

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

*In the matter of an Appeal under and in  
terms of Section 331 of the Code of Criminal  
Procedure Act No. 15 of 1979.*

**Court of Appeal No:**

CA/HCC/0076/2021

**High Court of Colombo**

**Case No:** HCB/17/2018

The Director General,

Commission to Investigate Allegations of

Bribery or Corruption,

No. 36,

Malalasekara Road,

Colombo 07.

**COMPLAINANT**

**Vs.**

Suwada Henedi Sunillal

No. 121, Thisara Uyana,

Kaburugamuwa.

**ACCUSED**

**AND NOW BETWEEN**

Suwada Hennedi Sunillal  
No. 121, Thisara Uyana,  
Kaburugamuwa.

**ACCUSED-APPELLANT**

**Vs.**

The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**COMPLAINANT-RESPONDENT**

Before : Sampath B. Abayakoon, J.  
: P. Kumararatnam, J.

Counsel : Anil Silva, P.C. with Amaan Bandara for the  
Accused-Appellant  
: Anusha Sammandapperuma, Assistant Director Legal  
for the Respondent

Argued on : 19-01-2024

Written Submissions : 23-05-2022 (By the Accused-Appellant)  
: 14-07-2022 (By the Complainant-Respondent)

Decided on : 02-05-2024

**Sampath B. Abayakoon, J.**

The accused-appellant (hereinafter referred to as the appellant) was indicted before the High Court Colombo by the Director General of the Commission to Investigate Allegations of Bribery or Corruption on the following counts.

1. That he, being a labour officer attached to Matara District Labour Office and being a government servant, solicited a gratification of Rs. 60,000/- between the period of 21-03-2017 and 24-03-2017 at Matara, within the jurisdiction of the High Court of Matara in order to underestimate the amount that should be paid by Hewamarambage Ishanka Rakapaksha as Employees Provident Fund (EPF) payments for his employees, and thereby committed an offence punishable in terms of section 19(b) of the Bribery Act as amended by Act No. 2 of 1965, 38 of 1974 and 9 of 1980.
2. At the same time and at the same transaction, being a government servant, namely a labour officer attached to Matara District Labour Office, solicited the said amount from the earlier mentioned person, and thereby committed an offence punishable in terms of section 19(c) of the of the Bribery Act as amended by Act No. 2 of 1965, 38 of 1974 and 9 of 1980.
3. Being a government servant and a labour officer attached to Matara District Labour Office, accepted a sum of Rs. 30,000/- on 27-03-2017 from the person mentioned in the 1<sup>st</sup> count for the same purpose as earlier mentioned, and thereby committed an offence punishable in terms of section 19(b) of the of the Bribery Act as amended by Act No. 2 of 1965, 38 of 1974 and 9 of 1980.
4. At the same time and at the same transaction mentioned in the 3<sup>rd</sup> count, accepted the same amount from the same person for the same purpose, and thereby committed an offence punishable in terms of section 19(c) of the of the Bribery Act as amended by Act No. 2 of 1965, 38 of 1974 and 9 of 1980.

The appellant has pleaded not guilty to all the counts preferred against him, and after the trial, the learned High Court Judge of Colombo of his judgement dated 06-08-2021 has found the appellant guilty as charged.

After having considered the mitigatory as well as aggravating circumstances, the learned High Court Judge has sentenced the appellant in the following manner.

On count one, 7 years rigorous imprisonment, in addition, Rs. 5000/- fine, and in default, 6 months simple imprisonment.

On count two, 7 years rigorous imprisonment, in addition, Rs. 5000/- fine, and in default, 6 months simple imprisonment.

On count three, 7 years rigorous imprisonment, in addition, Rs. 5000/- fine, and in default, 6 months simple imprisonment.

On count four, 7 years rigorous imprisonment, in addition, Rs. 5000/- fine, and in default, 6 months simple imprisonment.

Having considered the fact that the appellant had no previous convictions, the learned High Court Judge has ordered that the sentences imposed upon all 4 counts shall run concurrently to each other, which means a total period 7 years imprisonment.

In addition to the above, the learned High Court Judge has ordered the appellant to pay Rs. 30,000/-, the sum obtained as a bribe in terms of section 26 of the Bribery Act and in default, he has been ordered to serve a rigorous imprisonment period of 1 year.

