# UMMA HABEEBA
# v.
# OIC, DEHIATTAKANDIYA & OTHER

COURT OF APPEAL.
YAPA, J.,
GUNAWARDANA, J.
C.A. (PHC) NO. 73/96.
HC/REV/AMPARA NO. 31/95.
M.C. AMPARA NO. 2201/D.
MARCH 05, 1998.
APRIL 02, 1998.

*Animals Act s. 3A – Transportation of cattle – Confiscation of vehicle – Use of vehicle without knowledge of owner – Discretion vested in the Magistrate – Evidence Ordinance, S. 3.*

The lorry in question had been used for illegally transporting nine heads of cattle and four accused were found guilty on their own pleas.

The Driver of the lorry was the husband of the owner of the vehicle. The Court was of the view, that the fact that the Driver was the husband, itself proved knowledge on the part of the appellant (owner) that the offence in question was committed with the knowledge of the appellant.

On Appeal –

**Held:**

1. The facts from which the learned Magistrate/High Court Judge had concluded that the appellant had knowledge had, at best, some remote conjectural probative force, if any. Those facts have no clear bearing on the disputed question of knowledge or lack of it on the part of the appellant and do not enable one to draw a firm or decided inference in regard thereto – one way or the other.

2. What circumstances are sufficient to prove a fact will not admit of easy definition or generalisation, one has to use ones own judgment and experience of human conduct and cannot be found by rules except by ones own discretion. . . . the inference drawn presuppose that everything done or rather every offence committed by the husband must be necessarily

known to the wife, that is a rather naive assumption for the inferences that the courts draw must be "founded on the experience of common life".

3. What s. 3A means is that the vehicle shall necessarily be confiscated if the owner fails to prove that the offence was commited without the knowledge but not otherwise. If, as contended, the Magistrate was given a discretion to consider whether to confiscate or not – the Magistrate could confiscate even when the offence was committed without the knowledge of the owner taking into consideration other damnable circumstances apart from knowledge or lack of it on the part of the owner.

*Per* Gunawardana, J.

"One cannot let ones prejudices influence the judgment of the case, they may be sinners; perhaps of that there is no mistaking – of course according to my thinking – but a Judge has to recompense even evil with justice."

**APPEAL** from the the Order of the Provincial High Court of Ampara.

**Case referred to:**

*Hornal v. Newberger Products Ltd.* – 1957 1 QB 247.

*Faiz Musthapha*, PC with *Sanjeewa Jayawardena* for appellant-petitioner-appellant.

*J. C. Jayasuriya*, SSC for Attorney-General.

*Cur. adv. vult.*

July 15, 1999.

## GUNAWARDANA, J.

This is an appeal against an order dated 30.05.1996 made by the High Court of Ampara upholding the order of the learned Magistrate made on 18.08.1995 confiscating the lorry belonging to the appellant under section 3A of the Animals Act.

It is to be observed that the lorry in question numbered 41-2084 had been used on 26.05.1995 for illegally transporting nine head of cattle and four accused were found *guilty, on their own pleas, in that*

*regard under* the relevant section of the Animals Act, ie section 3A, which reads thus: "Where any person is convicted of an offence under this part or any regulations made thereunder any vehicle used in the commission of such offence shall in addition to any other punishment prescribed for such offence be liable, by order of the convicting Magistrate to confiscation.

Provided, however, that in any case where the owner of the vehicle is a third party no order of confiscation shall be made if he proves to the satisfaction of the Court that he has taken all precautions to prevent the use of such vehicle or that the vehicle had been used without his knowledge for the commission of the offence.

Two points had been urged in support of the appeal:

(i) That the appellant had no knowledge, in advance, of the fact that the lorry was used on the relevant date, ie on 26.05.1995 in the commission of that particular offence by transporting the nine head of cattle;

(ii) That the expression that occurs in section 3A of the Animals Act (reproduced above) ie "liable to confiscation" does not mean that the Magistrate has, of necessity, to confiscate the vehicle used for the commission of the offence in transporting the animals but vests a discretion in the Magistrate to consider the extenuating circumstances, it is to be observed, of which there is none; nor had the learned President's Counsel referred to any.

