

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

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

S.C. APPLICATION NO. 524/96

Neetha Dissanayake, Attorney at Law,
1149, Kotte Road, Rajagiriya.

Appearing for

Kariyawasam Marithinnagamage Lal,
Samithi Shalawa Cross Road, Batapola.

Petitioner

Vs.

1. Sujeewa, Sub Inspector of Police,
Police Station, Meetiyaoda.

2. Dissanayake, Police Constable,
Police Station, Meetiyaoda.

3. Officer in Charge, Police Station,
Meetiyaoda.

4. Inspector General of Police, Police
Headquarters, Colombo 1

5. The Attorney General, Attorney
General's Department, Colombo 12.

Respondents

BEFORE: **G.P.S. DE SILVA, C.J. WIJETUNGA, J. AND
SHIRANI A. BANDARANAYAKE, J.**

COUNSEL: A. A. de Silva, PC with Kithsiri Jayalath for the petitioner.
Mohan Peiris with Nuwathi Dias for 1st, 2nd and 3rd respondents.
P. D. Ratnayake SC for 4th and 5th respondent.

WRITTEN SUBMISSIONS TENDERED ON: 01.10.1998

FURTHER WRITTEN SUBMISSIONS TENDERED ON:

for the respondents 07.12.1998.

DECIDED ON: 16.12.1998.

Fundamental Rights - Violation of rights by the Police - Articles 11, 13(1) and 13(2) of the Constitution.

At the time this application was filed the victim Lal was unconscious. Subsequently he tendered an affidavit. It was alleged that close to midnight on 02. 06. 1996 when he was sleeping in his house, the 1st respondent and other police officers arrived and arrested him. He was taken to the Meetiyagoda Police station. In the early hours 03. 06. 1996 the 1st respondent assaulted him with hands and feet and a club when he lost consciousness. Later that day the police admitted the victim to Batapola hospital. As per hospital record, the patient was unconscious. On 04. 06. 1996 he was transferred to the National Hospital Colombo at which stage also he was unconscious, with paralysis of the right side of the body. A CT scan disclosed an extra-dural haemorrhage in the left parietal area of the Victim's head. That injury was fatal in the ordinary course of nature but he recovered after surgery and the removal of the extra-dural haemorrhage. Even thereafter he + had a weakness of the right side of the body. The respondents averred that the victim was arrested at 12. 15. p.m. on 03. 06. 1996 on a complaint that he with others had threatened to cause bodily harm to one Yasawathie and that after the arrest, he told the police that one Tillakaratne had struck him on the head with a club.

Held:

The respondents' version was incredible and the injury sustained by the victim had been caused by the police in violation of the victim's rights under Article 11 of the Constitution. The victim's version that he had been arrested whilst he was sleeping in his house was credible. In the circumstance, the arrest and detention of the victim violated his rights under Articles 13 (1) and 13 (2) of the Constitution.

APPLICATION for relief for infringement of fundamental rights.

December 16, 1998,

SHIRANI BANDARANAYAKE, J.

This application was filed by Neetha Dissanayake, an Attorney-at-Law on behalf of the petitioner who was unconscious at the time of the filing of this application. The petitioner alleges that his fundamental rights guaranteed under Articles 11, 13 (1) and 13 (2) were violated by the respondents.

According to the petitioner, on 02. 06. 1996, while the petitioner was asleep, the 1st respondent along with some other police officers from the Police Station, Meetiyaoda had entered the petitioner's house. The 1st respondent had assaulted the petitioner who was sleeping. Thereafter the respondents had brought the petitioner in a three wheeler to the Meetiyaoda Police Station. The following morning, the petitioner's mother had taken breakfast for the petitioner, but she was not allowed to see him. When the petitioner's lunch was sent through his brother-in-law, he was informed that the petitioner was not in the Police Station, but had been taken to Batapola Hospital and from there to Karapitiya Hospital. From Karapitiya the petitioner was transferred to the National Hospital, Colombo, on 04. 06. 1996 and he was sent back to Karapitiya Hospital on 09. 06. 1996.

This court granted leave to proceed in respect of the alleged infringement of Articles 11, 13 (1) and 13 (2) of the Constitution.

