

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

In the matter of an appeal against the judgement and sentences of High Court of Puttalam under and in terms of the section 331 (1) and (4) of the Criminal Procedure Code read with section 11 with the Provincial High Court (Special Provisions) Act No.19 of 1990 and also with article 154 (P) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

Court of Appeal

Case No.CA/HCC/0154/2024

High Court of Puttalam

Case No. HC/89/19

Vs.

Mohamed Jifry Mohamed Wahil
No.263/B,
Nagahawilluwa,
Palaviya.

ACCUSED

AND NOW BETWEEN

Mohamed Jifry Mohamed Wahil
No.263/B,
Nagahawilluwa,
Palaviya.

ACCUSED-APPELLANT

Vs.

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

PLAINTIFF- RESPONDENT

Before: **Amal Ranaraja J.**

&

Dr. Sumudu Premachandra J.

Counsel: Punarji D. Karunasekara for the Accused-Appellant
instructed by S.A.K. Banu.

Azard Navavi, P.C., A.S.G. for the State.

Accused-Appellant is produced via zoom platform by
the Prison Authorities.

Written Submissions: By the Accused-Appellant filed on 22/05/2026.
By the Respondent filed 16/06/2026.

Argued On : 14/07/2026.

Jugement On : 25/08/2026.

Dr. Sumudu Premachandra J.

1] This is a motor traffic accident which led to death of 7 peoples, 19 grievously injured and 18 injured from minor injuries. According to the evidence of the Prosecution, on or about 06/11/2017, the Appellant was driving a crowded public passenger bus carrying approximately 70 to 75 passengers near Chilaw when he engaged in a series of highly rash and reckless maneuvers. Driving at excessive speeds estimated between 80 km/h and 120 km/h, the bus was seen swaying side-to-side, dangerously overtaking other vehicles, and racing against another bus. This dangerous driving culminated in a catastrophic accident where the bus struck the rear of a green three-wheeler travelling on the left lane, swerved sharply to the right across the road, struck a bridge/culvert, and

overturned. The devastating consequences left 7 people dead, 19 grievously injured, and 18 others suffering various injuries.

2] The Prosecution supported its case through a wide array of consistent testimonies from both bus passengers and external road users. The driver of the three-wheeler (PW1) testified that he was hit from behind on his side of the road, while passenger witnesses including an army officer (PW2), a lawyer (PW3), police sergeants (PW22, PW23), a government surveyor (PW26), and an electricity board employee (PW27) stated that the bus was travelling at terrifying speeds, swaying violently, and frightening passengers prior to the impact. Furthermore, external eyewitnesses, including an independent motorist (PW49) and a motorcyclist (PW50), verified that the bus was overtaking recklessly rather than taking emergency evasive action to avoid an unexpected obstruction.

3] Further, technical and expert evidence of the Prosecution firmly ruled out external factors or mechanical failures as potential causes of the crash. The Motor Vehicle Inspector (PW63) inspected the scene and vehicles, confirming that the road was a normal, straight stretch with standard conditions and that the three-wheeler's mechanical systems were fully functional. This technical assessment, combined with extensive eyewitness testimony, demonstrated that the incident was not a simple accidental misjudgment or emergency avoidance, but rather a case of severe, culpable negligence and a total breakdown of road discipline by a professional driver entrusted with public passenger safety.

4] The evidence revealed that the Appellant's driving license was taken for over a speeding case by the Mankulam Police. It is seen that this is a common rivalry of Private Buses and CTB Buses to get more passengers to the bus. The bus was proceeding from Colombo to Jaffna with full of passengers over 100 while the accident occurred. The Appellant's story was that the three-wheeler driver, ahead of him tried to take a u turn which led to the accident. The Appellant admits that he was in excessive speed at that time which caused the damage.

5] The Appellant was charged with seven counts under Section 298 of the Penal Code for causing the deaths of 7 people by committing a rash or negligent act,

not amounting to culpable homicide and twenty one counts under Section 329 of the Penal Code for causing grievous hurt to 21 people by committing an act so rashly or negligently as to endanger human life and twenty four counts under Section 328 of the Penal Code for causing hurt to 24 people by the same act so rashly or negligently as to endanger human life, by the Hon. Attorney General.

