

**Rupasinghe V. Attorney-General** (S.C. Appeal No. 43/84 - H.C. 624/B.), (5/SC) Decided On 15/07/1986.

*Section 8, 16, 18(c) of Bribery Act - Right to silence – Section 1 10 of The Code of Criminal Procedure Act, - Section 105 of Evidence Ordinance, - Burden of proof that gratification was authorized by law on the terms of employment*

Wanasundera, J., with Colin-Thome, J., Ranasinghe, J., Tambiah, J., and L. H. De Alwis, J. agreeing,

The accused-appellant a public officer (interpreter of a court) was held to have accepted a gratification of Rs. 50 from an accused person allegedly to save him from a prison sentence. The accused was indicted before the High Court on two counts under the Bribery Act. He was acquitted on count 1 but convicted on count 2.

There was a misdirection in acting on the findings of fact of the High Court Judge in the review by the Court of Appeal of the evidence against the appellant on Charge 2, without an independent review and there was a material misdirection as to the right to silence of the appellant. Subsequently the determinations were challenged in the Supreme Court.

**Held;**

Under section 110(1) of the Code of Criminal Procedure Act the police are invested with powers during the investigations of offences of examining orally any person supposed to be acquainted with the facts and circumstances of the case and the person interrogated is bound to answer truly all such questions relating to the case put to him except questions which have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

The right to silence is restricted only to questions which would have a tendency to expose any person to a criminal charge or to a penalty or forfeiture. Further if the accused person does make an incriminating statement in answer to questions by the police that statement shall not be proved against him at the trial as section 25 of the Evidence Ordinance expressly forbids it subject to the proviso in section 27 of the Evidence Ordinance.

There was no offence if the payment was authorized by law or the terms of his employment but the burden of proving this was on the accused in view of the provisions of the new proviso to s. 19 of the Bribery Act brought in by the amendment.

1. *R v. Gilbert*-(1978) 66 Cr. App. R. 237; that as the law stands no comment is permissible that implies that the jury may draw an inference adverse to the accused from his exercise of his "right to silence"
2. *Van Cuylenberg v. Caffoor* -(1933) 34 N.L.R. 433; in order to entitle a person to the privilege of silence under such circumstances, the Court must see that there is a reasonable ground to apprehend danger to such person' from his being compelled to answer.
3. *Mohamed Auf v. The Queen*-(1967) 69 N.L.R. 337, 343; where a public servant is charged under section 19 (c) of the Bribery Act, with having accepted a gratification which he was not authorized by law or the terms of his employment to receive, the burden of proving that the gratification was unauthorized lies on the prosecution.

Appeal dismissed.