

Dissanayake Arachchilage Karunarathne v. The Republic of Sri Lanka, (CA Application No. 123/2004, HC-Colombo-B 1401/2002) (2/CA) Decided on 11/06/2009.

Section 26 of the Bribery Act-principles of treating dock statements- Article 138 of the Constitution-334 of the Criminal Procedure Code.

Sisira De Abrew, J. with Upali Abeyrathne, J. agreeing;

A Development officer attached to the Divisional Secretary's office at Yatiyanthota solicited a sum of Rs. 4000 in order to attend a problem pertaining to the complainant's land. Upon being arrested by the Bribery Commissioner's Department, the Accused-appellant was convicted in the High Court of Colombo for accepting the aforementioned bribe and was sentenced to a term of three years rigorous imprisonment with a fine of Rs. 5000; further, ordered to pay a penalty of Rs. 4000, under Section 26 of the Bribery Act. In appeal at the Court of Appeal, the Appellant contended that the Dock Statement of the appellant had not been properly considered.

Held;

The Accused-appellant's contention in his dock statement, in that he was falsely implicated on charges of bribery was denied for the failure to convince the Court of Appeal in raising any reasonable doubt on the prosecution case.

Underlying the value of dock statements, it was propounded that belief in a dock statement should result in placing reliance on it and that the creation of a reasonable doubt against the prosecution entitles the accused to succeed in defense. Further, relied on **Kularathne v. Queen 71 NLR 529** in holding that the dock statement of one accused cannot be used against another accused. Failure to observe the said principles has not caused any prejudice as no reliance could be placed on the dock statement in the instant application.

Followed, **Dharmawardene v. Director General, Commission to Investigate allegations of Bribery and Corruption (2003) 1 SLR 64**; where it was held that while onus rested on the learned High Court Judge to avoid upholding the conviction by the learned magistrate where the High Court was of opinion that the Magistrate should have given more consideration to the evidence of the accused, nevertheless prejudice was averted in application of the facts where it was revealed that the evidence of the accused cannot be relied upon.

Applied the proviso to Article 138 of the Constitution and Section 334 of the Criminal Procedure Code to reject appeal of the Accused-appellant.

Affirmed the Conviction, appeal dismissed.