

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

SC Application No. 4/91 with SC Application No. 3/91

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

1. Bulath Sinhalage Piyal Rathnasiri,
83, Watareka, Padukka. Petitioner in
SC appl. No. 4/91
2. Vidanapathiranage Thilak Pushpa
Kumarana of No. 25 Pitipana North,
Homagama. Petitioner in SC appl.
No. 3/91.

Petitioners

Vs.

1. B.G. Devasurendran, Inspector of
Police, Slave Island Police Station.
2. P.S. 3015 Silva, Slave Island Police
Station.
3. Ranjith Kuruppu, Police Driver,
Personal Police Headquarters,
Colombo 1.
4. P.C. 2043, Slave Island Police
Station.
5. Hon. Attorney General, Colombo 12.

Respondents

BEFORE: KULATUNGA, J.,

RAMANATHAN, J. AND

WADUGODAPITIYA, J.

COUNSEL: A. A. de Silva with N. V. de Silva and Nimal Punchihewa for
petitioners.

M. D. K. Kulatunga with Leon Fernando for 1, 2 and 3 respondents.

Mohan Peiris S.C. with Adrian Perera S.C. for 4 and 5 respondents

ARGUED ON: 22.09.1992.

DECIDED ON: 21.10.1992

SEPTEMBER 22, 1992.

Fundamental Rights - Torture - Inhuman treatment.

Held:

The incidents of assault and inhuman treatment complained of which were a sequel to travel in a bus, have been established. The Police Officers, acting under the colour of office assaulted the petitioner and subjected them to inhuman treatment but the identity of the particular officers who could have been personally responsible has not been established. Hence only the State would be obliged to pay compensation.

Cases referred to:

1. *W. M. K. Silva v Chairman, Ceylon Fertilizer Corporation* (1989) 2 Sri LR 393.
2. *Amal Sudath Silva. v. Kodituwakku* (1987) 2 Sri LR 119.
3. *Geekiyanage Premalal Silva v. Rodrigo* S.C. Appl. No. 24/89. S.C. Mins. of 5.9.90.
4. *Jayartne v Tennakoon* S.C. Appl. No. 18/189 with No. 10/89 - S.C. Mins. of 04.07.91.
5. *Gamalath v Neville Silva* S.C. Appl. No.78/90 S.C. Mins of 27.8.1991.
6. *Wimal Vidyamuni v Lt. Co. Jayatilleke* S.C. Appl. 852/91 (Spl) S.C. Mins. Of 22.7.92.

October 21, 1992.

KULATUNGA, J.

Of consent, the above two applications were consolidated and heard together. The petitioner in application No. 4 ("1st petitioner") was the driver and the petitioner in application No. 3 ("2nd petitioner") was the conductor of a private omnibus plying between Fort and Homagama in which the 3rd respondent (a Police Constable attached to the Police Headquarters as a driver) was travelling, having boarded the bus at a bus stop in the Slave Island area at about 7.00 p.m. on 05.01.91. These applications are a sequel to an incident which occurred

between the 3rd respondent and the petitioners inside the bus on account of which the petitioners were arrested by police officers on mobile duty and were taken to the Slave Island Police Station. The petitioners complain that whilst they were in police custody they were subjected to assault and other treatment violative of Article 11 of the Constitution.

The 3rd respondent's destination appears to have been a bus stop opposite "Salaka" in Union Place. However, bus tickets being issued section-wise on the route, the 2nd petitioner issued to the 3rd respondent a ticket for the section ending Town Hall and charged Rs. 2/- on a Rs. 5/- coin tendered by him and gave him Rs. 3/- being the balance. The 3rd respondent protested that the correct fare is Rs. 1.50 and abused the 2nd petitioner in rude language addressing him "Yakko" (you devil). When this happened the bus was opposite the Ratnam Private Hospital. The 3rd respondent was in civil and hence his identity as a police officer was not immediately known during the altercation that followed.

The petitioners' version of the incident is that in the course of the altercation the 3rd respondent, disclosed that he was a police officer and showed his identity card whereupon the 2nd petitioner offered to return the fare to him; but the 3rd respondent pulled the 2nd petitioner by his shirt and attempted to assault him. Thereafter, whilst the bus was passing the Lipton Circus roundabout the 3rd respondent threatened the 1st petitioner (the driver) and pulled him by his hair. At this stage, two passengers who were in the bus found fault with the 3rd respondent for his conduct and assaulted him. When the bus reached the Town Hall bus stop a mobile police truck arrived and a police officer from that vehicle arrested the petitioners and took them and the bus to the Slave Island Police Station at about 8.00 p.m., having unloaded all the passengers.

The petitioners further state that at the Police Station, the 3rd respondent complained that the petitioners had assaulted him whereupon the 1st respondent came up and struck the 1st petitioner a blow. Thereafter, the petitioners were subjected to torture by about eight policemen including the 2nd, 3rd and 4th respondents intermittently during the night until about 3.00 a.m. on 06.01.91, the details of which treatment are as follows:

(a) They were assaulted with a stick on their heads, knees and the soles and were also kicked.

(b) They were made to wait, in a crouching position (neither seated nor standing) carrying five heavy crown books on their arms extended outwards and held parallel to the ground.

(c) They were forced to kiss each other using their lips.

(d) They were made to creep under a bench and if any part of their body protruded they were kicked and assaulted with sticks.

On 06.01.91 they were remanded by the Magistrate (on an order made at the Magistrate's bungalow). On 08.01.91 they were released on bail (pursuant to an application made by Counsel in court in their absence) after which the owner of the bus had them admitted to the Colombo South Hospital on 09.01.91 to receive treatment for the injuries sustained by the assault at the Police Station. They were hospitalised until 16.01.91 and were X-rayed for suspected fractures of the ribs.

The brawl in the bus on 05.01.91 and its aftermath including the alleged police assault on the petitioners and their hospitalisation coupled with a strike by private bus employees was given wide newspaper publicity as appears from P6, a report published in the "Sunday Times" of 13.01.91. It carries the photographs of the two petitioners in the hospital ward and a record of an interview given by them to the press on 09.01.91. Being a contemporaneous account of their physical condition, P6 tends to corroborate the petitioners on that aspect of the case. It states that the petitioners "lay groaning in pain" when the press met them. The petitioners also gave the press an account of the events which account is consistent with the position taken in their applications before us. They alleged inter alia that they had been "subjected to inhuman and brutal treatment while in custody". The report further states that bumps on the head, scars on the body were still visible. In the absence of direct evidence from the reporter, these observations cannot be admitted as evidence and hence I do not propose to act on them except to state that the said news report has been produced without objection.

The petitioners had been examined by the Judicial Medical Officer on 16.01.91 when they gave a history of assault by eight policemen at the Slave Island Police Station on 05.01.91 around 8.00 p.m. The 1st petitioner had the following injuries :

1. Healed discoloured linear contusion 3"x1/2" on right shoulder blade area.
2. Healed superficial abrasion 2"x1/2"x on left shoulder blade area.
3. Discoloured area of contusion 1 1/2"x1/2" on lower back of right upper arm.
4. Complained of pain in front of both knees, chest and head.

A chest X-ray showed no fractures. As regards the 2nd petitioner, the J.M.O's observations are that he complained of aches and pains of chest, head and right knee but no external injuries were seen. X-rays of the chest and the right knee showed no fractures.

The 3rd respondent admits that on 05.01.91 he had an altercation with the 2nd petitioner over the bus fare and states that when he questioned the 2nd petitioner as to its correctness, the 2nd petitioner abused him in filth and struck him a severe blow and

a fight ensued in which the 1st petitioner also participated; whereupon he disclosed the fact that he is a police officer. The 3rd respondent also alleges that when he showed his identity card, the 1st petitioner struck him and snatched it together with a sum of Rs. 70% which was inside it. According to the Information Book Extracts 2R2, the 3rd respondent arrived at the Slave Island Police Station, bleeding from his mouth wearing a blood-stained shirt of which the buttons had come off. The Deputy Judicial Medical Officer observed the following injuries on him.

1. Contusion of the right half of the upper lip.

2. Abrasion 1/8"x1/8" base of right forefinger.

3. Abrasion 1/4"x1/4" medial left elbow.

According to the notes of investigation made by Sub Inspector of Police, Delgoda, he was on mobile duty with other officers. When they were proceeding from the Slave Island roundabout towards the Eye Hospital junction they observed a traffic jam near "Salaka" and an altercation inside a bus. He went up and stopped it when the 3rd respondent complained that the petitioners had assaulted him. Consequently, he took them and the bus to the Slave Island Police Station.

At the Police Station, the 3rd respondent's complaint was recorded and after further investigation, criminal proceedings have been instituted against the petitioners charging them under s.382 of the Penal Code with voluntarily causing hurt to the 3rd respondent in committing robbery of his identity card and Rs. 70/-. The 1st petitioner is also charged under s.394 of the Penal Code with dishonestly retaining the identity card and the cash knowing the same to be stolen property.

The respondents deny the alleged assault on the petitioners whilst they were in police custody. As regards the injuries sustained by

the petitioners, the respondents appear to suggest that they were sustained in the course of the fight with the 3rd respondent on 05.01.91. The explanation of the petitioners for the injuries observed on the 3rd respondent appears to be that they were sustained at the hands of two passengers who travelled in their bus on that day and who assaulted the 3rd respondent for his conduct in harassing the petitioners. It seems to me that neither the petitioners nor the respondents have placed the full facts before this Court. We have, therefore, to make our determination upon an assessment of the available material.

QUESTIONS OF FACT

On the basis of the available material, a decision has to be made on the following questions of fact:

(a) Whether the petitioners have been assaulted whilst they remained in police custody; and

(b) If so, whether personal responsibility for such assault has been established against any of the respondents.

I propose to decide these matters without prejudicing the criminal prosecution against the petitioners presently pending before the Magistrate.

ALLEGATION OF ASSAULT

In order to rebut the allegation of assault, the 2nd respondent has produced marked 2R4 an affidavit from one Narangoda who had been detained at the Slave Island Police Station on a charge of robbery. He says that he was brought to the Police Station at about 9.00 p.m. on 05.01.91 and was locked up in the same cell with the petitioners and that he did not witness any assault; nor did the petitioners inform of any assault when he spoke to them. I am not prepared to attach credibility to the affidavit of this witness in view of his antecedents.

The 2nd respondent next points out to the fact that on 06.01.91 the petitioners were remanded by the Magistrate; that on 08.01.91 they were bailed out on a motion by their lawyer and that on 23.01.91, they surrendered to Court, when they were represented by a lawyer; however, at no stage was any complaint made to the Magistrate about the alleged assault, nor was an application made to the Magistrate to have the petitioners medically examined.

The petitioners state in reply that on 06.01.91 the Magistrate made the remand order at her residence when they had no opportunity of seeing the Magistrate; that on 08.01.91 they were brought to Court after their lawyer had obtained bail and after the Court had adjourned; as such they could not complain to the Magistrate on that day; and that on 09.01.91 they entered the Colombo South Hospital. They do not give any explanation in respect of 23.01.91. However, it is to be noted that as early as 09.01.91 they had told the press about the police assault and given the same history to the J.M.O. on 16.01.91 when they were examined by him. Hence their failure to complain to the Magistrate on the 23rd is not a material omission. I am of the view that in all the circumstances the failure to complain to the Magistrate about the assault would not necessarily discredit their version.

The facts and circumstances which tend to support the petitioners' version may be enumerated as follows:

(a) Their account of the events is quite plausible especially in that the details as to the torture inflicted on them do not savour of a fabrication.

(b) The allegation of assault is corroborated by their complaint to the I.G.P. (P4) and by the affidavit of Yahampath, their employer (P7). Yahampath says that he saw the petitioners in police custody on 06.01.91. They were limping and had swellings on them which gave him the impression that they had been severely assaulted. He was not allowed to speak to them. He therefore sent a complaint to the I.G.P. (ND) on 07.01.91. The said complaint (which has not been denied by the respondents) corroborates Yahampath's evidence.

(c) Further corroboration of the petitioners' version is to be found in the interview they gave to the press on 09.01.91 (P6) and the fact their hospitalisation until 16.01.91. It has not been suggested that they were malingering. It has to be presumed, therefore, that the Colombo South Hospital treated them as inpatients during that period because their condition required serious attention. Such a situation could not have resulted from the altercation in the bus. The location and the nature of the injuries observed by the J.M.O. on the 1st petitioner are consistent with an assault from behind rather than with injuries caused during a fight.

(d) The existence of a strong motive -for the occurrence of a police assault on the petitioners, viz. the provocation resulting from the complaint of a fellow policeman that he had been assaulted and robbed by the petitioners.

Upon a careful consideration of the evidence, I am satisfied that during the night of 05.01.91, police officers attached to the Slave Island Police Station, acting under the colour of office, did assault the petitioners and subject them to inhuman treatment.

On the basis of the evidence which I accept, I hold that the petitioners were, whilst they remained in police custody, subjected to treatment which "caused severe pain or suffering" to them (both physical and mental) without lawful sanction, which treatment constitutes "an aggravated form of inhuman treatment or punishment... which grossly humiliates the individual before others."; and that such treatment is violative of the petitioners' rights under Article II of the Constitution. For a discussion of what constitutes "inhuman treatment", see the judgment of Amerasinghe, J. in *W. M. K. Silva v. Chairman, Ceylon Fertilizer Corporation*(1). See also the commentary on Article 3 of the European Convention on Human Rights by P.J. Duffy in the *International and Comparative Law Quarterly* Vol. 32 April 1 1983 p. 316. The said Article which is similar to our Article II provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

At page 328, the author cites a passage from the judgment of the European Court of Human Rights in *Tyrer v. United Kingdom* where the Court observed that one of the main purposes of Article 3 is to protect a person's dignity and physical integrity. The treatment meted out to the petitioners at the Police Station has denied to them that protection.

PERSONAL RESPONSIBILITY OF THE RESPONDENTS

It is not the case for the petitioners that they knew any of the police officers who are parties to these proceedings prior to 05.01.91. Nor have they identified any of them in their complaint to the I.G.P.(P4) by name or designation, except that one of them is referred to as (Chief Officer of the Police Station). In the history given to the J.M.O. they said that they were assaulted by eight policemen at the Slave Island Police Station. However, their petition (for the first time) refers to the 1st respondent by name and by his designation as I. P. Police, the 2nd respondent as P.S. 3015 Silva, the 3rd respondent by name and by his designation as police driver and the 4th respondent as P.C. 2045. The petitioners do not explain how they ascertained such particulars.

The 4th respondent states that he has never been attached to any Police Station in the Colombo district, specifically the Slave Island Police and that on the day in question he was on duty at the Badulla Police Station. This has not been contradicted by the petitioners and hence the charge against him is not established.

The 3rd respondent admits that he had an altercation with the petitioners in the bus and that they exchanged blows. He himself went to the Police Station with bleeding injuries. It is alleged that he too participated in assaulting the petitioners. However, in their complaint P4 the petitioners have only stated that on the way to the Police Station also the 3rd respondent gave the 1st petitioner a couple of blows. This evidence is insufficient to establish the allegation of inhuman treatment against the 3rd respondent.

The 1st respondent is I.P. (Crimes) at the Slave Island Police Station. The 2nd respondent is the officer in charge of prosecutions. It is their position (which is supported by the Information Book Extracts (2R7)) that on 05.01.91 they left the Station at 4.00 p.m. to investigate an offence by two suspects Ajith and Narangoda whom they apprehended and brought to the Police Station at 9.00 p.m. Thereafter the 1st respondent left for further investigations and the 3rd respondent went home. They deny participating in the assault on the petitioners. It is their position that they have been falsely implicated in view of the pending prosecution against the petitioners. It is my view that the evidence is not cogent enough to establish personal responsibility for the impugned assault as against the 1st and the 2nd respondents. At its best, it raises a suspicion against them, but that is not sufficient to fix personal responsibility on them. I am not prepared to go so far as to uphold the submission that the petitioners have deliberately trumped up a false charge against the respondent officers. The weakness of their case against individual officers is probably due to the fact that they have attempted to identify these officers subsequently by making inquiries from others and that in the process they based their case on hearsay evidence. In these circumstances, the rejection of their testimony against individual respondents would not necessarily render their testimony as regards the assault on them incredible especially because the allegation of assault is corroborated by independent evidence including the medical evidence.

The episode which led to these applications was the result of a dispute as to the bus fare. The petitioners and the 3rd respondent had lost their self-control which led to a fight in the course of which they conducted themselves in a manner unbecoming of the position held by each of them. If during the said fight the 3rd respondent sustained injuries at the hands of the petitioners, that would not warrant reprisals at the Police Station; for law enforcement officers must set an example and conduct themselves with restraint especially when a fellow police officer is involved. The inclination of police officers to assault suspects in police custody is both unlawful and cowardly. By means of such assault they seek to inflict punishment on a suspect before his trial for the alleged offence, which conduct is a blatant abuse of power. Such conduct has been repeatedly condemned by this Court in the following decisions.

1. Amal Sudath Silva v. Kodituwakku (2).
2. Geekiyanage Premalal Silva v. Rodrigo(3).
3. Jayaratne v. Tennakoon (4).
4. Gamalath v. Neville Silva (5).
5. Wimal Vidyamuni v. Lt. Col. Jayatilleke(6)

The incidence of torture evidenced in the above cases and in the instant case tends to create the impression that superior officers in Police Stations turn a blind eye to what goes on there whenever individual officers torture suspects in police custody. If in cases where personal responsibility for such conduct is not established no further action is taken to avoid a recurrence of such conduct, it may give rise to the inference of acquiescence of such conduct on the part of the superior officers in charge of a Police Station. If a suspect is subjected to brutal assault or inhuman treatment at a Police Station by subordinate officers, can the superior officers there always feign ignorance of such assault? Are they not answerable to the State for such infamous conduct? If the Inspector General of Police fails to give his mind to these issues, acquiescence in such conduct may be attributed to the State itself, which would be an unhappy development, especially in view of the fact that Sri Lanka is a party to International Covenants on Human Rights.

For the foregoing reasons, I grant a declaration to the petitioners that their rights under Article II of the Constitution have been infringed by executive or administrative action. In the particular circumstances of this case, I consider it just and equitable to grant the 1 st petitioner compensation in a sum of Rs. 5000/- (Rupees Five Thousand) together with costs in a sum of Rs. 750% (Rupees Seven Hundred and Fifty) and the 2nd petitioner compensation in a sum of Rs.

3000/(Rupees Three Thousand) together with a sum of Rs. 750/- (Rupees Seven Hundred and Fifty) as costs. I direct the State to pay the said sums to the petitioners. As the petitioners have failed to establish personal responsibility on the part of the 1st, 2nd, 3rd and 4th respondents, I dismiss the applications against them, but without costs.

In view of my observation above, I direct the Registrar to forward to the Inspector General of Police, a copy of this judgment to enable him to take appropriate action and to report to this Court on or before 30.11.1992 as to what action he has taken in the matter.

RAMANATHAN, J. - I agree.

WADUGODAPITIYA, J. - I agree.

Relief granted.