To consider the above two points in order: the learned Senior State Counsel, who appeared for the 1st and 2nd respondents, had argued that it's no good closing our eyes to the facts and that it was a point worth mentioning that the driver of the vehicle at the time of the commission of the said offence was none other than the appellant's husband, although the appellant in her evidence in chief had sought to make somewhat of pretence that the driver was a stranger to her or an outsider whom she (the appellant) had engaged for a wage or pay. To quote her own words:

"මගේ කුලී වැඩ කරපු පිටස්තර කෙනෙක් කරපු වරදක් නිසා මේ වාහනය මට අහිමි වුනොත් . . . "

Both the learned Magistrate and the High Court Judge seem to have found it difficult to believe or rejected the appellant's evidence to the effect that she did not know that the vehicle was used for the commission of the particular offence in question, substantially, if not wholly, for the following three reasons:

(i) That the appellant concealed the fact that the driver of the lorry was her own husband till that fact was elicited under cross-examination or that in any event, she did not state in her evidence in chief itself that the driver was none other than her own husband. The learned Magistrate, in particular, was decidedly of the view that the fact that driver was the husband that itself proved knowledge on the part of the appellant that the offence in question was committed with the knowledge of the appellant. To quote the relevant excerpt from the order of the learned Magistrate:

"තමාගේ ස්වාමි පුරුෂයා රියදුරු වශයෙන් ක්‍රියා කරන්නේ නම් මෙම අයිතිකාරියගේ අනුදැනුමකින් තොරව ගවයින් ප්‍රවාහනය කිරීම සඳහා මෙම ලොරිය යොදු ගත්තා යයි විශ්වාස කිරීමට අපහසුයි."

(ii) The fact that the appellant had admittedly permitted or had not prevented the driver (who was involved in the commission of the relevant offence) from continuing to drive, even after the relevant conviction, also showed that the offence was committed with the knowledge of the appellant;

(iii) That as the 1st accused in the case had, ie the husband of the appellant had been convicted by the Magistrate's Court (Panwila) of a similar or identical offence, in case No. 75404, it was not possible to believe that on this occasion too, that is, on the present occasion relevant to the case under consideration, the offence of transporting cattle was committed without the knowledge of the appellant.

Assuming for the purpose of argument the fact that the appellant had sought to conceal, in the course of her evidence in chief, that

the driver of the vehicle at the time of the detection of the relevant offence was her husband, yet such an attempt at concealment, nor the fact that the driver was, in fact, her husband nor the fact that she knew (assuming that she knew) that the husband had been convicted of a similar charge in the Magistrate's Court of Panwila nor the admission by the appellant that her husband was still, that is, even after the conviction in the Magistrate's Court of Ampara, entrusted with the lorry to drive it, in isolation, that is, each one of the above facts taken individually, or cumulatively will make the appellant's evidence to the effect that the present offence (detected at Dehiattakandiya) was committed without her knowledge less probable, than the fact that it was committed with her knowledge or even equally probable because the probative force of her (appellant's) evidence would make it more probable than not that she had no knowledge, as explained below.

Proviso to section 3A of the Animals Act states that the vehicle used for the commission of an offence under the Animals Act shall not be confiscated where the owner (being a third party) "proves to the satisfaction of the Court" that the vehicle has been used for the commission of the offence without his knowledge. (The other circumstance or situation in which no order of confiscation will be made is not relevant in this instance as it had not been called in aid, as such, by the appellant in these proceedings).

The appellant had, in her evidence in chief, referred to the person who happened to be driving the vehicle at the time of detection of the offence, as an "outsider" who, in fact, as stated above, was her own husband. The appellant is a Muslim lady and it appears that she had given evidence in Sinhala in which language she wouldn't have been all that articulate. Inaccuracy or imprecision in evidence may well arise out of incompetence of a witness to state a fact precisely or completely. By the use of the terms "outsider", it may well be, that she sought to emphasize that she was not personally or directly involved in the commission of the offence of transporting; or it may well be that she had echoed the words of her own counsel who led her evidence in-chief as so often happens or merely answered in the affirmative a question put to her without giving much thought or without

aiming at clarity or precision in expresion. The appellant's evidence had not been recorded in question and answer form. One cannot lightly ignore, as both the learned Magistrate and the High Court Judge had done, the fact the appellant had without any demur or hesitation, stated under cross-examination in the most explicit terms that the driver was her husband and he was continuing to drive the vehicle even after the relevant conviction. So that, viewing the matter from a practical angle, it couldn't seriously or justifiably be said that the appellant has sought falsely to represent to Court that the driver was not her husband.

