JUDGMENTS

EVIDENCE ORDINANCE
COURT OF APPEAL

H.M.T. Herath v. The Attorney-General
CA Appeal No: 140/2004
HC Colombo: 1366/2001

DECIDED ON 22.10.2009

Sisira De Abrew J, and Upaly Abeyrathne J

Sec. 134 of the Evidence Ordinance – no particular number of witnesses required – duty of trial judge when considering a dock statement

Sisira De Abrew J.
The 1st and 2nd accused (the Appellant) in this case were indicted on several counts of bribery. The 1st and 2nd counts were against the 1st accused under 16(b) and 19(c) of the Bribery Act for soliciting Rs. 10,000/- from one Muthubanda. The 3rd and 4th counts were against the 2nd accused under 16(b) and 19(c) of the Bribery Act for soliciting Rs. 10,000/- from said Muthubanda. The 5th and 6th counts were against the 2nd accused under 16(b) and 19(c) of the Bribery Act for accepting Rs. 10 000/- from said Muthubanda and the 7th and 8th counts were against the 1st accused under the section 25(2) read with Section 16(b) and 19(c) for aiding and abetting the 2nd accused in the commission of offences in counts No. 5 and 6.
After trail the learned trial Judge acquitted the 1st accused of all the counts levelled against him and acquitted the 2nd accused of the 5th and 6th counts. The learned trial Judge convicted the 2nd accused of the 3rd count but acquitted him of the 4th count on the basis that the 4th count is an alternative count to the 3rd count. I must mention here 4th count is not an alternative to the 3rd count. The 2nd accused on the 3rd count was sentenced to term of three years rigorous imprisonment (RI) and to pay a fine of Rs. 5000/- carrying a default sentence of one year RI. Being aggrieved by the said conviction and the sentence the 2nd accused (the appellant) has appealed to this court.

HELD that;
(a) As provided for in Section 134 of the Evidence Ordinance no particular number of witnesses is required in every case to prove a fact;
(b) If the evidence of a witness is convincing that he speaks the truth, court could act on such evidence without corroboration. There is no rule that the evidence of a witness should be corroborated for court to act when the court is of the opinion that he is speaking the truth.
(c) When considering a dock statement of the accused the trial Judge should address his mind and decide whether to reject the dock statement or whether it creates a reasonable doubt in the prosecution.

Ref. 01/02/10

CRIMINAL LAW
COURT OF APPEAL

D. Tikiribanda v. Hon Attorney-General
C.A. Case No. 64/2003
HC Anuradhapura Case No. 275/99

DECIDED: 06.10.2009

W.L.Ranjith Silva, J and A.W.A. Salalm, J

Grave sexual abuse – offence under sec. 365(b)(2) of the Penal Code – Explanation to Sec. 363 of Penal Code – corroboration is not the 'sine que non' for a conviction in sexual offences

W.L.Ranjith Silva, J
HELD that;
(a) If delay of making a statement is explainable, the evidence of a witness should not be rejected on that ground alone.
(b) When the medical report is consistent with the version of a sexually harassed victim it can be taken as evidence consistent and thus form to some extent corroboration and is admissible under Sec. 157 of the Evidence Ordinance (although that may not be corroboration in the strict sense)
(c) Mostly the victims of sexual harassment prefer not to talk about the harrowing experience and would like to forget about the incident as soon as possible (withdrawal symptom). The offenders should not be allowed to capitalize or take mean advantage of these natural inherent weaknesses of small children.
(d) Insignificant omission of such a victim or her utterance of dreadful words should not be taken as a contradiction having effect or impact on the credibility of the victim.
(e) While a Court of Appeal will always attach the greatest possible weight to any finding of fact of a Judge of a court of first instance based upon oral testimony given before that Judge, it is not absolved by the existence of these findings from the duty of forming its own view of the facts, more particularly in a case where the facts are of such complication that there right interpretation depends not only on any personal impression which a Judge may have formed by listening to the witnesses but also upon documentary evidence, and upon interference to be drawn from the behaviour of these witnesses (demeanor of deportment) both before and after the matters on which they give evidence. A court of Appeal in such situations is free to overrule such findings of facts if it appears that the trial Judge has misdirected himself on the facts or that wrong inferences have been drawn from the facts.
(f) An appellate court can and should interfere even on questions of facts although those findings cannot be branded as "perverse" unless the issue is one of

credibility of witnesses solely or mainly based on the deportment and demeanor of witnesses keeping in mind that the trail Judge is better equipped to adjudicate on facts as the trail Judge is the one who has the priceless advantage and the privilege of observing the demeanor and the deportment of the witnesses. If the issue is one of credibility of witnesses based solely or mainly on the deportment and demeanor of the witnesses, an appellate court should not interfere unless those findings are "perverse"

