

***Ratnapura Vijitha Nanda Thera v. The Attorney-General, C.A. NO. 183/95 H.C. Colombo Case No. B924/94 (2/CA) Decided on 30/06/1998.***

*Criminal Law - Illegal gratification - Section 19 (c) of amended Bribery Act - Evidence of disposition, propensities and tendencies - Evidence of similar transactions: Res inter alios actae non nocet - Sections 11 (b), 14, 15 and 52, 54 of the Evidence Ordinance.*

Jayasuriya, J. with De Silva, J. agreeing,

In this case, a witness named 'Mangalika' had offered Rs. 5,000.00 as illegal gratification to the accused to secure the release of her husband from the Pelawatte Detention Camp. The Bribery officers recovered the money from the accused. The accused made a dock statement that he received the money as expenses for religious rituals and a talisman to invoke God's blessings to release Mangalika's husband. Here, it was questioned whether an illegal gratification to the accused to secure the release of husband from the Detention Camp was taken. Indeed, He was indicted in the High Court on two counts of soliciting and of accepting of an illegal gratification.

**Held;**

For the offences of solicitation and acceptance of an illegal gratification, proving of the accused's intention knowledge or a state of mind is not required.

The trial judge cannot adjudicate on the diverse assertions of Mangalika and the accused, by relying on earlier transactions to which the accused had become a party, because they would only disclose a certain disposition, propensity or a tendency on the part of the accused person - res inter alios actae non nocet.

Thompson v. Church "the business of the court is to try the case and not the man for very bad men may very well have righteous causes."

The bad character of the accused and which evidence was excluded by the principle Res inter alios actae non nocet, cannot be rendered relevant and admissible under section 11 (b) of the Evidence Ordinance.

The led evidence does not come under section 11 (b) and its admission prejudiced the case of the accused-appellant to the result. We affirm our order upon this appeal which has been already set out in the preceding part of this judgment. The appeal is allowed. The findings, convictions and sentences imposed by the High Court Judge are set aside, but a retrial is ordered.

*Appeal allowed Retrial ordered.*