Even assuming for the sake of argument that the appellant: (*a*) had sought to conceal the fact that the driver, was her own husband (*b*) had knowledge of the fact of the commission by using the same lorry of an identical offence by her husband at Panwila (*c*) had admittedly permitted the husband to drive or acquiesced in the husband continuing to use or drive the lorry would neither prove nor disprove (on a balance or otherwise) the fact that the offence was committed with the knowledge of the appellant. The facts designated (*a*), (*b*), (*c*) above are not, by their very nature, the sort of facts which of themselves exclude or imply distinctly the existence of the fact sought to be proved – the fact sought to be proved by means of these facts being that the appellant had knowledge of the commission of this particular offence of which her husband and three others were convicted in the Magistrate's Court of Ampara; for that matter, the said facts particularized or designated above are, so to say, natural facts in that they neither imply nor exclude the fact sought to be proved – the fact sought to be proved being, as stated above, that the appellant had knowledge. Both the learned Magistrate and the High Court Judge, had clearly drawn the inference that the said facts showed that the relevant offence was committed with the knowledge of the appellant. It is true that the burden was on the appellant to prove that the offence was committed without her knowledge, but *the facts* enumerated above from which both the learned Magistrate and the High Court Judge had concluded that the appellant had knowledge had, at best, some *remote conjectural probative force*, if any. Those facts may, perhaps, make the evidence of the appellant to the effect that the offence was committed without her knowledge somewhat

doubful or suspect but they do not possess the force or probative value even cumulatively, of making the fact that the offence was committed without knowledge of the appellant less probable than that it was committed with the appellant's knowledge for those facts have no clear bearing on the disputed question of *knowledge or lack of it on the part* of the appellant and do not enable one to draw a firm or decided inference in regard thereto – one way or the other. As would appear from the sequel each one of these facts relied on by the Judges in the Courts below does not (even when amalgamated) exclude lack of knowledge on the part of the appellant although those facts enumerated above (and relied on by the Judges in the Courts below to attribute knowledge to the appellant) may, perhaps, leave the matter in some doubt although the probability of the veracity of the appellant's evidence that she had no knowledge does not disappear in consequence thereof. Although the burden of proving that the owner of the vehicle had no knowledge is on appellant (she being the owner) yet that question, ie whether or not she had knowledge, needless to say, has to be decided on the totality of the evidence available to Court. As stated above, the Courts below had taken the view that because the driver of the vehicle at the time of detection of the offence was the husband of the appellant, the particular offence in question ought to be held to have been committed with knowledge of the appellant. The Courts below had also taken the view that the fact that the appellant's husband had been convicted of a similar offence in case No. 75404 in the Magistrate's Court of Panwila strengthened belief that this offence too was committed with the appellant's knowledge although that reasoning is too far-fetched: solely from the fact that the appellant was the wife of the driver the inference had been drawn that the offence of which the husband had been convicted in the Panwila Magistrate's Court had been committed with the knowledge of the appellant. As such, that is because the learned Magistrate had inferred that the offence of which the husband had been convicted in the Magistrate's Court of Panwila had been committed with the appellant's knowledge, merely by virtue of the fact that the appellant was the wife, it had been further inferred therefrom that the relevant offence, which was of a similar nature, too had been committed with the knowledge of the appellant – although the learned Magistrate had preferred to use confusing language to plain expres-

sions to say so. To quote from the order of the learned Magistrate: "පැමිණිල්ල විසින් ඉදිරිපත් කරන ලද පත්විල මහේස්ත්‍රාත් අධිකරණයේ අංක 75404 දරණ නඩුවේදී ද මෙම 1 වන විත්තිකරු වරදකරු වී ඇත. 1 වන විත්තිකරු මෙම ඉල්ලුම්කාරියගේ ස්වාමිපුරුෂයා බැවින් මෙම වරදකරු කිරීම ඇය නොදැන සිටියා යැයි කිසිසේත්ම පිළිගැනීම අපහසුයි. මෙම කරුණු සියල්ලම සලකා බැලීමේදී . . . එම කාර්යාලයේ අනුදැනුමකින් තොරව මෙම වරද සිදුවුවා යැයි කරන ප්‍රකාශය විශ්වාසනීයත්වයෙන් තොර බවත් මාගේ මතයයි."

Of one thing one can be sure, if of no other, that is, that the learned Magistrate whilst drawing the inference that the offence which was the subject of the charge in the earlier case No. 75404 had been committed with the appellant's knowledge, since appellant was the wife, had gone further afield to impute knowledge to the appellant of this offence as well for no other or better reason than that she (the appellant) had knowledge of the commission of the previous offence of which the appellant's husband had been convicted. This, I suppose, is the sense one can, so to say, divine from the above excerpt of the order. Although at the inquiry in which the appellant had given evidence a certified copy of the proceedings of the said case No. 75404 had been marked as P1 – a copy of it had not been filed of record. As such, at our instance, the learned State Counsel, on behalf of the Attorney-General had called for the record in that case and as we were intent on getting to the bottom of the matter, we examined the record (marked P1) in case No. 75404 (MC Panwila) and found that although two accused, one of whom was the husband of the appellant had been convicted on his own plea for transporting animals in the same lorry, – yet, strangely enough, for some reason or other, it had not been followed up by noticing the owner to show cause against confiscation. So it is within the realm of probability that she did not know (as she had stated giving evidence in the Ampara Magistrate's Court) of the conviction in the Panwila Magistrate's Court nor of the offence relevant to that conviction most probably because the owner (appellant) was not noticed to show cause against confiscation of the lorry. This aspect had not received any consideration in the Courts below. Had she been noticed, in case No. 75404 (MC Panwila) and if she had received the notice, there was no question of her denying knowledge (subsequent to the conviction) of the previous

offence, committed on 20.05.1995 of which the husband had been convicted in case No. 75404 (MC Panwila). It is worthy of mention that this offence, ie the offence of which the husband was convicted in the Ampara Magistrate's Court, was committed on the very next day, viz 21.05.1995. There is no essential inconsistency between any of those facts made use of by the Courts below to come to a finding that the relevant offence was committed with the knowledge of the appellant with the fact that the offence in question was committed without the knowledge of the appellant. There is an equal possibility that the offence in question was committed with knowledge of the appellant as without her knowledge because both the said inferences could legitimately be drawn from the facts relied upon in the Courts below to impute knowledge to the appellant. What circumstances are sufficient to "prove" a fact will not admit of easy definition or generalization. One has to use one's own judgment and experience of human conduct and cannot be bound by rules except by one's own discretion. The inferences drawn by the learned Magistrate and the learned High Court Judge more or less, presuppose that everything done or rather every offence committed by the husband must be necessarily known to the wife. That is a rather naive assumption for the inferences that the Courts draw must be "founded on the experience of common life". Any common imagination can adequately conceive that the husband in question is so little versed in the refinements of civilized life as to take the wife too much into confidence. The Courts below had also concluded that the fact that the appellant had permitted the husband to drive the lorry even after the conviction of the offence of transporting animals by using the lorry of which the appellant was the owner, inferentially proved that the offence in question was committed with her knowledge. But, in drawing that inference the Courts below had overlooked the significant fact that the driver was the appellant's husband. The owner (appellant) could not have dealt with the husband in the same way as she would have *dealt with somebody else* or in like manner *get rid of or prevent* the husband from driving the lorry. If the appellant had done so, that is, if the appellant had sought to take the lorry out of the hands of her husband, that would have been tantamount to something like an act of matrimonial treason. The Court had to take a realistic view, and not judge like visitors from the outer space. It is probable that

the appellant couldn't prevent the husband from continuing to drive as she was powerless to do so and not because the offence was committed with her knowledge. If one can accuse the appellant of anything it is that she had accepted the inevitable with resignation and unconcern. One must not be content to reach decisions by looking at the mere surface of things. When there are various possibilities one must be wary of and cautious in accepting one possibility as being more probable than the other. Against such a factual background it is not quite logical and even unfair to draw the inference, from the fact of the husband continuing to drive the vehicle even after the conviction, that the relevant offence was committed with the appellant's knowledge for it is common knowledge that in such a society as that in which the appellant lived women went about their household chores as required of them and no woman ever braved a husband without in the long run suffering for it and it is not unreasonable to assume that his was the authority and his the business head.

To balance the evidence on either side: the facts relied on in the Courts below, to impute knowledge of the commission of the offence are not such as to make the fact that the offence was committed with the knowledge of the appellant more probable than the fact that the offence was committed without her knowledge because, to say the least, all those facts, as explained above, admit of the interpretation that there was an equal possibility that the offence was committed without the knowledge as with knowledge. Of course, notwithstanding all this, one may say that the appellant may well have known of the commission of the offence. But, that is a mere hypothesis which does not have the support of the evidence. If may arguably be said that there is a doubt or a feeling of uncertainty as to the truth of the appellant's version that the offence was committed without her knowledge. But, if the truth must be told, in my own mind, there is even a greater doubt as to whether it was committed with her knowledge. Of the two versions, viz that *the offence was committed with the* knowledge and without knowledge, the latter version is more probable even though there may be, perhaps, a doubt in regard to the truth of it. In general, of the two versions of events, one version can be accepted as the more probable version even when there is a doubt in regard to the very version that is upheld as the more probable

version for if there is not even a doubt in regard to it, that version must be held to be proved beyond a doubt which high degree of proof is not cast, by the law, on the appellant in this case. In *Hornal v. Neuberger Products Ltd* [1] the plaintiff claimed damages for breach of contract and in the alternative fraud. It was alleged that an agent of the defendant company had deliberately made a false statement about goods which were sold to the plaintiff. The claim of fraud inevitably required the plaintiff to prove a criminal offence. The trial Judge held that he was saisfied on the balance of probabilities that the statement was made but was not satisfied beyond reasonable doubt and so held with the plaintiff. The Court of Appeal of England held that the trial Judge was right to find the plaintiff's claim proved because the action was a civil case and so the civil standard of proof applied. In this matter the burden on the appellant is the same standard. There is no gainsaying that there is no inherent improbability, as such, in the appellant's version, supported as it is by two circumstances which the Courts below had overlooked – (in the absence of which two circumstances the two versions, viz knowledge and lack of it would perhaps, have been evenly balanced and so that neither could have been held to be "proved") – the two circumstances being: (i) that the offence was committed or detected at some considerable distance from the place where the appellant was resident or, to put it more accurately, the appellant physically was at the relevant time when the offence was committed; (ii) that the driver, i.e. the husband of the appellant visited the appellant or came home only once a month. It is to be observed that the above two facts deposed to by the appellant are not contradicted although one must be conscious of the fact that the nature of those facts is such that it would be almost practically impossible for the prosecution to disprove them for such facts are virtually although, perhaps, not exclusively within personal knowledge of the appellant. In other words as the fact viz that the appellant was the wife of the driver who had used the lorry to commit the relevant offence, could be interpreted either way and did not unerringly point to knowledge on the part of appellant, or to the fact that it was more probable than not that the offence was committed with the appellant's knowledge there is no other decisive circumstance or, for that matter, any circumstance from which it can be inferred that the offence was committed with the knowledge of the appellant

notwithstanding the fact that there was admittedly no personal participation on the part of the appellant since the offence was committed at a considerable distance from where the appellant physically was at the time of detection or of the commission of the offence although there is no concrete evidence regarding the distance between the two places. A Mr. Weller would have even suggested that "alleybi" was available to the appellant in this case. "Never mind the character and stick to the "alleybi" wherever he is going to be tried . . . a alleybi is the thing to get him off. We got Tom Vildespark off that ere manslaughter when all the big wigs to a man said as nothing couldn't save him". It is not without interest to note that this profound legal opinion was given by Mr. Weller to the respondent in an action for breach of promise of marriage – totally disregarding the assurances and arguments tending to show that in such an action such a defence wouldn't be all that admissible, I have said all this to show that in everyday sort of matter like this, as to whether wife (the appellant) knew, in advance, of the commission of the particular offence, robust commonsense demands that some degree of weight should have been given to the fact that thare was no personal participation which had not been done in the Courts below. The appellant's residence was at a place called Madawela. It could be perhaps, inferred from the tenor of the evidence that the offence was committed or rather it was detected at Wattegama. To quote from appellant's evidence – there being no other evidence touching the point:

"වත්තේගම පොලීසියෙන් මේ ලොරිය හරක් ප්‍රවාහනය කිරීම සම්බන්ධයෙන් අත්අඩංගුවට ගත්තා කියා දැන ගන්න ලැබුනේ නැහැ. මම මඩවල පදිංචි. වත්තේගමට කොපමණ දුරද කියා දන්නේ නැහැ . . . ලොරිය කොහේවත් යනවා නම් පුරුෂයා මට කියලා යන්නේ නැහැ."

(Reading between the lines it does not require much imagination to see that the appellant is somewhat of an ignorant lady who had perhaps much more to put up with from her husband than one would suspect.)

It may arguably be said that the evidence of the appellant that she did not know that the relevant offence was committed without her knowledge is weak. But, even assuming that it is so, such weak evidence must prevail when, as in this case, no other evidence is

available to counterbalance it. Section 3 of the Evidence Ordinance contemplates or provides for two conditions of mind with regard to matter of proof of a fact: first, that in which a man feels absolutely certain of a fact, that is, believe it to exist; and secondly, that in which though he may not feel absolutely certain of a fact yet he thinks it so extremely probable that a prudent man would under the circumstances act on the assumption or basis of its existence.

In this case before an order of confiscation can be made the Court has to be satisfield not merely that the appellant had a general idea or that she vaguely knew that the lorry was usually used for the purpose of transporting animals illegally but that the particular offence on the relevant date, i.e. on 26.05.1995 was committed with her knowledge. It is to be noticed that section 3A of the Animals Act which penalised the owner speaks of "the offence" thereby referring to or particularizing the specific offence in question which had formed the basis or subject of the offence of which the accused had been convicted. The inference that the wife had knowledge, solely by virtue of the fact that she was the wife, would have been justified or could have been more easily drawn if the law had authorized the confiscation of the vehicle if the owner had known that the vehicle was generally or usually used for transpport of animals although the owner had no knowledge of the particular offence or for that matter, of any particular occasion on which the vehicle had been so used for the commission of an offence under the Animals Act.

If the lorry could be confiscated under secction 3A of the Animals Act when the owner merely knew that the general or usual purpose or use to which the lorry was put was the transport of animals, then it would be possible to confiscate this vehicle even when there was no conviction of any person of an offence, under any section of the Animal Acts. But, section 3A makes a conviction an indispensable condition – precedent to a confiscation.

As a final note I wish to say this: that the point raised by the learned President's Counsel for the appellant, Mr. Musthapha, that the expression used in section 3A of the Animals Act, viz "the vehicle used in the commission of the offence shall . . . be liable to

confiscation . . . " did not have the compulsory meaning that the vehicle should be confiscated even when the owner of the vehicle failed to "prove" that the offence was committed without his knowledge was so raised, for the sake of appearances, not because it had any value; perhaps, the learned President's Counsel coudn't help himself. In this context the expression: "shall be liable to confiscation", has to be interpreted in an imperative sense and the word "shall" has the invariable significance of excluding the idea of discretion although that term, viz "shall" in certain contexts may by construed as being merely permissive. What the said section 3A means is this : that the vehicle shall necessarily be confiscated if the owner fails to prove that the offence was committed without the knowledge but not otherwise. If, as contended by the learned President's Counsel for the appellant, the Magistrate was given a discretion to consider whether to confiscate or not – the Magistrate could confiscate even when the offence was committed without the knowledge of the owner taking into consideration other damnable circumstances apart from the knowledge or lack of it on the part of the owner. The arguments too can recoil on the propounder. That argument was an invitation to confiscate for that would have been the necessary and inexorable consequence of the acceptance of that argument. In this case, if I had a discretion, I would not have been loath to confiscate notwithstanding the fact that it is more probable that this particular offence was committed without the knowledge of the appellant (owner) – for the lorry seems to be consistently used for the purpose of illegally transporting animals. *In section 3A the word "liable" cannot be considered in isolation for its meaning is conditioned by the term "shall".* The term "liable", I dare say, taken in isolation may connote future possible or probable happening which may not actually occur and suggests an occurrence within the range of possibility. But, the above point raised by the learned President's Counsel is only of academic interest in the context of the order I decide to make that on the totality of the evidence led at the inquiry before the learned Magistrate it ought to have been held, in the least, that it was more probable than not that the relevant offence was committed without the appellant's knowledge.

One cannot let one's prejudices influence the judgment of the case. They may be sinners; perhaps, of that there is no mistaking – of

course, according to my thinking. But, a Judge has to recompense even evil with justice. The appeal is allowed and the order made by the High Court on 30.05.1996 upholding the learned Magistrate's order dated 18.08.1995 is hereby vacated. The lorry numbered 41-2084 is ordered to be returned to the owner. Justice, according to law, demands no less.

I wish to add this by way of a postcript: the law with respect to the matter of confiscating the vehicle used in the commission of an offence under the Animals Act is in a loose and unsatisfactory state, allowing offenders to cut loose, and therefore needs to be tightened up in two ways: by (*a*) making knowledge or lack of it immaterial when the person convicted of an offence under the Animals Act and the owner are spouses with appropriate exceptions; (*b*) making the confiscation of the vehicle mandatory upon the third conviction irrespective of whether the owner had knowledge or not of these particular offences; or else owner could be noticed to appear in Court and apprised of each conviction as it is entered. As at present the law is so lax as to encourage invention of ways and ways of evading the law without infringing the letter of it. A husband, for instance, can buy a vehicle and register in the name of his wife who is abroad which will make knowledge on the part of the registered owner impossible of proof.

**HECTOR YAPA, J.** – I agree.

*Appeal allowed.*