Being aggrieved by the conviction and the sentence, the appellant has preferred this appeal.

Before considering the grounds of appeal urged, I will now consider the facts in brief, which led to the conviction of the appellant.

### **Facts in Brief**

PW-01 has commenced a business of servicing and repairing motorcycles on 03-11-2014. For that purpose, he has employed two persons to assist him in the business.

Before the incident that led to the indictment, officials from the Employees Trust Fund Board (ETF) have visited his establishment and had informed him that he needs to pay ETF for his employees. Accordingly, he has registered himself to pay ETF and had paid an arrears amount as well. He was in the process of paying ETF as required.

On 21-03-2017, the appellant to whom PW-01 refers to as 'Lal Sir' has visited his establishment and has informed that he is from the labour office. The appellant has inquired whether he is contributing to Employees Provident Fund (EPF) for his employees, and the appellant has answered in the negative.

After inquiring into the matter, the appellant has informed PW-01 that he will have to pay an arrears of nearly Rs. 150,000/- as EPF payment. The PW-01 has informed that he was unaware that he has to pay EPF as well, and that he has already paid an arrears amount as ETF.

Thereafter, the appellant had instructed him to come to the Matara District Labour Office on the same day with the relevant documents relating to his employees. The appellant has given his phone number to PW-01 as well.

After getting the necessary documents ready, PW-01 has given a call to the appellant and he has informed the PW-01 to come. When PW-01 reached Matara District Labour Office, the appellant was not there, which has resulted in PW-01 giving a call to the appellant. The appellant has instructed PW-01 to come near Thudawa, Pinidiya fuel station.

When PW-01 met the appellant at the fuel station, the appellant has informed PW-01 that he should be looked after for this. When asked by PW-01 what he should do, the appellant has asked him how much money he has in his possession. PW-01 has informed him that he has Rs. 5000/- and the appellant has taken the Rs. 5000/- from him.

Thereafter, the appellant has solicited Rs. 60,000/- from PW-01 to arrange the EPF payments without any arrears being paid. When PW-01 resisted saying that he does not have that kind of money, the appellant had stated that he can pay Rs. 30,000/- first, and should pay the balance in one week's time.

Accordingly, the appellant has given the necessary application forms to PW-01, which has been marked at the trial as P-02 (A), (B), (C).

After coming home, PW-01 has discussed this matter with his wife and has decided to lodge a complaint to Bribery Commission in this regard.

Accordingly, officials of the Bribery Commission have come and met PW-01 on 27-03-2017 at Thihagoda town. The Bribery Department officials had taken down his complaint and had inquired from PW-01 whether he is willing to assist the officials in conducting a raid, for which he has agreed.

On instructions, PW-01 has selected one of the officials to accompany him as a decoy and the officials have instructed him to bandage his hand to look as if he has an injury to show that it was the reason he is accompanying the decoy. He has been advised to introduce him as his wife's elder brother if asked by the appellant. The Bribery Department officials have handed over Rs. 30,000/- to the decoy to be used in the raid.

Thereafter, PW-01 has given a call using his mobile phone to the appellant, and the appellant has instructed him to come to his office. The PW-01 and the decoy has gone to the labour office in the motorcycle belonging to PW-01 bearing number WP-8811. It was the decoy who has ridden the motorbike as PW-01 was

dressed to pretend that he has a hand injury. Once they reached the labour office, both of them had gone to meet the appellant.

According to the evidence of PW-01, he has observed that once he saw the decoy, the appellant appeared to have panicked a bit. The appellant has informed them that he has a meeting at the office and to come in the afternoon.

Around 4.00 p.m., the appellant has called PW-01 and has informed him that the meeting was over and come. When he and the decoy returned to the labour office, the appellant was not available. When PW-01 called the appellant, he has been informed that he should come near Pinidiya fuel station. When he reached the said fuel station, PW-01 could not see the appellant. This has resulted him giving another call to the appellant. While taking this call, PW-01 has observed the appellant standing near a salon situated nearby, and taking a call.

