

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA**

In the matter of a petition of appeal  
in terms of section 331 (1) of the  
code of criminal Procedure Act No  
15 of 1979

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High Court (Galle)

Case No: HC 2451

CA 129/2009

Democratic Socialist Republic of Sri  
Lanka

The Hon Attorney General,  
Attorney General's Department,  
Colombo 12.

**(Complainant)**

**Vs:-**

Gamini Senanayake,  
Dikkuburagewaththa,  
Nambadawa,  
Yakkalamulla.

**Accused**

**And Now**

Gamini Senanayake,  
Dikkuburagewaththa,  
Nambadawa,  
Yakkalamulla.

**Accused Appellant**

**Vs:-**

The Hon Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENT**

**BEFORE** : SISIRA J DE ABREW, J (P/CA)  
P.W.D.C. JAYATHILAKE, J

**COUNSEL** : J.U. Wijesingha for the Accused Appellant.  
R. Abeysooriya D.S.G. for the Respondent.

**Argued On** : 13.11.2013

**Decided On** : 28.02.2014

**P.W.D.C. Jayathilake J.**

Gamini Senanayake was a government School teacher. He was teaching English at Nabadawa Sri Sumangala Maha Vidyalaya. On 6<sup>th</sup> April 1998 he came home after School at about 2.30 p.m. He was requested by his younger brother who was carrying on a tea leaves collecting business to collect tea leaves on that day as the tractor driver had not come for work. Gamini possessed tractor driving licence obtained in 1984. Therefore he had driven his brother's tractor to collect tea leaves occasionally. On this particular day Gamini went out to collect tea leaves by driving the tractor at about 3.00 p.m. Priyantha a 16 year old School boy joined Gamini on his way to Wathogala area from Nambadawa. They collected about 35 to 40 bags of tea leaves and started their return way towards Nambadawa late in the evening. Priyantha was in the trailer of the tractor where there were bags of tea leaves weighing 1000kg.

Priyantha fell down on tea leaves bags as the tractor braked suddenly. He had got down from the tractor once it stopped and seen a girl lying under the tractor.

The girl who was under the tractor was Chamila Subashini. Chamila was an a 18 year old School girl who was studying for the A/L examination. Gamini and Priyantha had known her, as she was residing in that area and was a student of their school before Chamila gain admission to Dharmapala Vidyalaya for A/L studies. Gamini Senanayake, the Accused Appellant was indicted for the murder of Mala Arachchige Chamila Harshani Subhashini under Sec.296 of the Penal Code. After the conclusion of the trial before High Court the learned trial judge had convicted the Accused Appellant for committing the death of Chamila Harshani by negligent and reckless driving under Sec.298 of the Penal Code. He had been sentenced to two years rigorous imprisonment, suspended for a term of seven years. He was also imposed a fine of Rs: 207500/- carrying a default sentence of two years simple imprisonment. It was ordered to pay Rs: 200000/- out of the said fine to the witnesses No: 02 and No: 03, the parents of the deceased as compensation.

Being aggrieved with the said conviction and the sentence the Accused Appellant has submitted this appeal.

There is no allegation for the amendment of the charge at the time of analyzing the evidence of the case by the learned trial judge. The learned trial judge has discussed the facts revealed in evidence and come to the conclusion that the Accused should have been charged under Sec. 298 of the Penal Code but not under the Sec 296.

On that conclusion the learned trial judge has convicted the Accused Appellant for the offence of fatal accident under Sec. 298 of the Penal Code by amending the charge with the authority provided under Sec.177 Code of the Criminal Procedure Act. The learned Judge has cited several judicial precedents in support of his decision in this regard.

The ground of appeal raised by the counsel for the Accused Appellant was that the learned trial judge was in error when coming to the conclusion that the alleged accident had taken place due to the negligent and reckless driving of the Accused Appellant. He further argued that the explanation of the Accused Appellant given in his evidence has not been taken into consideration.

The Accused Appellant in his evidence state that he saw a child when he was driving the tractor down the slope of the road. He further says that the child crossed the road when the tractor reached closer to the child. He further says that at the time he saw the child crossing the road he applied brakes to stop the tractor, but the tractor dragged forward as it was a slope.

When answering the questions by the State Counsel Accused Appellant has stated that the road was clear at that time as there was no other vehicle. Thereafter the State Counsel has suggested that the Accused Appellant has not made any attempt to avoid the accident. He has remained silent without giving any answer, to the said suggestion.

The learned Deputy Solicitor General who appeared for the Respondent submitted that as per the evidence of the investigating officer the width of the road was 6.4m. The driver could have seen about 20 meters ahead from the place of the accident as the road was not curved. The right side of the road was spacious enough to swerve the tractor in order to avoid the accident.

The body of the deceased was lying by the left rear wheel of the trailer. The death was due to Crania-Cerebral injuries according to the post mortem reports. The Judicial Medical Officer has stated that the death

was due to the injuries caused to the brain because the skull was cracked as a result of the head colliding with a heavy object.

Since the facts revealed are such, I am of the opinion that the facts speak for themselves that the accident has taken place due to the negligence of the driver. This situation applies to the doctrine of "**Res Ipsa Loquitur**" without any doubt. Therefore it appears that there is no reason to interfere with the verdict of the learned trial judge.

The other reason to be considered is whether the trial judge could have acted under Sec. 306 of the Criminal Procedure Code to discharge the Accused Appellant conditionally without proceeding to conviction considering the circumstances under which offence was committed. The learned trial judge has stated when passing the sentence even though the court was willing to act under Sec. 306 of the Code of Criminal Procedure Act, it was impossible to do so as there is a judgment of the Court of Appeal where it has been decided that the Sec. 306 of the Code of Criminal Procedure Act is not applicable in the instances where the accused is tried upon indictment before the High Court.

It has been decided in Attorney General V. Ranasingha and Others that the provisions of Sec. 306 of the code of Criminal Procedure Act apply only in relation to the Magistrate Court.

However when we consider the facts the case we decide not to interfere with the sentence passed by the learned trial judge. Therefore we affirm the conviction and the sentence and dismiss the appeal.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**SISIRA J DE ABREW, J (P/CA)**

I agree.

**PRESIDENT OF THE COURT OF APPEAL**