Judge himself appears to have been reluctant to act on her evidence alone. We therefore quash the conviction and sentence on count 1.

Learned Counsel for the accused also submitted that the learned District Judge has failed to consider the fact that the complaint of Agnes Nona was belated and its impact on the prosecution case. No doubt there seems to have been a lapse of some time before the complaint was made. But the evidence discloses several attempts to get the money back by Agnes both before and after the accused was transferred to Heiyantuduwa. Gamini himself at

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her request was attempting to get the accused to refund the money. These attempts no doubt would have taken a fairly long time. The evidence shows that it was only when the accused threatened the complainant Agnes Nona and warned her not to come again to his office at Heiyantuduwa that she lodged her complaint. Under the circumstances and in view of the clear evidence of acceptance by the accused of the money I do not think this submission of learned Counsel has any merit.

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For the above reasons we set aside the conviction and sentence of the accused on count 1 and acquit him of that count. We affirm his conviction and sentence on count 2. He will also pay the mandatory penalty of Rs. 300 imposed on him by the learned District Judge.

COLIN-THOME, J.-I agree.
Conviction set aside on count 1.
Affirmed on count 2.

G. G. Ponnambalam (Jnr.)

Attorney-at-Law.

