

Chandrapala Perera V. The Attorney-General, (S.C. Appeal No. 169/96, C.A. No. 157/91, H.C. Colombo No. 8243/84 27) (3/SC) Decided On 21/05/1998.

Sections 19 (b) and 19 (c) Bribery Act - Acquittal on one count Conviction on the other count on the evidence of same witness - Rejection of evidence by implication - S. 203 of the Code of Criminal Procedure Act- Order required to be made at the conclusion of trial.

G. P. S. De Silva, CJ, With Perera, J. and Bandaranayake, J. Agreeing,

At the conclusion of the trial in the High Court, found the accused-appellant guilty on counts 1 and 3 and imposed on him a sentence. In respect of counts 2 and 4 of the Indictment, the learned Trial Judge refrained from making an order in terms of section 203 of the Criminal Procedure Code acquitting the appellant. The Court of Appeal has, however, in its judgment made order in terms of section 203 of the Criminal Procedure Code acquitting the appellant on the aforesaid counts in the Indictment. Subsequently the determinations were challenged in the in the Supreme Court.

Held:

In terms of the provisions of section 203 of the Code of Criminal Procedure Act at the conclusion of the trial the Judge has to record a verdict of conviction; hence the appellant was entitled to an acquittal instead of a "discharge" on the charge of acceptance. Solicitation of the gratification had been established beyond reasonable doubt.

Nalliah v. Herat 54 NLR 473, at 475; a conviction on one count cannot be based on evidence which has by implication been rejected by an order of acquittal on the other count.

Sambasivam v. Public Prosecutor, Federation of Malaya (1950) AC 479; The rule is of general application and has equal force when one considers the effect which an order of acquittal on one charge could have on a connected charge in the same proceedings. A verdict on one count cannot be based on evidence which has by implication been rejected in disposing of another count at the trial.

Raphael v. The State 78 NLR 29; where the accused was acquitted by the Trial Judge on one count, he should have been acquitted on the remaining count which was based on evidence which has by implication been rejected by an acquittal on the other count.

Appeal dismissed.

Sentence varied.