SUNIL
v.
ATTORNEY-GENERAL

COURT OF APPEAL.
JAYASURIYA, J.,
KULATILAKE, J.
C.A. No. 53/97.
H.C. COLOMBO No. 897/93.
NOVEMBER 19, 26, 1998.
DECEMBER 9, 1998.
MARCH 3, 4, 1999.

Bribery charges – Is corroboration necessary ? – Testimonial trustworthiness.

Held:

1. It is trite law that the trial Judge who hears a bribery trial is entitled to convict on the sole testimony of a prosecution witness without any corroboration *provided* he is impressed with the cogency, convincing character of the evidence and the testimonial trustworthiness of the sole witness.

2. It is an incorrect statement of the law to hold that a reasonable doubt arises *on the mere fact* that the prosecution case rested on the uncorroborated evidence of a solitary prosecution witness.

Per JAYASURIYA, J.

"There appears to be a misgiving among trial Judges in bribery court that the testimony of a witness in bribery prosecution is required to be corroborated before it could be acted upon; such a proposition is a manifest error of law."

APPEAL from the judgment of the High Court of Colombo.

Cur. adv. vult.

Cases referred to:

1. *Attorney-General v. Gunasekera* – 79 (1) NLR 348 at 355.
2. *Attorney-General v. Visvalingam* – 47 NLR 286.
3. *State of Uttar Pradesh v. Anthony* – 1985 AIR SC 48.
4. *Jagathsena v. Bandaranayake* – [1984] 2 Sri L.R. 397.
5. *Bharwada Bhoginbhai Hirijibhai v. State of Gujarat* – 1983 AIR (SC) 753 at 755.
6. *Samaraweera v. Republic* – [1991] Sri L.R. 256-260.

APPEAL from the High Court of Colombo.

Cur. adv. vult.

Dulinda Weerasuriya for accused-appellant.
V. K. Malalgoda, SSC, for Attorney-General.

March 04, 1999.

JAYASURIYA, J.

We have heard both, learned counsel for the accused-appellant and learned Senior State Counsel on several dates of hearing. Learned counsel for the appellant has drawn our attention to certain inconsistencies, contradictions *inter se* between the evidence of the virtual complainant and the evidence given by two bribery officials who took part in this raid. There have been also certain contradictions marked in relation to external *indicia.* It is in relation to a statement made to the bribery officials. Learned counsel impressed upon us that these officials of the Bribery Department are trained and experienced witnesses and therefore Court has to be very careful in the assessment of their testimony and adopting the words of Justice Vaithiyalingam in *Attorney-General v. Gunasekera*[1] at 355 he has submitted that no amount of cross-examination could shake their testimony in regard to the acts of solicitation and acceptance of bribes.

We agree with the observation made by Justice Vaithiyalingam in *Attorney-General v. Gunasekera* (*supra*) and we are mindful that bribery officers could be partisan or interested witnesses. Their testimony must inspire confidence in a Court before such evidence could be acted upon and their testimony must be viewed with care and caution by all Courts. Nevertheless, the Court must not be unmindful of the fact that they are human witnesses and it is a hall mark of human testimony that such evidence is replete with mistakes, inaccuracies and misstatements. Though one has to be careful in the assessment of evidence given by the bribery officers, the Court has to be equally mindful of the fact that the evidence tendered by human testimony will suffer from certain deficiencies and defects. It is in this light that Justice Cannon in *Attorney-General v. Visuvalingam*[2] emphasised that no prudent and wise Judge would disregard testimony for the mere proof of a contradiction but that a wise Judge should critically assess and evaluate the contradiction. He emphasised "the Judge must give his mind to the issues what contradictions are material in discrediting the testimony of a witness. The Judge should pointedly direct his attention to this fundamental issue and also consider whether the witness has been given an opportunity of explaining those statements which are marked as contradictions – *Attorney-General v. Visuvalingam (supra).* In the Indian decision *of State of Uttar Pradesh v. Anthony*[3] : "the danger of disbelieving an otherwise truthful witness on account of trifling contradictions has been spotlighted. The Indian Judge observed that the witness should not be disbelieved on account of trivial discrepancies especially where it is established that there is 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".

In this prosecution the trial Judge arrived at a considered finding in favour of the testimonial trustworthiness of the witness, after carefully evaluating and analysing contradictions, omissions proved before him. Thus, the *all important factor* of the demeanour, and deportment of the witness has also helped the trial Judge to come to this conclusion.

In *Jagathsena v. Bandaranayake*[4] Justice Colin-Thomé gave his mind to contradictions of *inter se* proved between the testimony of two witnesses. His Lordship in evaluating those contradictions raised the following question: "Was the discrepancy due to *dishonesty* or to *defective* memory or whether the witness' powers of *observations* were limited" and thereafter His Lordship observed in evaluating evidence one must give due consideration to the all important factor of the demeanour and deportment of the witness. Certainty, this trial Judge who has arrived at a finding in regard to the testimonial trustworthiness of the prosecution witness, has been greatly influenced by the demeanour and deportment of the witnesses before him. Justice Thakkar in a very instructive judgment, relying on human psychology and relying on his vast experience in the trial Court, has laid down certain important principles which ought to guide any Court in the evaluation of testimony adduced before it. Having indulged in that exercise he finally observed that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore, cannot be annexed with undue importance: *Bharwada Bhogindhai Hirjibhai v. State of Gujarat*[5] at 755. In *Samaraweera v. Republic*[6]. The Court of Appeal placing reliance on passages from Indian treatises and following dicta laid down in Indian judgments has raised some issues which any Court ought to consider – Whether the discrepancy in testimony is due to dishonesty or to human defects or due to an embroidery indulged in by the witness and the latter situation does not justify the rejection of his testimony. Having regard to these principles, we are of the view that the contradictions and omissions spotlighted by counsel for appellant do not justify an adverse inference being drawn in regard to the testimonial trustworthiness of the witnesses. In fact, the trial Judge, although he has acquitted the accused on all charges except the third count of the indictment has given the following reasons for the acquittal of the accused on the other counts. Learned trial Judge states thus:

පැමිණිල්ලේ සාක්ෂි අංක 1 විසින් මේ අධිකරණයේ දී ඇති සාක්ෂිය කිසිම සහාථ සාක්ෂියක් ඉදිරිපත් නොවී ඉදිරිපත් වී ඇති නිසා ඒ සම්බන්ධයෙන් ඇත්තේ පැමිණිල්ලේ සාක්ෂි අංක 1 ගේ සාක්ෂියක් පමණක් නිසා ඒ මගින් ඇතිවන සැකයේ වාසිය විත්තිකරුට දී ඔහුව චෝදනා 1 හා 2 නිදොස් කොට නිදහස් කරන ලදී.

With all respect to the learned trial Judge we hold that the reasons trotted out by him creating a reasonable doubt and acquitting the accused in respect on count 1 and count 2 do not stand examination before this Court. For it is trite law that the trial Judge who hear a bribery trial is entitled to convict on the sole testimony of a prosecution witness without any corroboration provided, he is impressed with the cogency, convincing character of the evidence and the testimonial trustworthiness of the sole witness who has given evidence before him. There appears to be a misgiving among the trial Judges in bribery Court that the testimony of a witness in bribery prosecution is required to be corroborated before it could be acted upon. Such a proposition is a manifest error of law. Vide the remarks of Justice Vythialingam in *Gunasekera v. Attorney-General* (*supra*). Thus, it is an incorrect statement of the law to hold that a reasonable doubt arises *on the mere fact* that the prosecution case rested on the uncorroborated evidence of a solitary prosecution witness. In the circumstances we hold that the reasons adduced by the learned trial Judge for acquitting the accused on counts 1 and 2 are wholly untenable and unsustainable in law. It is manifest on a reading of the judgment that after critically evaluating contradictions and discrepancies the learned trial Judge has arrived at a favourable finding in regard to the testimonial trustworthiness of the prosecution witnesses. In these attendant circumstances, it is futile for learned counsel for the appellant to contend that the learned trial Judge had misgivings and doubts in regard to the testimonial trustworthiness and the cogency of the evidence adduced by the prosecution witnesses.

We are unable to agree with the learned counsel for the appellant that the contradictions and omissions spotlighted by him in the course of his submissions created any doubt in regard to testimonial trustworthiness of the prosecution witnesses and we hold that these witnesses have given convincing, cogent and overwhelming evidence in regard to the material facts relating to this prosecution.

At this stage we were intent on enhancing the sentence imposed on the accused-appellant as the bribery is a cancer in all Government

Institutions including the Court offices which are supposed to be institutions in temples of justice. In the circumstances, the deterrent punishment is merited where such offences are proved beyond the reasonable doubt. However, due to the persuasive and cogent submissions made by learned counsel for the appellant, we are reluctantly induced to desist from taking such action. Having considered his submissions we merely vary the sentence in limiting the operational period of the suspended sentence of imprisonment imposed to a term of five years with effect from 27. 01. 1997.

Subject to this variation in the operational period of the suspended sentence, we dismiss the appeal.

KULATILAKE, J. – I agree.

Appeal dismissed.