According to the respondents, on 02. 06. 1996, one Kariyawasam Vidanage Yasawathie had come to the Meetiyaoda Police Station around 11.15. p.m. and complained that the petitioner and several others who were armed were threatening the said Yasawathie and her family with serious bodily harm (1R1). On the said complaint, the 1st and 2nd respondents with several other police officers proceeded to the complainant's house where an unlawful assembly was said to have gathered. On arrival, the 1st and 2nd respondents observed a crowd of about 25-30 people gathered near the complainant's house armed with swords and blunt weapons. On seeing the police party, the crowd had dispersed and the 1st and 2nd respondents had given chase. One of the persons threw some object which he had in his hand to a nearby shrub and started running. He fell several times in the process of running towards his house and the 1st and 2nd respondents were able to apprehend him as he entered the house. Upon inquiry, the person revealed that his name was M. G. Lai (the petitioner). The respondents had observed that he was under the influence of liquor. The petitioner had told the respondents that one Kariyawasam Vithanage Tillakaratne had hit him on the head with a club. The respondents thereafter arrested the petitioner after informing him as to why he was being arrested. A statement was recorded from the petitioner on 03. 06. 1996 around 1.30 a.m. wherein he categorically stated that he was hit on the head with a club by Tillakaratne. He had further stated that the two parties, viz, the complainant's family and the persons who were together with him, came to blows before the arrival of the police at the scene (1 R2). According to the respondents the petitioner was taken to the Batapola Hospital on the 3rd around 9.45 a.m. and since his condition was serious he was warded. On the same day, on the instructions of the Officer in Charge, the petitioner was released on bail.

The respondents further submit that on the information supplied by the petitioner, the respondents arrested Tillakaratne for assault on 04. 06. 1996 and in his statement to the Police he had admitted that he hit the petitioner on the head (1R4). On this statement, the respondents were able to recover the club with which the petitioner was

hit, as evidenced by the notes of the 1st respondent (1R5). Tillakaratne was prosecuted in the Magistrate's Court for assault.

The Judicial Medical Officer, Colombo in his report has classified the injury the petitioner had sustained as fatal in the ordinary course of nature. He has given the history, clinical findings and the medicolegal opinion, which are as follows:

B. History

Transferred to ward No 72 (Accident Service) of the National Hospital, Sri Lanka, Colombo from ward No. 12 of the Teaching Hospital, Karapitiya on 04. 06. 1996 for investigation and treatment of a head injury following an assault on 04. 06. 1996 (details of the assailant/s, weapons and time of assault not available in the bed head ticket notes).

C. Clinical findings, investigations and treatment

1. Patient unconscious with paralysis of the right side of the body at the time of transfer from the Teaching Hospital, Karapitiya to the Accident Service of the National Hospital, Sri Lanka, Colombo;
2. patient unconscious with weakness of the right side of the body at the time of admission to ward 72 (Accident Service) of the National Hospital, Sri Lanka at 4.10 p.m. on 04.06.1996;
3. no external injuries have been observed by the medical officers treating the patient at the Accident Service (ward 72);
4. a CT scan done on 04. 06. 1996 (same day) has indicated an extra- dural- haemorrhage in the left parietal area of the head intracranial;
5. patient was subjected to neuro-surgery under general anaesthesia on the same day. A left parietal craniotomy was performed for the removal of the extra-dural haemorrhage;
6. the patient had an uneventful recovery from the surgery and anaesthesia and regained consciousness;
7. on 05. 06. 1996, the next day, the patient was transferred to ward No. 64 of the Neurology Unit of the National Hospital, Sri Lanka. At the time of transfer to ward 64, the patient was conscious but confused with a weakness of the right side of the body;
8. On 06. 06. 1996 and 07. 06. 1996 the patient was conscious, rational, obeying commands but with a weakness of the right side of the body;
9. on 08. 06. 1996, the patient was still in ward 64;

10. no entries available in the bed head ticket after 08. 06. 1996.

D. Medico-legal opinion (based on the notes available on the bed head ticket)

1. The extra-dural haemorrhage is due to rupture of the middle meningeal vessels on the inner table of the skull following blunt trauma to the left side of the head;

2. blunt trauma to the skull may at times not leave any visible external injury as the head is covered by the hair which will conceal injuries like contusions;

3. an extra-dural haemorrhage will definitely result in death if not evacuated surgically. Therefore it is classified as an injury fatal in the ordinary course of nature.

Admittedly the petitioner walked with the 1st and 2nd respondents to the private vehicle which was parked some distance away and travelled to the Police Station with them (1R3, pg. 4). The 1st respondent in his notes had noted that there were no wounds to be seen on the petitioner but that there was an abrasion on his head (1 R3).

There are 7 affidavits filed on behalf of the petitioner. Out of these, 3 affidavits (P1, P3 and P4) refer to an incident where the affirmants had seen the petitioner walking with the 1st respondent, the 1st respondent carrying a club in his hand and assaulting the petitioner with that club, from time to time. One affirmant (P2) averred that, while taking the petitioner towards the parked vehicle, the 2nd respondent was assaulting the petitioner. There is no denial from the respondents that the petitioner had no difficulty in walking on his own to the vehicle in the early hours of 03. 06. 1996. The 1st respondent in his notes has stated that a statement of the petitioner was recorded at 1.30 a.m. on 03. 06. 1996 (1R2). He further states that the petitioner was taken to the District Medical Officer, Batapola at 9.45 a.m. on 03. 06. 1996. On his instructions the petitioner was admitted to the Government Hospital, Batapola, around noon on 03. 06. 1996.

The petitioner's mother went to the Police Station around 8.00 a.m. on 03. 06. 1996, but could not meet the petitioner. On her way to the Police Station she has met one Sarath, who was a relation of hers, who had said that, although the petitioner was inside the cell, he did not speak (P1). In his affidavit, the said Sarath averred in the following terms:

Subsequently, the petitioner tendered an affidavit. In that, he has averred that, after taking him to the Police Station in the early hours on 03. 06. 1996, the 1st and 2nd respondents assaulted him with their hands and feet and a club. At that point he had lost consciousness.

The Admission Form of the District Hospital, Batapola stated that at the time of admission, the petitioner was unconscious. It is significant to note that at the time of admission the hospital authorities had noted that there were no external injuries on the petitioner, whereas, as mentioned earlier, the 1st respondent in his notes had stated that he had noticed an abrasion on the petitioner's head (1 R3). Furthermore, on the

Form on Transfer of Patients from one institution to another, the officer transferring patient at the Government Hospital, Batapola had made the following remarks:

admitted at 12.30 p.m. (03. 06. 1996)

no proper history available

brought by the police

. . .? assault

pt. unconscious

.

no external injuries

It is conceded that the Police Officers admitted the petitioner to the Government Hospital, Batapola. The position of the 1st and 2nd respondents is that one Tillakaratne assaulted the petitioner with a club and that the petitioner had an abrasion on his head. If this was the situation, it is difficult to comprehend as to why the Police Officers refrained from informing the hospital authorities as to the background of the petitioner's injuries. Furthermore, it is to be noted that both the Batapola Hospital as well as the National Hospital, Colombo had noted that there were no external injuries whereas the Police Officers, in the early hours on 03. 06. 1996, had noted that the petitioner had an abrasion on the head.

On a consideration of all the material placed before us, I reject the version of the respondents. I hold that the 1st respondent had violated the petitioner's fundamental right guaranteed under Article 11 of the Constitution.

The respondent averred that one Kariyawasam Vithanage Yasawathie had made a complaint against the petitioner (1 R1) and the petitioner was arrested on that complaint. Further it was averred that the petitioner was released on bail on 03. 06. 1996 around 12.45 p.m., soon after admitting the petitioner to the Government Hospital, Batapola. According to the respondents, the petitioner was taken into custody on the complaint made by one Yasawathie on 02. 06. 1996 at 11.15 p.m. (1 R1). The notes produced by the 1 st respondent disclose that within 15 minutes, he had left the police station and had taken the petitioner into custody by 12.15 a.m. on 03. 06. 1996, while he was in the premises of the complainant (1113). The petitioner on the other hand, has averred that the 1 st respondent took him into custody on 02. 06. 1996, close to midnight, while he was sleeping in his house. This position is supported by the affidavit of the petitioner's mother (P1). On a consideration of the material placed before us, I am satisfied that the petitioner's version is credible and therefore I hold that the arrest and the detention of the petitioner by the 1 st respondent are unlawful and violative of the

petitioner's fundamental rights guaranteed under Articles 13 (1) and 13 (2) of the Constitution.

I award the petitioner compensation in a sum of Rs. 50,000 payable by the State. The petitioner will also be entitled to a sum of Rs. 5,000 as costs from the State. The 1st respondent will pay Rs. 5,000 personally, as compensation to the petitioner. In all the petitioner will be entitled to Rs. 60,000 as compensation and costs. This amount must be paid within three months from today.

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

G. P. S. DE SILVA, C.J. - I agree.

WIJETUNGA, J. - I agree.

Relief granted.