(g) If the evidence of the victim should be relied on, is trustworthy, firm etc there is no impediment on the part of the Court in acting solely on the evidence of the victim and it is only when the evidence of the victim suffers from some infirmity or where the Courts believe that it would not be prudent to base a conviction, solely on that evidence, the Court should look for corroboration.

(h) The law as it stands today in this country certainly does not expect the innocent victims of a sexual crime to struggle with the assailant valiantly that wouldn't result in the victim sustaining injuries. Under the amended Penal Code Act No.22 of 1995 the Legislature has categorically expressed this view by way of explanation (ii) to section 363 of the Penal Code of Act No.22 of 1995. What is required is the use of the genitals or any other part of the accused on any orifice or any part of the body of the victim for the purpose of obtaining sexual gratification.

CIVIL PROCEDURE
COURT OF APPEAL

Chandramali v. Riyaldeen and another
Court of Appeal No: CALA 337/2002
District Court of Puttalam No: 909/L

DECIDED ON: 12.01.2010

Eric Basnayake J, K.T. Chitrasiri J.

Civil Procedure – production of documents not listed in terms of Sect. 121(2) – leave required under Sec. 175

Eric Basnayake J
The Learned District Judge after an inquiry, disallowed a witness and the two documents as they were not listed in terms of Sections 121(2) and 175(2) of the Civil Procedure Code. The next witness too was disallowed on the same basis. Thereafter an application was made to recall the Notary Public to prove P10 & P10a. As the court had already disallowed these two documents the application to recall was refused. The Plaintiff was seeking to have these orders set aside.

HELD that-

(a) Section 175(2) of the PC requires leave of the court prior to receiving in evidence documents not listed as per Section 121(2).

(b) Whether leave of court should be granted under Section 175(2) is a matter eminently within the discretion of the trial Judge.

INJUNCTIONS
COURT OF APPEAL

People's Bank v. Telepix (Pvt) Ltd & another
C.A.L.A. No. 136/2006
D.C. Kandy Case No. 346/2004/1

DECIDED ON: 13.01.2010

K.T. Chitrasiri J. and Eric Basnayake J.

Application for Interim Injunctions - criteria

The 1st Defendant-Petitioner Bank (hereinafter referred to as the Defendant) made this application seeking to set aside the Interim Injunction issued by the Learned District Judge of Kandy on the 23rd of March 2006.

K.T. Chitrasiri J
HELD that –

(a) The duty of the Court of Appeal is to ascertain whether the Learned District Judge had properly addressed his mind to the law and to the facts relevant to the issue when granting the Interim Injunction in favour of the Plaintiff. Needless to say, that the law applicable in issuing Interim Injunctions in our country is now clearly established and settled. Indeed we seem to have a rich jurisprudence in this area of law. This is evident by the following decisions.

(b) When issuing interim injunctions, Original Court Judges should primarily consider whether the Plaintiff has made out a prima facie case which has a probable chance of winning in the end. Also, it is the duty of the Judge to consider where the balance of convenience lies and equitable consideration between the parties to the action. Also, it is the duty of the court to ascertain whether there exists a serious question to be tried. It is necessary to look into the fact of suppression of material facts according to the circumstances of each case since the issue of interim injunctions are considered as purely a discretionary remedy of court.

(c) The circumstances of the case show that;

- The balance of convenience of the parties,
- Equitable consideration,
- Whether the damages could be quantified, etc.

Which are being regarded as the other criteria that should be looked into when issuing interim injunctions.

(d) If the lenders, especially the banks registered with the Central Bank, are to be prevented from exercising their legal rights, it will affect the day today business of the banks and will ultimately affect the society at large. This principle will not apply for the citizens who seek redress of their legal rights ensured by law. However, Courts should always look at the issues considering both these aspects. Especially when the cases are filed frivolously, Judges should act in a way to discourage such attitudes of the litigants.