

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

Nanayakkarawasam Harijja

Waththage Noel Wasantha Silva.

Wikulawaththa Road, Polkotuwa

Gampola.

ACCUSED - APPELLANT

C.A. No. 242/2010

HC Colombo Case No. B1661/2006

Vs

Hon. Attorney General

Attorney General's Department

Colombo 12.

RESPONDENT

BEFORE

: Deepali Wijesundera J.

: L.U. Jayasuriya J.

COUNSEL

: Neranjan Jayasinghe for the

Accused – Appellant

Kapila Waidyaratne PC, ASG for

the Attorney - General

ARGUED ON

: 16th June, 2016

DECIDED ON

: 30th June, 2016

Deepali Wijesundera J.

The accused appellant was indicted in the High Court of Colombo under section 19 (b) and 19 (3) of the Bribery Act on six charges. After trial he was convicted on all the charges but sentenced on the first, third and the fifth charges.

On the day in question the lorry hired by the complainant Ran Banda which was carrying fire wood was alleged to have been stopped by the appellant and demanded Rs. 75,000/= to release the lorry and the fire wood. The evidence shows the fire wood belonged to the Hope Estate and the Superintendent of the Estate has given evidence to say that Ran Banda had a letter of authority to transport fire wood within the Estate.

The grounds of appeal urged by the appellant are that the learned High Court Judge failed to address his mind to the infirmities in the case for the prosecution and that he failed to apply the test of probability.

The learned counsel for the appellant argued that if there was a permit to transport fire wood within the Estate it is highly improbable for the complainant to pay a sum of Rs. 75,000/= to the appellant. The explanation given by the complainant Ran Banda was that he had hired 13 people from the Estate to unload the lorry and that the lorry belonged to a third party and in order to prevent them being prosecuted he negotiated and brought down the money to Rs. 60,000/= and paid Rs. 10,000/= from his income in the shop and the balance Rs. 50,000/= was paid after his wife withdrew the same from the post office savings account. Hiring 13 people to load and unload a lorry of fire wood is highly

improbable. More over if Ran Banda had a valid permit he had no reason to panic when the detection was made and further he had ample time to inform the Superintendent who issued the letter to transport fire wood.

The counsel for the appellant argued that the learned High Court Judge has not considered the contradiction *inter se* and drew the attention of court to the evidence of prosecution witness number 5 Wickremasinghe and prosecution witness number 3 Koin Manika, where she has stated she went to the post office to withdraw the money from her savings account at 12.30 whereas Wickremasinghe who was maintaining accounts at Hadawalapitiya Sub Post Office has stated the money was withdrawn at 1.00 p.m. This is only a trivial contradiction, as it is only a difference of 30 minutes.

On perusal of evidence of witness number 8 S.I. Wickremasinghe the appellant has reported to work on 30/11/2015 at 6.58 and he has been on duty till 19.05. He has further stated in his evidence that the police party lead by him has left the police station at 11.50 and has made the return entry at 18.10. This evidence is elicited from a witness of the prosecution and he has produced documentary evidence to prove his evidence. He has also testified that the place where the detection was made is 15 kilometers away from the police station. Under cross examination he has stated it takes about one hour to get there from the police station considering the state of the road. When we consider the evidence of S.I. Wickremasinghe it is highly improbable for the appellant to be present at the place of detection.

The accused appellant giving evidence has stated that he reported to work at 7.00 in the morning and left the police station at 11.50 along

with a police party lead by S.I. Wickremasinghe, and has reported to the police station at 19.05. The position taken by the appellant was corroborated by S.I. Wickremasinghe's evidence.

In *Bandaranayake vs Jagathsena and others* 1984 2 SLR 397 it was held;

“when versions of two witnesses do not agree the trial judge has to consider whether the discrepancy is due to dishonesty or to defective memory or whether the witness power of observation were limited. The demeanor of the witness in the witness box must be taken into account.”

My considered view is that the learned High Court Judge has not followed this legal principle.

For the afore stated reasons I decide to set aside the judgment dated 10/11/2010 and acquit the appellant appeal is allowed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree

JUDGE OF THE COURT OF APPEAL