Thereafter, the PW-01 and decoy has gone near the place where they saw the appellant. When the PW-01 met with the appellant, he has acted as instructed and has asked whether the amount can be reduced, for which the appellant has stated that it cannot be done. The appellant has again promised that his EPF payments will be arranged without the arrears been required to be paid.

The appellant has informed that he has to go quickly. PW-01 has then gone near the decoy who was pretending to be the brother-in-law of PW-01. After taking the money from the decoy, he has returned again to the place where the appellant was. The appellant without taking the money to his hand has instructed to leave the money between the seats of his motorbike parked nearby. The appellant has complied. At that moment, the raiding party of the Bribery Commission has come and arrested the appellant.

Under cross-examination, the learned Counsel who represented the appellant has repeatedly asked questions about EPF as well as ETF payments that should have been paid by the PW-01. The position of PW-01 had been that he did not know that he has to pay EPF payments as well, and that was the reason why he did not register himself to pay EPF.

He has admitted that when the appellant came to his establishment on 21-03-2017, he interviewed his two employees, and has stated that what the appellant offered was to arrange for EPF payment without an arrears being paid.

He has admitted that when he went to the labour office along with the decoy for the 1<sup>st</sup> time, the appellant did not discuss any details of the bribe solicited by him, but has maintained the position that when the appellant saw the decoy, he inquired about him more than anything else, and the injury to his hand, before informing him that he has a meeting and to come in the afternoon.

It appears from the proceedings before the trial Court that the learned Counsel who represented the appellant had been cross-examined the PW-01 on the same matter over and over again, which has led to the PW-01 being required to provide answers to the same questions asked in different ways.

It had been suggested to him that the incident narrated by him before the Court was not probable. The position of PW-01 has been that he is telling the truth about what happened. The contradiction marked V-01 had been in relation to what PW-01 has stated in the 1<sup>st</sup> statement made by him to the Bribery Department Officials, about what the appellant told one of his employees when he interviewed them.

The decoy mentioned by PW-01 had given evidence as PW-02. He has confirmed the matters that led to him going along with the PW-01 for this raid as the decoy. According to his evidence, when they went for the 1<sup>st</sup> time to the labour office, the PW-01 has informed him that the appellant is not in his office. When PW-01 took a call to the appellant, the appellant has instructed him to come near Pinidiya fuel station. On their way, they have met the appellant coming in a motorbike. The appellant, after seeing them had stopped his motorbike and had informed the PW-01 to come to his office. When they went to the office of the appellant for the 2<sup>nd</sup> time, before they could go near him, the appellant has signaled them to wait and has come near them and had talked to them.



He has inquired about the injured hand of the PW-01 and has also inquired about the decoy to which PW-01 has replied that he is his brother-in-law, and because of the injury, he cannot ride the motorbike and that is the reason he came along with him. After coming out of the labour office with them, the appellant has informed that he has a meeting and cannot attend to PW-01's matter now, and will call him in the afternoon.

As a result, both of them have returned to the establishment of PW-01 and while waiting there, PW-01 has received a call at around 4.00 p.m. where he has been informed to come to the appellant's office. The decoy has corroborated the evidence of PW-01 as to what happened thereafter, and the arrest of the appellant by the Bribery Department officials.

When PW-01 was giving evidence, he has stated that after the bribe money was handed over, he saw the decoy taking a call and video recording of the incident. However, the stand in that regard by the decoy was that he or his team did not take any video recording equipment for the raid and he did not record what was happening using his mobile phone.

At the trial, the two employees of PW-01 have also given evidence corroborating that the appellant came and inquired from them about their salary and other information.

The officer who conducted the investigation and the raid, namely, PW-03 have given evidence providing details of the complaint received by the Commission, the raid conducted, and the investigations carried out in this regard.

The call record details of the mobile phones of PW-01 and that of the appellant had been admitted in terms of section 420 of the Code of Criminal Procedure Act.

At the conclusion of the prosecution case and when the appellant was called upon for his defence, he has decided to make a statement from the dock.

He has denied that he solicited a gratification from PW-01 or obtained any bribe and has claimed that it was impossible for anyone to evade paying EPF for employees, and has claimed that the evidence of PW-01 was false.

However, he has admitted that he went to the establishment of PW-01 on 21-03-2017 and inquired about payment of EPF for his employees. He has also admitted that there were several phone calls between them before he was arrested on 27-03-2017 and has admitted the fact that he gave necessary application forms to PW-01 to register him as an EPF payer.

Referring to what happened on the 27<sup>th</sup> of March, he has stated that he received a call from PW-01 around 12.15 p.m. and instructed him to come to his office. He has admitted that he received another call from PW-01 and at that time, he was not in his office because he went out to buy some food, and he instructed the PW-01 to wait for him at the office. He has stated that when he went back to his office, he met PW-01 who was with another person, and has claimed that he informed the PW-01 that he has a meeting to attend, and therefore, cannot look into his matter and come later.

He has admitted that he gave a call to PW-01 around 3.55 p.m. and told him to come to his office again. He has stated that since PW-01 did not come, he left the office, but about 15 minutes later, when he was near the small bridge situated close to the Pinidiya fuel station, PW-01 called him, and because of that, he instructed PW-01 to come there. According to the appellant's version of events, he has waited there, after parking his motorbike nearby, expecting the PW-01 to arrive. It had been his position that PW-01 who came with the person whom he met earlier in his motorbike and informed him that he brought Rs 30,000/-. The money is with his brother-in-law who came with him, and to take that money and conclude his EPF matter.

The appellant has claimed that he refused the request and went to the nearby boutique. It has been his position that when he returned to the road after having a chat with the owner of the boutique for about 5 minutes, a white coloured van came and stopped near him and asked for the money taken as a bribe. He has claimed that when he denied he took any money, the officials accompanied him to his bike which was parked nearby and pointed to some money kept between his travelling bag and the front seat, and asked him to take that. The appellant has stated that he was arrested thereafter, and taken to the Thihagoda police station.

The appellant has claimed that this was a set up against him by the police and the PW-01, and a false allegation against him.

### **The Grounds of Appeal**

Although several grounds of appeal have been urged on behalf of the appellant in his written submissions, the learned President's Counsel who represented the appellant formulated the following grounds of appeal for the consideration of the Court.

1. The learned High Court Judge failed to consider the material contradictions of the evidence of PW-01 and that of the decoy, namely PW-02.
2. The learned High Court Judge was misdirected when the appellant was convicted in a situation where there was no evidence to prove the charges beyond reasonable doubt against the appellant.

### **The Consideration of the Grounds of Appeal**

As the two grounds of appeal urged by the learned President's Counsel are interrelated, I will now proceed to consider the said grounds collectively.

Although it was contended that the learned High Court Judge has failed to consider the material contraindications of PW-01 and 02, I am unable to agree that there were material contradictions between their evidence in view of the admissions made by the appellant in his dock statement.

The only contradiction marked in relation to the evidence of PW-01 has been a contradiction about what PW-01 has stated in his statement about a thing said by the appellant to his employees when appellant interviewed them.

Having cross the PW-01 over and over again on the same points, an omission had been highlighted on the basis that he did not tell in his complaint to the Bribery commission that, the money was solicited in order to arrange for him not to pay any money as EPF.

However, it is abundantly clear from the evidence of PW-01, when taken as a whole, his complaint had been to the effect that the appellant demanded money so that he can arrange for the EPF payments without requiring him to pay any arrears of EPF, and not to allow him to evade paying EPF. The documents marked at the trial show that the appellant had in fact given the necessary application forms to the PW-01 and those applications forms had been completed as required, when the arrest was made. This goes on to show that the transaction had been not to allow the PW-01 to avoid paying EPF, but to help him avoid paying any arrears of EPF.

The only deficiency between the evidence of PW-01 and 02 had been in relation to what occurred when both of them went to meet the appellant. The PW-01 has failed to mention that when they went to the office of the appellant for the first time, he was not there, but they met him later on the road and came to the office of the appellant when asked by him to come.

The evidence of PW-02 has been to the effect that it was only after they went to his office for the second time, the appellant spoke to them and informed that he has a meeting and cannot attend to the matter.

If one looked at this omission in its isolation, one may claim that there was a deficiency in the evidence between the two witnesses in that regard. However, in the dock statement, the appellant has admitted what happened at that time, exactly in the similar manner the PW-02 has stated as to what occurred at the office of the appellant.