6] After a lengthy trial, the Appellant was sentenced for section 298 of the penal code charges; one-year rigorous imprisonment for each count (altogether 7 years) and Rs. 5000/- fine, in default 6 months simple imprisonment for each count; for the section 329 charges; three months rigorous imprisonments for each count and Rs. 1000/- fine, in default 02 months simple imprisonment (altogether 5 years three months) and for the section 328 charges; one-month rigorous imprisonment for each count (altogether 2 years) and fine Rs. 100/- each, in default one-month simple imprisonment for each count.

7] However, the rigorous imprisonment sentence was imposed to run consecutively which calculates 13 years three months imprisonment and Rs. 55,800 fine altogether.

8] At the argument, the learned counsel for the Appellant sought a reduced sentence rather than a complete denial of occurrence, arguing that the accident was substantially caused or triggered by a sudden, negligent U-turn made by a three-wheeler driver. Furthermore, he contended that his trial admissions, his attempts to prevent the tragedy, and severe personal hardships namely being a father to four minor children after being abandoned by his wife warranted sentence mitigation and that the consecutive nature of the sentences produced an excessively harsh total term.

9] The Appellant seeks to reduce the severity of the sentence on the following grounds:

- The accident was allegedly caused or substantially contributed to by the sudden U-turn or negligent act of the three-wheeler driver.

- The Appellant allegedly attempted to prevent the accident and was not the sole cause of the tragedy.
- The Appellant made admissions during trial which, according to him, reduced the duration of the trial and should be treated as mitigation.
- The Appellant relies on personal circumstances, including the fact that he has four minor children and that his wife has allegedly left him.
- The Appellant states that the consecutive sentences have resulted in a lengthy total imprisonment term of 13 years and 3 months.

10] Being aggrieved by the judgement and sentences dated 13/06/2024, the Appellant in his Petition of Appeal has mentioned the following grounds as grounds of appeal:-

- The judgement dated 13/06/2024 delivered by Honourable High Court Judge of Puttalam is contrary to law and fact.
- The judgement dated 13/06/2024 by Honourable High Court Judge of Puttalam is against the evidence given by the witness.
- When delivering the judgement dated 13/06/2024, Honourable High Court Judge of Puttalam has failed to properly evaluate the evidence given by the witnesses.
- The Honourable High Court Judge of Puttalam has failed to properly consider and appreciate the contradiction and omission marked by the Defense at the trial.
- The Honourable High Court Judge of Puttalam has failed to consider the facts that the charges are not proved beyond the reasonable doubts.

- The sentence given by the Honourable High Court Judge of Puttalam is disproportionate and excessive and against the prevailing law in the country.
- The Honourable High Court Judge of Puttalam has failed to consider the proper procedure provided in the Criminal Procedure Code and other relevant laws and regulations at her findings.
- The Honourable High Court Judge of Puttalam has failed to analyze and consider the available evidence according to the penal code sections and the contents of the indictment.

11] In this appeal, the Appellant seeks leniency on sentencing rather than contesting on the grounds of appeal. Thus, the Appellant has not substantiated the grounds of appeal with regard to the conviction. I proceed to examine whether the given sentence is proportionate to the offences committed and whether reduction can be given.

12] The learned counsel for the Appellant said that the learned trial judge misapplied the ration of **Bandara Vs. Republic** [2002] 2 SLR 277, when sentencing. He argues that the trial court applied its principles unfairly. He says in Bandara's case, despite causing 14 deaths under severe aggravation driving while intoxicated, clapping hands off the steering wheel, and jumping out of the vehicle before impact, the driver received a total concurrent sentence of only 5 years RI; in contrast, the Appellant was sober, remained at the wheel, was injured and hospitalized himself, operated on a fixed time schedule, and acted defensively, making a 13-year consecutive sentence disproportionately severe. As personal mitigation, the Appellant submitted that his wife recently eloped, leaving him as the sole provider for four minor children who are now facing grave hardship.

13] The Learned Additional Solicitor General countered that the lawfulness of the sentence, that the 13-year and 3-month total term was fully justified and strictly complied with Section 16(1) of the Code of Criminal Procedure Act No.

15 of 1979. The Appellant faced 44 distinct, proven counts. He said that while personal family hardships are regrettable, they cannot eclipse the irreversible loss of seven lives, the severe injuries inflicted on 37 other victims, and the public interest in holding public transport operators accountable for high-casualty negligence.

14] This judgment, delivered on 13/06/2024 by the High Court of Puttalam, concerned a fatal motor traffic accident that occurred on 06/11/2017 near the Mundalama Bridge on the A-03 road. The Accused (the Appellant), who was driving the bus, faced 52 charges under Sections 298, 329 and 328 of the Penal Code. The accident itself shows the severity of the incident. When, the Court go through the evidence of the Motor Vehicle Examiner, he says there was no mechanical defect in the bus. Thus, the root cause for the accident was the excessive speed of the driver-Appellant. His Bed Head Ticket marked X-01 merely established the Accused's hospitalization after the accident and did not substantiate his account of how the collision occurred. Thus, it cannot be taken as a mitigatory factor.

15] Though this appeal was not considered on the judgement of conviction, this court sees, on the totality of the evidence, that the Prosecution had proved beyond reasonable doubt the requisite degree of criminal rashness and negligence. The Accused was consequently convicted of charges 01–07, 09–15, 17–24, 26, 48–50, and the specified charges under Sections 298, 329 and 328, while charges 08, 16, 30, 32, 33, 35, 40 and 51 resulted in acquittals because the Prosecution failed to establish those particular counts beyond reasonable doubt, by the trial court.

16] When this court considers whether the imposed sentence is excessive, the Appellant was convicted for multiple counts. The section 16 of the Criminal Procedure Code enacts what is to be considered when there is such a situation and that is;

“16(1) When a person is convicted at one trial of any two or more distinct offences the court may, subject to section 301, sentence him for such

*offences to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence, **unless the court orders them or any of them to run concurrently**, the one after the expiration of the other in such order as the court may direct, even where the aggregate punishment for the several offences is in excess of the punishment which the court is competent to inflict on conviction of one single offence.” [Emphasis is added]*

17] Thus, the sentence imposed by the learned trial judge is well within the law. The normal cause is to run sentences consecutively, one after other, unless trial judge specifically mentions them to be run concurrently. Thus, the section 16(1) makes it clear that sentences upon conviction for several distinct offences at one single trial, establishing that terms of imprisonment run consecutively unless the court explicitly orders them to run concurrently.

18] The Appellant’s reliance on **Bandara v Republic** [supra], clarifies that the precedent does not grant leniency for mass-casualty traffic offences, like this case. Instead, Bandara emphasizes firm, deterrent sentencing to reflect the gravity of rash and negligent driving by public passenger transport drivers who show grave disregard for human life.

19] In Sri Lanka, there is no law on sentencing policy. It revolves on the trial judge who heard and conclude the case. He has the discretion to decide what sentence should be imposed on balance; offender vs society.

20] **In AG Vs. Janak Sri Uluwaduge**, [1995] 1 SLR 157, it was discussed in determining the proper sentence, primarily the Judge should consider the gravity of the offence, the reformation of the criminal should be taken into consideration subsequently. (Vide: **De Zoysa vs. Inspector of Police** [74 NLR 425]; **A.G. vs. De Silva** [57 NLR 138], **Perimbarajah v. Officer-in-charge, Minor complaints section, police station, Wattala**, [1994] 2 SLR 361.

21] The offence committed in this case is common occurrence now a days. The court have come across similar nature of traffic accidents. Negligent and

reckless driving in public transport is very common in Sri Lanka, particularly involving private buses and inter-provincial routes where speeding, dangerous overtaking, and racing between private operators and SLTB (Sri Lanka Transport Board) buses frequently endanger passengers and pedestrians.

22] It is to be noted in **Dhananjoy Chatterjee vs State of West Bengal** [1994 SCR (1) 37, 1994 SCC (2) 220] at paragraph 14 and 15 Indian Supreme Court held as follows;

*“Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. **The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.**”* [Emphasis is added]

23] Further, in **State of MP vs Najab Khan**, (2013) 9 SCC 509, the Indian Supreme Court cited the judgements in **Jameel vs State of UP** (2010) 12 SCC 532, **Guru Basavraj vs State of Karnatak**, (2012) 8 SCC 734, and observed as follows;

*“In operating the sentencing system, **law should adopt the corrective machinery or the deterrence based on factual matrix.** The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. **We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law. It is the duty of court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed. The courts must not only keep in view***

the rights of victim of the crime but also the society at large while considering the imposition of appropriate punishment." [Emphasis is added]

24] What is "Proper Sentence" was explained in **Deo Narain Mandal Vs. State of UP** (2004) 7 SCC 257 by observing that Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of the sentence, the court should bear in mind the principle of proportionality. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of Accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

25] In **Shyam Narain vs State (NCT of delhi)**, (2013) 7 SCC 77, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being given to the nature of the offence and the manner in which the offence has been committed. **The fundamental purpose of imposition of sentence is based on the principle that the Accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric.** The purpose of just punishment is **that the society may not suffer again by such crime.** The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen. Similar view has been expressed in **Sumer Singh vs Surajbhan Singh**, (2014) 7 SCC 323 , **State of Punjab vs Bawa Singh**, (2015) 3 SCC 441, and **Raj Bala vs State of Haryana**, (2016) 1 SCC 463. [Emphasis is added]

26] In the case of **Sevaka Perumal etc. V. State of Tamil Nadu** [AIR 1991 S.C. 1463J; Indian Supreme Court noted that;

" ... Protection of society and stamping out criminal proclivity must be the object of law **which must be achieved by imposing appropriate sentence.** Therefore, law as a corner-stone of the edifice of order should meet the challenges confronting the society ... **Therefore, undue**

sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

[Emphasis is added]

27] In Sri Lankan context, His Lordship Basnayake A.C. J in the case of **Attorney-General v H.N. de Silva**, 57 NLR 121, held on sentencing as follows;

*“... in assessing the punishment that should be passed on an offender, **a Judge should consider the matter of sentence both from the point of view of the public and the offender. Judges are too often prone to look at the question only from the angle of the offender.** A Judge should, in determining the proper sentence, first consider the gravity of the offence as it appears from the nature of the act itself and should have regard to the punishment provided in the Penal Code or other statute under which the offender is charged. He should also regard the effect of the punishment as a deterrent and consider to what extent it will be effective.”* [Emphasis is added]

28] Further, in **The Attorney General v. Mahapatunage Sujeewa Samanmali Perera alias Hamina**, C.A. Case No: CA 204/2017, decided on 08/08/2019, Her Ladyship K.K. Wickremasinghe, J; considered the judicial discretion on sentencing by enhancing the given sentence as;

*“it is understood that **even though a Judge has discretion with regard to the sentencing of an offender, such discretion has to be exercised judicially.** A trial Judge must be mindful to impose a sentence which is proportionate to the crime committed”* [Emphasis is added]

29] In the case of **Attorney General V. Mayagodage Sanath Dharmadiri Perera** [CA (PHC) APN 147/2012], it was held that;

"The nature and the gravity of the offence have to be considered before ordering a suspended sentence ... "

30] On considering the above guideline judgements, I now consider whether the given sentence is compatible to the societal expectations. The Appellant, a driver of a public passenger bus carrying approximately 70 to 75 passengers. The bus crash resulting in multiple fatalities and injuries depends heavily on the degree of fault—ranging from rash and negligent driving under penal codes to more severe charges like culpable homicide not amounting to murder or vehicular manslaughter. When I consider the degree of culpability, it is seen that the crash resulted not from simple error, but due to high-speed recklessness.

31] When I consider the scale of harm, the accident costs 7 deaths, 21 grievously injured, 24 with minor injuries, significantly aggravates the offense compared to standard single-fatality traffic accidents.

32] It is to be noted that the Appellant as a public transport driver carry a heightened duty of care for dozens of passengers, justifying substantial custodial sentences to deter public-road recklessness. In fact, I am of the view that sentence should be enhanced prevailing the condition of public transport as exemplary nature. Since, there is no cross appeal by the State, I do not consider to materialise it.

33] The Learned High Court Judge, in her sentencing order has clearly mentioned why the sentence has not been imposed concurrently. The mitigating factors which were tendered to court by the Appellants should be taken against the aggravating factors and the plight of victims. It should be noted despite lengthy trial; the trial judge has not imposed maximum sentence on each court. This is not to say just because the Accused had exercised his statutory rights, he should be given a maximum punishment. I see that the Learned High Court Judge acted well within lawful sentencing discretion without any illegality, material misdirection, or manifest excessiveness.

34] In the above circumstances, I dismiss the appeal and affirm the original conviction and sentence.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL