

Gunawardena v. The Attorney-General

COURT OF APPEAL.

RATWATTE, J. AND TAMBIAH, J.

C.A (S.C.) 23/78—D.C. COLOMBO (BRIBERY) 828.

MAY 26, 1980.

Bribery Act, sections 16, 19—Good character of accused—Failure of trial judge to consider such evidence—Does such failure amount to misdirection where evidence establishes the charge beyond reasonable doubt

Held

Where the evidence establishes the guilt of the accused beyond reasonable doubt, it cannot be said that there was misdirection on the part of the trial judge for failure to consider the evidence of good character of the accused.

Per TAMBIAH, J.: “Officers of the Bribery Commissioner’s Department cannot claim that their evidence should be treated with a greater sanctity; their evidence must be considered in the same manner as that of any other witness.”

APPEAL from the District Court, Colombo.

V. S. A. Pullenayagam, with H. Mendis and Miss Abeyssekera, for the accused appellant.

Rohan Jayatillake, Senior State Counsel, for the Attorney-General.

Cur. adv. vult.

June 20, 1980.

TAMBIAH, J.

The accused-appellant was charged before the District Court of Colombo, on an indictment containing 6 counts—

1. That on or about the 10th day of September, 1976, at Nagoda, you being a public servant employed for the prosecution, detection or punishment of offenders to wit: Grama Sevaka, did solicit a gratification of a sum of Rs. 100 from one N. G. Siripala as an inducement or a reward for your protecting from punishment the said N. G. Siripala the perpetrator of an offence and that you are thereby guilty of an offence punishable under section 16 of the Bribery Act.
2. That at the time and place set out above and in the course of the same transaction you being a public servant to wit: Grama Sevaka, did solicit a gratification of a sum of Rs. 100 from the aforesaid N. G. Siripala as an inducement or a reward for your abstaining from performing an official act to wit: taking charge of illicitly felled timber and that you are thereby guilty of an offence punishable under section 19 of the Bribery Act.
3. That at the time and place set out above and in the course of the same transaction you being a state officer to wit: Grama Sevaka did solicit a gratification of a sum of Rs. 100 from the said N. G. Siripala and that you are thereby guilty of an offence punishable under section 19 (c) of the Bribery Act as amended by section 8 of the Bribery (Amendment) Law, No. 38 of 1974.
4. That on or about the 14th day of September, 1976, at the time and place set out above and in the course of the same transaction you being a public servant as set out in count 1 above did accept a gratification of a sum of Rs. 100 from the said N. G. Siripala as an inducement or a reward for your protecting from punishment the said N. G. Siripala the perpetrator of an offence and that you are thereby guilty of an offence punishable under section 16 of the Bribery Act.

5. That at the time and place set out in count 4 above and in the course of the same transaction you being a public servant as set out in count 2 did accept a gratification of a sum of Rs. 100 from the said N. G. Siripala as an inducement or a reward for your abstaining from performing the official act set out in count 2 and that you are thereby guilty of an offence punishable under section 19 of the Bribery Act.
6. That at the time and place set out in count 4 above and in the course of the same transaction you being a state officer as set out in count 3 did accept a gratification of a sum of Rs. 100 from the said N. G. Siripala and that you are thereby guilty of an offence punishable under section 19 (c) of the Bribery Act as amended by section 8 of the Bribery (Amendment) Law, No. 38 of 1974.

After trial, he was found guilty on counts 1, 3, 4 and 6 and sentenced to 6 months' R.I. on each count and a fine of Rs. 250 on each count; the jail sentences on counts 1 and 4 to run consecutively and on counts 3 and 6 to run concurrently.

In the village of Udavelivitiya, there is a forest reservation called Darahulkanda. The foothills of this forest have been allotted to villagers for cultivation. The virtual complainant in this case is Siripala; he has two brothers, Sammie and Thenoris who were allotted Lots Nos. 57 and 58 respectively. Siripala himself was not given any land in this forest reservation. The accused-appellant, during the relevant period, was the Grama Sevaka of Udavelivitiya.

The case for the prosecution, briefly stated, was that Siripala was intending to construct a house and for that purpose required rafters, reepers and beams for the roof. With Sammie's permission, he cut down one Dun tree standing on his lot. On a message from the accused-appellant to the effect that the Dun tree had fallen and damaged some cinnamon trees planted in the land of one Newton who was claiming Rs. 25 as damages, he went to meet the accused-appellant. The accused-appellant requested him to pay Rs. 25 as damages and he told him, he was not in a position to make the payment. He met Newton who told him, he had not made complaint to the accused-appellant and had not demanded Rs. 25 as damages.

On 4.9.74, Siripala says, he cut the Dun tree into logs with the assistance of another villager and was in the process of sawing them. While engaged in sawing, the accused-appellant came along with P. C. Paulis and told him, he had felled the tree

without a permit and to stop sawing. He was brought to the Nagoda police station and was bailed out the next morning. On 9.9.76, plaint was filed in the Magistrate's Court, Udagama, against Siripala for cutting down a tree without a permit. He pleaded not guilty and the case was postponed.

On 10.9.76, on a message from the accused-appellant, he met him at his office at Udavelivitiya. The accused-appellant told him, he had helped him in regard to the Dun tree he had already felled by mentioning a smaller amount of timber; he could also cut down the other Dun tree and make it into logs and demanded Rs. 100. Siripala had no money at that time and said he would sell some tea leaves and pay.

Siripala then proceeded to Colombo, to the Bribery Commissioner's Department and his statement was recorded on 13.9.76 by Police Sergeant Umagiliya. The usual arrangements were made by P. S. Umagiliya to lay a trap for the accused-appellant. P.C. Silva was given Rs. 100 in two Rs. 50 notes, the numbers of which were noted. He was to accompany Siripala to the accused-appellant's house; Siripala was to introduce him as his brother-in-law to the accused-appellant and to tell the latter that he had brought the Rs. 100 which he demanded, for allowing him to cut down the other dun tree. If the accused-appellant showed willingness to accept the money, he was to obtain the same from P.C. Silva and hand it to the accused-appellant. P.C. Silva was instructed to watch the transaction and if the accused-appellant accepted the money, to give a signal by flashing a torch at intervals.

The police party consisting of P. S. Umagiliya, P. S. Lionel and P. C. Silva and the complainant Siripala reached Udavelivitiya, late that night. They were on their way walking to the accused-appellant's residence—Siripala and P. C. Silva in front followed by P. S. Umagiliya and P. S. Lionel. The accused-appellant was near a bridge, talking to some one. The time was about 11.05 p.m. Siripala then addressed the accused-appellant—"Ralahamy, I have brought Rs. 100 which you demanded. Tomorrow we intend to start work on the Dun tree." The accused-appellant inquired who P. C. Silva was and he was introduced as the brother-in-law. The accused-appellant then whispered, there was an outsider present and wanted Siripala to come and see him in the morning. Siripala told the appellant he would see him at about 4 a.m., and the appellant agreed. P. C. Silva does not claim to have heard the entire conversation between Siripala and the appellant, as it was carried on in low tones. He however heard Siripala say that he intended to start

work the following morning and would see the accused-appellant by about 4 a.m. at his residence. P. S. Umagiliya also confirms that he heard Siripala say that he would come and see the accused-appellant about 4 a.m.

The police party and the complainant Siripala stayed over for the night in the village, at the house of one Amaradasa. They set out at about 3.30 a.m. to the residence of the appellant. Siripala and P. C. Silva went towards the house, while P. S. Umagiliya and P. S. Lionel took position outside. Siripala knocked at the door and they were admitted by a carpenter who was also residing there. The appellant was asleep in his bed room and they both entered his bed room. There was a lamp burning in the hall. Siripala woke him up and the appellant asked whether it was dawn. The former replied it was dawning. The appellant went out to answer a call of nature, came back to the verandah, brought out 2 chairs on to the verandah and requested Siripala and P. C. Silva to sit down, but the latter two declined. The appellant sat down on one of the chairs. He ordered the carpenter to prepare tea. Siripala then told the appellant, he had brought the Rs. 100 demanded by the appellant and that he intended starting work, the following morning. The appellant told him to saw the tree without fear, to hurry up and take it away and to keep "Podda" to watch out whether the Police were arriving; he would be coming by the side of Theneris's house. Siripala took the Rs. 100 from P. C. Silva and handed same to the appellant who accepted the money and kept it on top of a piece of log which was at an arm's length from where he was seated. The log served the purpose of a tea-poy. There was a lamp burning in the hall and the light from the lamp fell on to the verandah as well.

P. C. Silva then flashed the torch as instructed. P. S. Umagiliya and P.S. Lionel then rushed into the house. P. S. Umagiliya questioned P. C. Silva and was told that the appellant had accepted the money from Siripala and had placed it on top of the log. P. S. Umagiliya went up to the log and took charge of the money. He also took the appellant into custody. According to him, the appellant was in a state of excitement and unable to speak. He asked the appellant to compare the serial numbers on the currency notes with those noted in his diary and the appellant agreed; the numbers tallied.

It was elicited from Siripala in cross-examination that it was because of a complaint made by the appellant that he had to face a charge in the Magistrate's Court of Udugama; that he and one Charles were warned to be of good behaviour by the appellant, over an incident where the cattle belonging to Charles

damaged his crops ; that Rs. 24.75 was recovered from him by the appellant for felling a tree in a land leased out by some one else from the State ; that he was one of those who opposed a grant of Rs. 2,500 from the local authority being given to the appellant for the repair of the bridge. The suggestion that Siripala and some others were opposed to the construction of a bridge itself in the village, for which the appellant was mainly instrumental, was however denied by Siripala. He stated he contributed towards the expense of, and assisted in, the construction of the bridge. He also denied that over an incident where he cut another with a sword, it was the appellant who arrested and handed him over to the Police. The appellant's own evidence is that he only did his duty as Grama Sevaka, but had no other ill feeling against Siripala. Despite these, Siripala maintained he had no ill-feeling or enmity against the appellant. It was suggested to him, which was denied, that because of ill-feeling against the appellant, he had kept Rs. 100 on the log of wood, in order to falsely implicate the appellant.

The appellant gave evidence and called witnesses on his behalf. The appellant denied the solicitation of Rs. 100 on 10.9.76. He admitted that on the late night of 13.9.76, near a bridge when he was talking to another person, Siripala and some others came there. Siripala addressed him as "Ralahamy" and said he was going in search of him. He told him, he was on his way to a pirith-ceremony and if Siripala wanted to, he could meet him, the following morning. He denied he asked Siripala to meet him at 4 a.m., but could not remember whether Siripala said so to him or not.

The next early morning two persons came to his house, one of whom was Siripala who addressed him as "Ralahamy". After asking them whether it was dawn, he got out to answer a call of nature and came to the verandah. Siripala and the other uttered something but he was too sleepy to follow. He had returned home from the pirith ceremony about 1.30 a.m. He sat on a chair. He inquired who the other person was—they said something and he was feeling sleepy. He offered a chair to the other person to sit and he refused. He then saw 2 persons coming, flashing a torch. They inquired for the Grama Sevaka and he answered it was he. One of them caught him by his arm ; the other showed him his identity card. But he was very sleepy at that time. A certain person brought the money and inquired whether he accepted it. He did not know from where that person took the money.

Under cross-examination, the appellant stated, Siripala had not visited him at odd hours. He could not remember Siripala telling him that they were starting work tomorrow and that he had brought Rs. 100 which he demanded. Siripala did not obtain the money from P. C. Silva and give it to him. He denied accepting the money from Siripala and placing it on top of the log. He also stated there was no reason for the police constable Silva to falsely testify against him.

The appellant also gave evidence in regard to his good character. He stated he had done his duties as Grama Sevaka satisfactorily and had not faced any disciplinary inquiries. Apart from his official duties, he had taken a prominent part in social and other work, for the welfare of the village. His witness Abeywickrema, an Assistant Government Agent, testified to the effect that the appellant had served under him and during that period, he had done satisfactory service and had received no punishment. He had also done social service and participated in official functions.

Learned counsel for the appellant submitted to us that the money was not found in appellant's possession. P. S. Umagiliya found the money on top of a log. The key issue in the case is whether the appellant accepted the money and placed the same on top of the log. Siripala had a grudge against the appellant. P. C. Silva is the only independent witness. P. C. Silva stated that Siripala obtained the money from him and gave it to appellant who accepted the same and placed it on top of the log. Equally, the appellant stated he did not accept any money. There was a conflict between the testimony of P.C. Silva and the appellant. Officers of the Bribery Commissioner's Department cannot claim that their evidence should be treated with a greater sanctity ; their evidence must be considered in the same manner as that of any other witness. The evidence that the appellant accepted the money and placed it on the log can be easily and readily fabricated. The learned trial Judge has not in his judgement stated why he preferred the version of P. C. Silva. He has only stated in his reasons—

“It was the accused's position that no money was given to him and that in the dark Siripala had kept the money on the log and had falsely implicated him. P. C. Silva definitely stated that he saw the money being given to the accused and the accused keeping the money on the log.”

Learned counsel further stated that the appellant has put his character in issue and this has escaped the mind of the learned trial Judge.

A reading of the judgement of the learned Judge shows that on a consideration of the totality of the evidence placed by both sides, he has come to a finding that the appellant accepted a gratification of a sum of Rs. 100 from Siripala. On the evidence, I cannot say, the finding is wrong. Feelings between Siripala and the appellant do not appear to have been that strained or bitter. The appellant admits he asked Siripala to meet him the next morning. The appellant did not resent the early arrival of Siripala and P. C. Silva at this unusual hour, whereby his sleep was disturbed. On the contrary he was hospitable—he offered them chairs to sit on and ordered the carpenter to prepare tea for them. Siripala's evidence that the appointment was fixed for 4 a.m., receives corroboration from P. C. Silva and P. S. Umagiliya. It is the latter's evidence that Siripala went to meet the appellant during that hour, because the appellant wanted him to come at that time.

Siripala's evidence that he obtained the two Rs. 50 notes from P. C. Silva and handed the same to the appellant who accepted the notes and placed them on top of a piece of log, has been corroborated by P. C. Silva who says that he clearly witnessed the transaction. P. S. Umagiliya says that on the pre-arranged signal being given, he rushed into the house and he questioned P. C. Silva who told him that the appellant had accepted the money and had placed it on top of the log. He went up to the log and took the two folded Rs. 50 notes. There was nothing urged against the witness P. C. Silva. In the words of the appellant—"There was no reason for P. C. Silva to give false evidence against me." It appears to me that the evidence of P. C. Silva that the appellant took the money and placed it on a log bears the imprint of truth, for, if it was a police fabrication, as was submitted by learned State Counsel, he and Umagiliya could have taken up the position, that the money was recovered from the appellant's possession.

There is a passage in Sarkar's "Law of Evidence" (10th Edn. Vol. 1, pages 497, 498)—

"In some cases evidence of general good character of the accused may explain his conduct or suggest an inference as to his guilt or innocence. Evidence of good character is of no help or use unless there is some legitimate doubt as to guilt of a person." Ellenborough, C.J., in *R. v. Davidson*, (1808) 31 How. S. T. 99, p. 217 :—

"Evidence of character is only of weight where the other evidence is in even balance, or where there is a fair and reasonable doubt of the prisoner's guilt."

In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality (*Habeed Md. v. State*, (1954) S.C.R. 475 : A. 1954, S.C. 51 : 1953, S. C. J. 678). It becomes of great importance in weighing the probabilities in doubtful cases; that is, when any reasonable doubt arises as to the guilt of the prisoner, evidence of good character may turn the scale in his favour. When, however, the evidence against the accused is such as to clearly establish his guilt, no importance can be attached to evidence of good character (*R. v. Turner* (1664), 6 How. St. Tr. 565, p. 613); unless the object is to plead in favour of a lenient sentence, or possibly the opposite. Norton cites the case of an Irish Judge who summed up thus: "Gentlemen of the Jury, there stands a boy of most excellent character, who has stolen six pairs of silk stockings," when evidence was given as to the good character of a boy who had been clearly found guilty of theft (Nort. p. 231). In *R. v. Davidson* (*supra*) Ellenborough, C. J. said to the Jury:—

"If you do not know which way to decide, character should have an effect. But it is otherwise in cases which are clear. If it could be permitted to operate where a crime is clearly proved, it would always be brought forward; because there is hardly any one who has not at some time maintained a good character.....If the evidence were in even balance, character should make it preponderate in favour of a defendant; but in order to let character have its operation, the case must be reduced to that situation."

The learned trial Judge, in his judgment, stated that he accepts and believes the evidence of the prosecution and rejects the evidence of the appellant. He has dealt with the various defences taken up by the appellant. He held that the prosecution had proved beyond reasonable doubt that the appellant solicited and accepted a gratification of a sum of Rs. 100 from Siripala. This was therefore not a case where it could be said that the evidence was in even balance and good character would have tilted the scales in favour of the appellant. In the said circumstances, it cannot be said there was misdirection on the part of the judge, for failure to consider the appellant's good character.

I affirm the conviction of the appellant and the sentence passed on him. The appeal is dismissed.

RATWATTE, J.—I agree.

Appeal dismissed.