This shows that, PW-01 has omitted to say in greater detail, not because he was telling an untruth, but because he has been subjected to a lengthy cross-examination on the same matter and nothing else.

I am of the view that such omissions as to details of an incident can occur in any case due to various reasons.

At this stage it is appropriate to refer to the Indian case of **Bhoginbhai Hitijibhai Vs. State of Gujarat (AIR 1983-SC 753 at pp 756-758)** where it was held:

*1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.*

*2) Ordinarily, so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*

*(3) The powers of observation differ from person to person. What one may notice, and the other may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part another.*

*(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purpose of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

I am of the view that, for any omission or contradiction *inter se* or *per se* of the evidence placed before the Court, has to be material contradictions or omissions that creates a reasonable doubt as to the trustworthiness of the evidence of the witnesses. Such contradictions or omissions should be matters that go into the core of the prosecution case.

In the case of **State of U P Vs. Ashok Kumar Srivastava AIR 1992 SC 840**, it was stated that Prosecution is not required to meet any and every hypothesis put forward by the accused.

In the case of **Inder Singh and Anr. Vs. State (Delhi Admn.) (AIR 1978 SC 1091)** it was held:

*“A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.”*

In the case of **State of Uttar Pradesh Vs. Anthony 1985 AIR SC 48**, the danger of disbelieving an otherwise truthful witness on account of a trifling contradictions have been spotlighted. It has been stated that;

*“The witness should not be disbelieved on account of trivial discrepancies, especially where it is established that there is a substantial reproduction in the testimony of the witness in relation to his evidence before the Magistrate or in the session court and that minor variation in language used by witness should not justify the total rejection of his evidence.”*

For the reasons as considered above, I find no merit in the 1<sup>st</sup> ground of appeal urged by the learned President’s Counsel, as I am unable to find any deficiencies in the evidence that goes into the core of the matter.

The next ground of appeal urged by the learned President's Counsel was to the effect that, there was no evidence to establish the case against the appellant beyond reasonable doubt, and the learned High Court Judge was misdirected when it was determined so.

It was the submission of the learned President's Counsel that, he concedes that no corroboration is necessary at all the time to prove a fact, but it was contended that the evidence of PW-01 was contradictory, and therefore, his evidence should not have been relied on by the learned High Court Judge.

However, as I have considered before, I do not find a basis to consider the evidence of PW-01 as unreliable, therefore not trustworthy.

It was the submission of the learned President's Counsel that since the money was not found in the possession of the appellant, given the facts and the circumstances, the incident could well be a setup against the appellant and that fact should have been considered in favor of him. It was submitted that where any doubt arises in that relation, it should have been considered, and the benefit of the doubt should have gone in favor of the appellant.

In considering whether this could have been a set up against the appellant, the evidence led by the prosecution and the defence taken up by the appellant needs to be considered as a whole and not in isolation.

The appellant has admitted almost all of the facts narrated by PW-01 in this regard and also the telephone conversations he had with him, and most of the matters occurred on the day of the incident. But what he has denied was that, he solicited a bribe or he told the PW-01 to place the money between the seats of his motorbike.

It is an admitted fact that the money was recovered by the officials of the Bribery Commission between the seats of the motorbike.

The evidence clearly shows that the appellant was unknown to PW-01 until he came to his establishment on 21-03-2017 and inquired of his non-payment of EPF. It was obvious that if he registered to pay EPF in 2017, he would have to pay about 3 years arrears of EPF.

It is clear from the evidence of PW-01 when the officials from Employee's Trust Fund registered him to pay ETP, he had to pay an arrears of around Rs.8000/-, which means that, PW-01 was aware that he would have to pay arrears of EPF as well.

It is under these circumstances the PW-01 says that the appellant informed him that he will have to pay around one hundred and fifty thousand rupees as arrears. It was only after PW-01 went and met him at his office, the appellant has informed him that he will have to look after him so that he can arrange for him to register to pay EPF without an arrears being paid. It is in that process the appellant has demanded a bribe. I do not find any reason not to believe the version of events as stated by PW-01 in that regard. It shows that when the appellant met the PW-01 for the 1<sup>st</sup> time, he has been forced to give Rs.5000/- to him and it was only after that payment the additional sum had been demanded.

The chronology of events that has been established at the trial shows that there was no reason for the PW-01 to concoct a story against the appellant.

The telephone details provided, and admitted by the appellant clearly show that such calls have been made.

If the appellant was only performing his legal duties in relation to getting the PW-01 registered to pay EPF for his employees, there was no necessity for him to keep on contacting the PW-01 in this manner. There was no necessity for him to tell PW-01 to come and meet him at a place other than his office. If PW-01 did



not come and meet as told, he could have very well told him to come and meet him at his office at the next available day.

It clearly appears from the evidence that, the appellant being a government servant was well aware of the repercussions he will have to face if he was caught taking a bribe. His actions clearly show that, once he saw a stranger in the company of PW-01 when he met them at his office on the date of the incident, he has taken care not to accept any bribe or to utter words in relation to that, but only to get out of the situation by stating that he has a meeting to attend and will call later. That may be the very reason why both the witnesses say that the appellant was inquisitive about the stranger and questioned them in that regard.

However, it appears that the greed for money has overcome him, which has resulted in him calling the PW-01 to come and meet him at the place where the arrest was made. The appellant may have thought that, by not taking money directly to his hand, he will have a better way of explaining his conduct. However, it is my view that the evidence placed before the Court has proved beyond reasonable doubt that the money recovered between the seats of the motorbike belonging to the appellant was the money solicited and obtained by him from PW-01.

Although PW-01 has stated in his evidence that he saw the decoy video recording what was happening, it was not clear whether he states that in relation to what happened after the arrest of the appellant by the bribery officials or when the money was being placed on the motorbike as demanded by the appellant.

However, the evidence in that regard by PW-02, the decoy, had been that he did not video record the incident using his mobile phone. But he has admitted that he made an attempt to take a call to the bribery officials to alert them about the incident. It is quite obvious that, PW-01 may have seen this as video recording of the incident.

It is my view that, there was no probability of video recording using a mobile phone by the decoy, as it would lead to a suspicion been created about him by the appellant, which may lead to the failure of the raid. It is hard to believe that the decoy being so close to the PW-01 and the appellant, and a person whom the PW-01 has introduced as his brother-in-law, and being a police officer, would make such a move which may jeopardize the whole operation.

I find no basis to accept that the evidence of PW-01 in relation to the time it took for the investigating officers to arrest the appellant creates an improbability of the version of events as narrated by the PW-01, in view of the admission by the appellant in his dock statement.

I find no basis to accept the argument that the learned High Court Judge has failed to consider the dock statement of the appellant in the correct perspective. I am of the view that, the dock statement has been well considered along with the evidence led in this matter and the learned High Court Judge has rightly concluded that the dock statement, does not create a doubt on the evidence of the prosecution.

For the reasons considered as above, I find no basis for the second ground of appeal urged either.

It needs to be noted that it is the same Judge who heard the entirety of the evidence has pronounced the judgement. Therefore, it is abundantly clear that the learned trial Judge had the advantage of hearing the evidence in its entirety and observing the demeanour and deportment of the witnesses.

In the case of **Alwis Vs. Piyasena Fernando (1993) 1 SLR 119, G. P. S. De Silva, J. (As he was then)** reiterated that the Court of Appeal would not likely disturb the findings of primary facts made by a trial Judge unless it is manifestly wrong as they have the priceless advantage of observing the demeanour of witnesses which the Judges of the Court of Appeal does not have.

In the case of **De Silva and Others Vs. The Attorney General (2010) 2 SLR 169** it was held:

*“Credibility is a question of fact, not law. Appeal Court Judges repeatedly stress the importance of trial judge’s observation of demeanor of witnesses in deciding questions of fact. The acceptance or rejection of evidence is therefore is a question of fact for the trial judge. Since he or she is in the best position to hear and observe witnesses. In such a situation the Appellate Courts will be slow to interfere with the findings of a trial judge unless such evidence could be shown to be totally inconsistent or perverse and lacking credibility. Evidence must be weighed and not counted.”*

Accordingly, the appeal is dismissed for want of merit. The conviction and the sentence dated 06-08-2021 affirmed.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal