

IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an application under Article of 126 of the Constitution.

S.C. (FR) Application No. 700/2002.

Lama Hewage Lal

DECEASED

1. Wewalage Rani Fernando (wife of the deceased)

2. Lama Hewage Janaka,

3. Lama Hewage Sampath

4. Lama Hewage Malsha Nadeeshani

(Minor children of the deceased, appearing through their mother)

Wewalage Rani Fernando (Guardian an-Litem)

All of No. 90/1, Medawatte, Seeduwa South, Seeduwa

PETITIONERS

VS.

1. Officer - in – Charge,

Minor Offences,

Seeduwa Police Station,

Seeduwa.

2. Officer – in –Charge,

Police Station,

Seeduwa.

3. Ratnayake,
Officer – in – Charge,
Negombo Prison, Negombo.
4. The Chief Jailer,
Negombo Prison, Negombo.
5. Superintendent of Prison,
Negombo Prison, Negombo.
6. Inspector of General of Police,
Police Head Quarters, Colombo-1
7. Commissioner General of Prison,
Prison Head Quarters,
Baseline Road, Colombo 08.
8. The Hon. Attorney General,
Attorney General's Department,
Colombo-12.
9. Sub – Inspector, Nishantha,
Minor Offences Branch,
Seeduwa Police Station, Seeduwa.

RESPONDENTS.

BEFORE: Shirani A. Bandaranayake J.,
J.A.N. de Silva J. &
Nihal Jayasinghe J.

COUNSEL: J.C. Weliamuna

with

M.A. Sumanthiran and Shan S. Senanayake.

for

Petitioners

Arjuna Kurukulasuriya for the 3rd, 4th and 5th Respondents.

K.A.P. Ranasinghe, State Counsel for 6th, 7th and 8th Respondents

J.M. Wijebandara for 9th Respondent.

ARGUED ON: 17.09.2003 & 14.06.2004

DECIDED ON: 26.07.2004.

Shirani A. Bandaranayake J.

This is an application filed by the wife and three minor children of one Lama Hewage Lal who was arrested by the officials of the Seeduwa Police Station. Subsequently he had died whilst in the custody of the Negombo Prison Officials. The Petitioners alleged that the said Lama Hewage Lal (hereinafter referred to as the deceased) died as a result of torture while in detention and therefore at a time when he was deprived of his personal liberty. They have prayed for a declaration that the deceased's fundamental rights guaranteed by Article 11, 12(1), 13(2), 13(4) and 17 of the Constitution have been violated. The Petitioners have also claimed compensation the deceased would have received, if not for his death, which according to the Petitioners, occurred due to the cruel, inhuman and degrading treatment meted out to him by the prison officials in whose custody he was kept.

This Court granted leave to proceed for the alleged infringement of Articles 11,13(4) and 17 of the Constitution.

The Petitioner's Case

According to the Petitioners, on or about 02.11.2002, Police Officers from the Seeduwa Police Station informed the 1st Petitioner to send the deceased to

the Police Station at 5 p.m. of the same evening for an inquiry. The deceased had adhered to this request and at the Police Station he had been told that a complaint was made against him stating that he had stolen two bunches of bananas. As the complainants were not present at that time, the Police Officer had told the deceased to leave the Police Station.

On 5.11.2002, while the deceased was chopping firewood along with one Shelton in the neighbourhood, three Police Officers from the Seeduwa Police Station had arrested both of them and taken to the Police Station.

The 1st Petitioner in her affidavit averred that both the deceased and Shelton were assaulted inside the jeep while being taken to the Police Station. In the evening of the same day the 1st Petitioner with a sister and a brother of the deceased, namely, Malani and Vincent, and some of the friends and relatives of the person who were arrested went to the Police Station. The 1st Petitioner averred that that the deceased was badly beaten and that he could not even drink the tea, which was offered to him by them, as his hand was swollen.

Thereafter, the deceased and Shelton were produced before the Magistrate and remanded on 06.11.2002 and had been taken to the Negombo Prison around 4.30 p.m. on 07.11.2002, when the 1st Petitioner along with Malani and Vincent and with few other friends and relatives, visited the Negombo Prison they could not meet the deceased. Shelton however had informed them that the prison officials had assaulted the Petitioner severely.

According to Shelton, on the morning of the 7th November, after the count for the morning was taken, he and the deceased were seated on the ground outside Ward No. 1. Whilst they were seated, two prison officers had come near them and started assaulting. The deceased had started running towards the wall and had run round Ward No. 1. The path he was taking was circular and the deceased ended up in arriving at the place he started to run. By that time, the prison officials were annoyed of the attempt made by the deceased and had hand-cuffed him, had shackled him and had assaulted him until he fell unconscious. The two officials had summoned two other inmates and they had carried away the deceased and Shelton had not seen him until the following morning.

On the 8th November, Shelton, along with the other inmates, was lined up to be taken to Court. Although he inquired from a jailor about the deceased, he did not get a favourable reply. However, when Shelton was passing Ward No. 1 he saw the deceased tied to an iron gate. Even at that time the deceased was handcuffed and his head had fallen to a side. Shelton was not allowed to

get close to the deceased and he was asked to join the others who were being taken to Court.

While Shelton was standing in the line to be taken to Court, two inmates were carrying the deceased on a stretcher and had kept the stretcher behind Shelton. He noticed that the deceased did not move and the 'panic stricken' prison officials running around.

At the Magistrate's Court the Police had informed the 1st Petitioner, Vincent, Malani and the others that the deceased would not be produced in Court as he was sick and that they could visit him at the Negombo Hospital once Shelton is released on bail. Although the 1st Petitioner visited the hospital she could not find the deceased.

In the meantime Malani had found a body on a trolley in Ward No. 4. The head of the body was covered in polythene. A prison guard was seated close by and had informed Malani that the deceased was brought to the hospital and that he was pronounced dead on admission.

The 1st Petitioner submitted that the deceased was subjected to torture, cruel, inhuman and degrading treatment while in detention at the Negombo Prison by Prison Officials serving under the 3rd, 4th and 5th Respondents in violation of Article 11 of the Constitution.

THE RESPONDENTS' VERSION

The 9th Respondent, who was the sub-Inspector of the Minor Offences Branch, at the Seeduwa Police Station, admitted that the deceased and another person were arrested by him and by some other Police Officers on suspicion of a theft of two bunches of bananas on 5th November at 10.15 p.m. After the arrest of the deceased, according to the 9th Respondent, the Police had taken prompt action to record statements and thereafter to produce the deceased on 06.11.2002 at 3 p.m. before the Magistrate of Negombo. The Magistrate had ordered the deceased and the other suspect to be remanded. Soon after, the deceased, along with the other suspect, was handed over to the Negombo Prison.

The 1st to 5th and the 9th Respondents took up the position that the petitioners have no *locus standi* to proceed with this application as they do not allege any violation of their fundamental rights, but only of the violation of fundamental rights that of the deceased. The said respondents referred to the majority decision in *Somawathie v Weerasuriya* (1990) 2 Sri LR 121 and the

minority decision which considered a preliminary objection prior to hearing, in Kotabadu Durage Sriyani Silva v Chanaka Iddamalgoda and others (SC Application No. 471/2000 SC Minutes of 10.12.2002).

The question on '*locus standi*' has been considered by this Court not only in the decision which considered the preliminary objection in Kotabadu Durage Sriyani Silva (Supra), but also in the final hearing of the same case (Supra). It is therefore settled law that the lawful heirs and/or dependants of a person who is deceased as a result of an act of torture should be entitled to a declaration of the violation and compensation. This position would be examined further in considering the violation of Article 13(4) of the Constitution at a later stage.

According to the submissions made on behalf of the petitioners, although the deceased was assaulted by the Police Officers, who arrested him on 05.11.2002, the 1st, 2nd and the 9th Respondents had denied such allegation. More importantly there is no medical evidence that has been produced by the petitioners to substantiate the allegation of torture by the said Police Officers. Learned Counsel for the petitioners had also informed this Court on 02.04.2003 that after perusing the MOIB of 05.11.2002 (pg. 241 and para 76) that it became clear that the officer who arrested the deceased is Sl. Nishantha and permission was granted to add him as the 9th Respondent. Learned Counsel also had submitted that the petitioners are not seeking relief personally against the 1st and 2nd respondents. At the hearing Learned Counsel for the petitioners submitted that the petitioners will not be proceeding against the 1st, 2nd and 9th respondents. Therefore the allegation on torture has to be considered from the time the deceased was handed over to the Officials of the Negombo Prison.

Liability of the Prison Officials and the alleged violation of Article 11 of the Constitution.

The 3rd, 4th and 5th respondents who are the Officer-in-Charge, the Chief Jailor and the Superintendent of the Negombo Prison, respectively, have denied all allegations of torture against them.

The 4th and 5th respondents admitted that the deceased was handed over to Negombo Prison around 4.20 p.m. on 06.11.2002. The 3rd respondent while admitting that the petitioner was handed over to Negombo Prison around 4.30 p.m. on 06,11,2002 stated that the deceased had to be restrained as he became restless, violent, uncontrollable and a danger to other inmates and officers of the Prison. He further submitted that the violent fits the deceased

experienced was due to lack of alcohol in blood, a common phenomenon in the Negombo Prison. He further stated that excessive force was not used to control the deceased.

It is to be noted that the 3rd respondent was the Officer-in-Charge of the Negombo Prison at the time the incident in question took place. Moreover there is an admission by the 3rd respondent that although no excessive force was used on the deceased, that he had to be restrained and controlled.

The B report filed by the Negombo Police on 14.11.2002 refers to the investigation carried out by them on 12.11.2002. The Police had recorded a statement made by Shelton who had referred to the incident that took place in the evening of 06.11.2002. The description given by Shelton to the Police is similar to what is stated in the petition by the petitioners. This is further corroborated by the affidavit given by Shelton on 05.12.2002 (P1).

Moreover, at the Magisterial inquiry, Shelton had clearly described as to how the deceased was assaulted by the Prison Officials. After describing the initial assault on the deceased, he goes on to explain as to what took place on the 7th November in the following words:

" I was assaulted about five occasions on the 7th morning. The deceased was also assaulted five or six times. We did not utter a word when we were being assaulted. When it was simply impossible to bear the pain any longer, we pleaded with the officers not to assault us. Worshipping the officers, the deceased repeatedly begged, "Sir, please don't hit me". Though the deceased was worshipping and pleading with the officers not to assault him, they continued their assault, stating that it is of no avail to worship them after stealing. The deceased was beaten on the back, buttocks, hands and legs. He was severely beaten with their batons for about two minutes. In severe pain the deceased attempted to run away from the officers though unsuccessful. Subsequently, the officers stopped their assault. We continued to be seated. Later we were given meals and were permitted to go out. Once again, at about 12.30/1pm, the same two officers started to assault us at the same place, near the entrance to Ward 01. It was the same place that we were assaulted at about 7.30 am in the morning. They used similar batons to assault us. To escape the beating, screaming in pain, the deceased ran towards the high wall of the prison. Screaming, I stood where I was. It was the wall around the remand prison. To escape their beating the deceased attempted to climb the wall unsuccessfully. The officers did not chase him The deceased failing to climb the wall, ran around the ward and came to the same place where we were. It was around 1/1.30pm. The deceased did not say

anything to me though he was able to speak. The officers who assaulted him handcuffed the deceased at this moment. Again the officers assaulted him two or three times yelling " are you trying to run away?". They beat his body, arms, and legs with their batons. In severe pain the deceased who was handcuffed, unsuccessfully attempted to run to escape their beatings. At this point he was shackled by the same officers. Then the officers started to beat the handcuffed and shackled deceased. He fell on the ground. The officers mercilessly trod the deceased, who lay on the ground, withering to escape their boots and batons. The deceased screamed out in pain for a while and his voice faded away eventually".

The aforementioned report clearly substantiates the position taken up by the Petitioners. Further it also confirms that at the time the deceased was assaulted that he was not only handcuffed, but was also shackled.

Learned Magistrate, Negombo had examined the injuries on the body of the deceased prior to the post-mortem examination was conducted. According to his observations in the area around the deceased's wrists and his ankles there had been dark patches indicative of tightening of handcuffs and shackles the left hand was swollen and had been dark blue in colour. There were laceration marks on his fingers and on his knee.

Learned Magistrate also examined the scene of the incident and has described it as follows:

".....there were a few prisoners in Ward 09. I was shown the scene of the incident. When I entered Ward 09, there were rooms on either side of the corridor. At the far end of the corridor there was an iron gate and, I observed a part of a handcuff hanging on the iron -gate, I was informed that the deceased was handcuffed and was chained to the iron door."

Preliminary Report of the post-mortem examination was submitted by the Consultant Judicial Medical Officer and the Assistant Judicial Medical Officer of the General Hospital, Colombo – North (Ragama). The Judicial Medical Officers in their Report has stated that the deceased was found to be dead when brought to the Base Hospital, Negombo at 9.35 a.m. on 08.11.2002. According to them this was recorded in the admission sheet prepared by that hospital.

The Judicial Medical Officers have also given their opinion of the cause of death, which is reproduced below:

"Shock and haemorrhage due to extensive soft tissue injuries of the trunk and limbs. These injuries are recent, blunt force-type injuries. They are consistent with multiple, repeated blows with blunt weapon(s) and are consistent with injury pattern seen and recorded in battering in custody. There were external (skin) injuries in the wrists and ankles consistent with injuries sustained due to handcuff and/or legation with traction. No skeletal injury found. Head and neck were almost free of injuries except few small abrasions. No signs of significant natural illnesses. We are of further opinion that these injuries could not have been sustained due to an ordinary force being used for restraining....."

On a consideration of the evidence before this Court regarding the circumstances in which the death of the deceased occurred. It is apparent that although there were allegations by the Petitioners that the deceased was assaulted by the Police Officers, that at the time he was brought into the Negombo Prison that he was not suffering of any injuries. The evidence before this Court also reveals that from the time the deceased was brought to the Negombo Prison he has been subjected to assault and the severest kind of assault had taken place on the 7th November while the deceased was seated on the ground outside Ward No. 1 with Shelton.

Considering the aforesaid evidence and circumstances, I am inclined to accept the version submitted by the Petitioners and I am of the view that the deceased's death occurred due to the assault, which took place in the Negombo Prison on the 7th November 2002.

Article 11 of the Constitution reads as follows:

"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

Petitioners have alleged that the deceased was assaulted severely while he was kept at the Negombo Prison and his death occurred as a result of such inhuman treatment. The 3rd Respondent as referred to earlier, has stated that minimum force had to be used as the deceased became violent and had to be restrained and controlled. As it appears the method of restraining or controlling the deceased had been to handcuff and shackle him, prior to assaulting the deceased mercilessly and to tie him to an iron door while he was still in handcuff and in shackles.

In saman V. Leeladasa and another ((1989) 1Sri L.R. 1) the Petitioner while in prison custody at the Galle Prison was assaulted by a Prison Guard while he

was bathing and as a result had suffered a fracture of his left arm and other injuries. This had been as a result of repeated blows with the aid of a baton.

This court held that the Petitioner was subjected to cruel, inhuman or degrading treatment or punishment in violation of Article 11.

The Supreme Court of Sri Lanka has clearly stated in *Senthilnayagam V. Seneviratne* ((1981) 2 Sri L.R. 187) that 'even Persons whose reports are not particularly meritorious' should irrespective of such records enjoy the constitutional guarantee of personal liberty.

In *Amal Sudath Silva V. Kodituwakku* ((1987) 2 Sri L.R. 119) it was stated that even "notorious" or "hard core" criminals should not be subjected to torture, inhuman or degrading treatment or punishment. Athukorale, J. was of the view that,

"Every person in this country, he be a criminal or not, is entitled to this right to the fullest content of its guarantee.... Nothing shocks the conscience of a man so much as the cowardly act of a delinquent Police Officer who subjects a helpless suspect in his charge to depraved and barbarous methods of treatment within the confines of the very premises in which he is held in custody.....The Petitioner may be a hard – core Criminal whose tribe deserves no sympathy, but if constitutional guarantees are to have any meaning or value in our Democratic set up, it is essential that he be not denied the protection guaranteed by our Constitution".

Since the decision in *Amal Sudath Silva* (Supra) where this Court held that the Petitioner's Fundamental rights guaranteed in terms of Article 11 of the constitution had been violated, several cases had followed the dictum that the position or the Petitioner's standing in the society should not be taken into consideration in deciding whether there has been a violation of his fundamental rights (*Dissanayake V. Superintendent, Mahara Prison* (1991) 2 Sri L.R. 247, *Premalal de Silva V. Inspector Rodrigo* (1991) 2 Sri L.R. 307 *Pellawattage (AAL) for Piyasena V. O.I.C. Wadduwa SC Application No. 433/93 Minutes of 31.08.1994*).

The allegation against the deceased was that he had stolen two bunches of bananas. However, as has been decided in several cases, this position would not be matter that should be taken into account when considering whether there has been violation of his fundamental rights guaranteed by the constitution.

It is to be remembered that at the time of the incident the deceased was an inmate of the Negombo Prison and was in the charge of the Prison authorities.

In *Thomas V. Jamaica* (communication No. 366/1989, views of Human Rights Committee, 02nd November 1993) where a prisoner, who was awaiting execution, was assaulted with a rifle butt and stabbed with a bayonet by soldiers conducting a search of prison. His clothes were also torn and were thrown back into his cell. No medical treatment was given to him. It was held by the UN Human

Rights Committee that the treatment to be degrading and contrary to Article 7 as well as 10 of international Covenant on Civil and Political Rights.

Admittedly in the present case under consideration, the deceased had not been in the prison for even a few hours before he was assaulted by some of the officers. In a matter of less than 48 hours after being brought into the Negombo prison the deceased had passed away. The medical evidence, clearly indicates that the deceased could not have sustained the injuries he had suffered due to an "Ordinary force being used for restraining" considering the fact that the deceased was in good health at the time he was handed over to the Negombo prison; that he was severely assaulted by some of the prison officials; that his death had occurred within a short period thereafter and the circumstances on which the deceased has come to his death, it is apparent that his death was as a result of the assault on him while he was at the Negombo Prison.

Assault on a prisoner by prison Officers, who are officials of the State must be considered to be an especially grave form of ill-treatment. This indicates that the officers concerned have exploited the vulnerability of the Victim.

The rules relating to Jail Guards contained in the Prisons Ordinance refers to the duties of such officers and section 132 states clearly that,

"It shall be the duty of all Prison Officers, without exception, to treat the prisoners with kindness and humanity, to inform the Jailor at his next visit of any prisoner who desires to see him".

There have been several International covenants and declarations concerned with the rights of the prisoners. The General Assembly Resolution 43/174 of 9th December 1988 adopted the UN Body of Principles for the protection of all persons under any form of detention or imprisonment.

The United Nations congress on the Prevention of Crime and the Treatment of Offenders had adopted the standard minimum Rules for the treatment of prisoners (Adopted at the Congress held in Geneva in 1955 and approved by the Economic and Social Council its resolutions 663C (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977) These standard minimum rules refer to Discipline and punishment and states that,

"Rule 27 – Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well ordered community life.

"Rule 31 - Corporal punishment, punishment by placing in a dark cell and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences"

The Standard minimum Rules for the Treatment of Prisoners also refers to the instruments of Restraint and Rule 33 reads thus;

"Instruments of restraint, such as handcuffs, chains, irons and strait – jackets shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints; Other Instruments of restraint shall not be used except in the following circumstances;

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a Judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative Authority"

Considering the Rules contained in the prisons Ordinance and the standard Minimum Rules for the treatment of Prisoners adopted by the First United Nations Congress, it is quite obvious that the prison Officers are bound not only to perform such duties for the purpose of preserving discipline and enforcing diligence, cleanliness, order and conformity to the rules of the prison, but also to treat the prisoners with kindness and humanity.

On a consideration of all the facts and circumstances of this case referred to above, I hold that the deceased's fundamental rights guaranteed in terms of Article 11 was violated, while he was detained at the Negambo Prison.

The alleged violation of Article 13(4) of the Constitution

The Petitioners have alleged that the deceased's fundamental right guaranteed in terms of Article 13(4) of the Constitution was violated by the actions of the 3rd, 4th and 5th Respondents.

Article 13(4) of the Constitution reads of follows;

"No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order or such judge made in accordance with the procedure established by law".

A careful reading of Article 13(4) of the Constitution clearly reveals that no person should be punished with death or imprisonment except by an order of a competent Court. Accordingly if there is no order from such a Court no person should be punished with death and unless and otherwise such an order is made by a competent court, any person has a right to live. Considering the contents of Article 13(4) of the Constitution, Fernando J. In *Kotabadu Durage Sriyani Silva v Chanaka Iddamalgoda, Officer-in-charge, Police Station, Paiyagala (SC (FR) No. 471/2000, SC Minutes or 08.08.2003)* stated that,

"expressed positively, that provision means that a person has a right to live, unless a Court orders otherwise".

Furthermore, when Article 13(4) of the Constitution creates a right to life, even impliedly. there cannot be a situation where such right is without a remedy. Referring to a creation of right by statute, Bindra, was of the view of that (interpretation of statutes, 7th Edition, pp, 728-730)

"If a statute which creates a right does not prescribe a remedy for the party aggrieved by the violation of such a right, a remedy will be implied and the Party aggrieved may have relief, in an appropriate action founded upon the statute"

As referred to in Kotabadu Durage Sriyani Silva v Chanaka Iddamalgoda Officer-in-Charge, Police Station, Paiyagala (Supra SC Minutes of 10.12.2002) this concept viz., a right must have a remedy is based on the principle which is accepted and recognized by the maxim *ubi jus ibi remedium*, viz., 'there is no right a remedy'. One cannot therefore think of a right without a remedy as the right of a person and the remedy base on the said right would be reciprocal. Furthermore, when the rights of a person who has been subjected to torture to cruel, inhuman or degrading treatment or punishment is protected by Article 11 of the Constitution which could be treated as a lesser infringement compared with the situation where death occurs as result torture or cruel, inhuman or degrading treatment of punishment, it is difficult to apprehend as to how the graver infringement could be ignored.

On a consideration of the aforementioned position as well as the decisions taken in both judgments of Kotabadu Durage Sriyani Silva (Supra) I am of the view of the Article 13(4) should be interpreted broadly to mean that the said article recognizes the right to life impliedly and that by reading Article 13(4) with Article 126(2) of the Constitution which would include the lawful heirs and/or dependents to be able to bring in an action in a situation where death had occurred as a result of violation of Article 11.

For the aforesaid reasons I hold that the deceased's fundamental rights guaranteed under Article 11 and 13(4) have been infringed and that his rights have accrued to and/or devolved upon the Petitioners.

On consideration of the circumstances of this case it is apparent that the alleged assault and the consequent death occurred at the Negombo Prison where the deceased was incarcerated. However, although the 3rd, 4th and 5th Respondents have been named, there is no evidence as to who had taken part in assaulting the deceased. Nevertheless, it is the responsibility of the 3rd, 4th and 5th Respondents to satisfy the basic requirements pertaining to the safety of the deceased. The 3rd, 4th and 5th Respondents, as the Officer in Charge, the Chief Jailer and the Superintendent of the Negombo Prison, respectively, were under a duty to take all reasonable steps to ensure that the persons kept in the Prison are treated with kindness and humanity. Moreover, it is of paramount importance that the lives of the Prisoners are safeguarded. Although there should be discipline and order that should be maintained with firmness, such discipline cannot invoke punishments, which are inhuman and violative of Article 11 of the Constitution. On a consideration of the totality of the circumstances of this case, I declare that there had been dereliction of duties by the 3rd, 4th and 5th Respondents for not being able to prevent the

assault on the deceased by some of the Prison Officials and therefore they too are responsible for the infringement of the deceased's fundamental rights guaranteed in terms of Articles 11 and 13(4) of the Constitution.

In the circumstances, in evaluating the liability of the State and personal liability of the 3rd, 4th and 5th Respondents, it would be necessary to consider the basic material before this court. The deceased was a father of 3 minor children and the treatment meted out to him while he was at the Negombo Prison has painted a gruesome picture where a hapless prisoner was brutally tortured and left alone tied to an iron door to draw his last breath. The reason for his incarceration was stealing two bunches of bananas, valued at Rs. 850/= an offence punishable under Section 367 of the Penal Code, which reads thus:

"Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both".

The punishment meted out to the deceased was far in extent than what is provided by section 367 of the Penal Code and more importantly it is to be remembered that the deceased, who was 36 years of age, faced his death while he was in the custody of a State Prison at a time where he was deprived of his personal liberty.

I accordingly award the Petitioners a sum of Rs. 1 million in equal shares as compensation and costs of which a sum of Rs. 925,000/= payable by the State and Rs. 25,000/= each payable by 3rd, 4th and 5th Respondents. These amounts to be paid within three months from today. The sum of Rs. 250,000/= each for the three minor children to be deposited in the National Saving Bank, Negombo Branch in the name of the minor children separate accounts and the interest to be drawn monthly by the 1st Petitioner for the maintenance of the children. The 2nd, 3rd and 4th Petitioners (minor children) should be entitled to the principal sum on majority.

The Registrar of the Supreme Court is directed to send a copy of this judgment to the Commissioner General of Prisons.

Judge of the Supreme Court

J.A.N. de Silva, J.

I agree

Judge of the Supreme Court

Nihal Jayasinghe, J.

I agree

Judge of the Supreme Court