

Baddewithana V. the Attorney-General(CA Application No. 337/85, - High Court, Colombo No. B 563) (2/CA) Decided on 18/06/1990.

Section 19 of the Bribery- Acceptance of gratification to perform official Act - Bribery Act- Failure of accused to call available witnesses and Presumption under s. 114 (f) of the Evidence Ordinance.

P. R. P. Perera, J. With W. N. D. Perera, J. Agreeing,

Due to the Failure of accused to call available witnesses in amount to the Presumption under s. 114 (f) of the Evidence Ordinance, the judgment in high court was challenged in the Court of Appeal Base on the lack of independent corroboration of the evidence of the virtual complainant, in respect of the allegation that the accused-appellant accepted an inducement or a reward to perform an official act.

Held;

In the absence of any corroborative evidence relating to the purpose for which the accused-appellant accepted this money it would be unsafe to permit a conviction of the accused appellant on charges under the Bribery Act to stand.

*Rex v. Burdett (1820) 4 8 & Ald. 95, 120;*The proper effect to be given to the failure of an accused to offer evidence when a prima facie case has been made out by the prosecution and the accused is in a position to offer an innocent explanation, is set out.

Appeal allowed. Conviction set aside and accused acquitted.