

**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 in  
the Democratic Socialist Republic of Sri  
Lanka.

**H.C. Case No. HCEP/2676/10**

**C.A. Case No. CA 84/2012**

Christy Sellor,

No. 59/20,

Sinnauppodai,

Batticaloa.

**Accused – Appellant**

Vs.

Hon. Attorney General

Attorney General's Dept.

Colombo 12.

**Respondent**

**BEFORE**

: **H.N.J. PERERA, J**

**P.W.D.C. JAYATHILAKE, J**

**COUNSEL**

: **J. Jeyakumar with P. Krishanthen**

**for the Defendant Appellant.**

**P. Kumareratnam DSG for the**

**Respondent.**

**ARGUED ON**

: **26.01.2015**

**DECIDED ON**

: **22.06.2015**

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

Vedaaranian Chithralekha was 21 by 23.09.2008. She was the youngest daughter of a family of three daughters and two sons. She was studying for her

external degree. On the said date Chithralekha went to Kovil in the evening by bicycle and was on her way home at about 5.30 p.m. At this time the lorry bearing No. EPJV 6679 was on a trial run, being driven by Christy, the Garage Owner while the driver of the lorry was seated on the other seat. Christy drove the vehicle up to the Hindu Kovil and turned back and was returning to the garage. The driver who was sitting by the side of the driver seat, saw a girl going in the same direction on a bicycle. She was on the left side of the road riding slowly. She got hit on the body of the lorry while the lorry was overtaking her. The girl collided by the lorry was Chithraleka who was on her way back from the Kovil.

Chithraleka had been dead when she was admitted to hospital. The death had taken place at about 5.30 p.m.

Christy Seller the Accused Appellant was indicted for causing the death of Vedaaranian Chithraleka by committing rash acts by driving the lorry bearing No. EPJV 6679 on 23<sup>rd</sup> September 2008 in Batticaloa. He has been convicted after trial and sentenced to two years' rigorous imprisonment with a fine of Rs: 10,000/- carrying a default sentence of 6 months imprisonment. Being dissatisfied with the said conviction and the sentence the Accused Appellant has preferred this appeal.

The Judicial Medical Officer has observed the following injuries on Chithraleka's body.

1. A bruised wound on the right side of the abdomen below the navel.
2. Four small abrasions on the back of the right elbow.
3. Two to Ten ribs on the right side of the chest being fractured.
4. The liver lacerated into many pieces.
5. 1.5 liters of blood has been expelled into the cavity of the abdomen.

According to the Judicial Medical Officer, the death was due to severe laceration of the liver. The Judicial Medical Officer has expressed his opinion that the injury caused to the liver may have been affected by weighty object.

When considering the injuries that had caused to Chithraleka in the accident, it is obvious that the vehicle had hit her right side.

According to the evidence of the eye witness, Chithraleka had been riding her bicycle on the left side of the road when the lorry was overtaking her.

The investigating officer has identified the point of impact 0.70 meter inside off the edge of the road. It shows that she had been keeping to her track. The road was clear and devoid of vehicles at that time according to the eye witness. The Accused Appellant was changing the gears in order to find out the defect of the gear system.

“The eye witness has stated he engaged the second gear only, with great difficulty to engage, he drove on.”

In my opinion, the facts so far discussed themselves speak how the incident had occurred.

It appears that the Accused Appellant while driving the lorry had not paid any attention to others on the road. If he had paid the slightest attention to the girl who was riding he could have driven the lorry leaving sufficient space between the cycle and the lorry avoiding the collision. Therefore not only the maxim, “*res ipsa loquitur*” applicable here but also these facts lead to the inference that the Accused Appellant’s state of mind that prevailed at the time of the incident was nothing but something like ‘let anything happen’. If anyone drives a vehicle with the state of mind, let anything happen, then all ingredients relevant to Sec.298 of the Penal Code, come into existence.

With all that, defence that had been taken up by the Accused Appellant in his dock statement was that the girl who had been coming behind the lorry had hit the lorry which was moving slowly and fallen on the road. This situation is not only contrary to the evidence of the eye witness but also does not tally with the medical evidence.

The learned trial judge has arrived at the decision of conviction after due consideration of evidence which established the high degree of negligence on the part the accused according to her opinion. Therefore we see no reason to interfere with the judgment of the trial court and as such we affirm the conviction and the sentence of the learned trial judge and dismiss the Appeal.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**H.N.J. PERERA, J**

I agree

**JUDGE OF THE COURT OF APPEAL**