

Ukwatta Liyanage Colvin Chandrasiri Dias Vs. Director General Commission to Investigate Allegations of Bribery or Corruption et al. SC Appeal 23/2015 HC Colombo HC MCA 59/2009 MC Colombo 95046/2001 (3/SC) Decided on 10/3/2016.

Sections 19 (b), (c) of Bribery (Amended) Act No 20 of 1994 - soliciting and accepting bribes.

J Sisira De Abrew J, with Eva Wanasundera PC and Anil Gooneratne J,

The complainant had requested the accused appellant to issue a certificate to the Urban Veterinary Surgeon Department for the purpose of obtaining a loan. The accused appellant had informed the complainant to pay Rs.500 to get the job done. Thereafter, the complainant (Hettiarachchige Priyantha) had informed the bribery commission regarding the accused appellant. The complainant with a police constable who acted as a decoy had gone to the office of the accused appellant. After examining the application accused appellant had asked for money and the second accused had put the money inside a drawer.

The accused appellant had called Somawathie to give evidence on his behalf. It was stated that she observed two people behaving in a suspicious manner in the office as if they had come to do some unlawful act. Further, she had seen one of them putting something into the drawer of the table of the accused-appellant. The accused-appellant could not see it as he was, at this time, turning his back to the table. However this witness knew the accused-appellant personally.

The Accused-Appellant was charged in the Magistrate's Court of Colombo for soliciting and accepting Rs.500/-, two counts based on section 19 (b) and 19 (c) for soliciting and third and fourth counts under the same section for accepting Rs.500. The second accused charged with aiding and abetting the first accused-appellant. Accused appellant, on the 1st count, was sentenced to one year rigorous imprisonment suspended for ten years and to pay a fine of Rs.1500/- . On the 2nd count he was ordered to pay a fine of Rs.1500/-; on the 3rd count he was sentenced to a term of one year rigorous imprisonment, suspended for ten years and on the 4th count he was ordered to pay a fine of Rs.1500/-. The 2nd accused on each count was sentenced to pay a fine of Rs.1500/-.

The Magistrate, after trial, convicted both accused on all counts and the accused appellant being aggrieved by the convictions both accused appealed to the High Court. The learned High Court Judge dismissed both appeals. Being aggrieved by the said judgment of the learned High Court Judge, The 1st accused (the accused appellant) had appealed to Supreme Court.

They were granted leave to appeal on the following questions of law.

1. Did the learned High Court Judge err in law when he failed to consider the error committed by the learned Magistrate when he stated that the accused must be found guilty because the defence had failed to show any contradictions in the evidence of the prosecution witnesses and thereby shifting the burden of proof on the accused?

2. Did the learned High Court Judge err in law when he failed to consider the adverse inference drawn by the learned Magistrate from the conduct of the complainant when he fled the scene after the detection which is irrational and unwarranted in law?

3. Did the learned High Court Judge err in law in affirming the conviction when the learned Magistrate had failed to properly consider and evaluate the entire evidence placed before him?

Held;

It was stated that the learned Magistrate has come to the correct conclusion. He has, in his judgment, observed that the contradiction and omissions marked by the defence were not capable of damaging the prosecution case. Court emphasized its reluctance to rely on the evidence given by the witness appeared on behalf of the accused appellant. In fact the complainant's evidence was accepted. The judge stated that it is a default to find fault with the judgment of the learned Magistrate. When considering the above matters the necessity to answer the 1st question of law does not arise.

According to the evidence of the case, the court held the view that the learned Magistrate had come to the correct conclusion and stated that, there are no reasons to interfere with judgments of the learned Magistrate and the learned High Court Judge. Further the 2nd and 3rd were found to be negative.

Court accepted the judgments of the learned Magistrate and the learned High Court Judge.

Appeal dismissed.