

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

In the matter of an application under Article 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka

S.C. (SPECIAL) NO. 117/97 and S.C. APPLICATION NO. 858/97

(1). S.C. (SPECIAL) NO. 117/97

Dissanayake Mudiyanseelage Gamini
Dissanayake, 9, Shanthipura, Nuwara Eliya.

Petitioner

(2) S.C. APPLICATION NO. 858/97

M.A. Sunethra Dissanayake (nee
Mallawaarachi) 9, Shanthipura, Nuwara
Eliya.

Petitioner

Vs.

1. Premaratne, Inspector of Police, Nuwara Eliya.
2. Jayathilake Bandara, 18138, Police Station, Nuwara Eliya.
3. Wijithweera, Pohoddaramulla Traders, 156, Kandy Road, Nuwara Eliya.
4. Police Constable, No 22627, Police Station, Nuwara Eliya.
5. Jayasena, 5175, Police Station, Nuwara Eliya.

6. Head Quarters Inspector, Police Station,
Nuwara Eliya.

7. Inspector General of Police, Police
Headquarters, Colombo

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

Respondents

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

COUNSEL: Trimi Gorden Rayen for petitioners.

Dr. Jayampathy Wickramaratne for 1st, 2nd, 4th and 5th
respondents.

Ms. Priyanthi Gunaratne for 3rd respondent.

Ms. N. M. S. Fernando, S.S.C. for 6th, 7th and 8th respondents

WRITTEN SUBMISSION TENDERED ON: for petitioner 16.03.1998

For respondents 30.03.1998

DECIDED ON: 04.05.1998.

16TH AND 30TH MARCH, 1998

*Fundamental Rights - Unlawful arrest and detention - Torture of suspects whilst in
police custody - Articles 11, 13 (1) and 13 (2) of the Constitution.*

On a message sent by the Police, the petitioner called over at the Nuwara-Eliya Police Station at about 3 p.m. on 8.5.1997 with his wife, petitioner in S.C. Application No. 858/97. They were detained at the Police Station until 5.30 p.m. on 9.5.1997 without being produced before a Magistrate when they were released on Police bail. The 1st respondent Inspector of Police and the 2nd, 4th and 5th respondents who were subordinate officers subjected the petitioner to torture on both days. His hands and feet were tied together. A pole was inserted through his hands and legs after which he was assaulted with a club whilst he remained in that position. He was also hung up and

assaulted with batons. Water was poured on him; and he was kicked by two officers. In between the petitioner's house was searched and he was questioned about an alleged theft of goods which he denied. He was admitted to the Base Hospital, Nuwara-Eliya, for treatment. According to the medical report, the petitioner vomitted twice. He was blood stained. He had chest pain and had abrasions and contusions all over his body.

Held:

The petitioner had been subjected to torture at the Police Station by the 1st, 2nd, 4th and 5th respondents in breach of his rights under article II of the Constitution. The respondents had also violated the petitioner's rights under Articles 13 (1) and 13 (2) by reason of the impugned arrest and detention at the Police Station for a period exceeding 24 hours.

APPLICATION for relief for infringement of fundamental rights.

4th May, 1998

SHIRANI A. BANDARANAYAKE, J.

When SC (Special) No. 117/97 was taken for hearing the counsel informed us that SC (Application) No. 858/97 was filed by the wife of the petitioner with special permission granted by this Court. As both applications relate to the same incident, it was agreed that both cases could be heard together. Accordingly both applications were so heard.

The petitioner in SC (Special) No. 117/97 is a small-time vegetable cultivator and sells his vegetables at Top Pass. He had gone to Colombo on the 04.05.1997 and he received a call from his wife on 07.05.1997 asking him to come immediately to Nuwara-Eliya as the Police had wanted him to report to the Police Station. The petitioner arrived in Nuwara-Eliya around 11. a.m. on 08.05.1997 and went to the Police Station with his wife (the petitioner in SC (Application) No. 858/97). When they arrived at the Police Station around 3.00 p.m., the 1st respondent scolded him in obscene language and asked whether he was Gamini Dissanayake. The 1st respondent requested another officer to take the petitioner and he had dragged the petitioner to the Crime Detection Branch and using obscene language asked him whether he had stolen anything from the 3rd respondent's home. When the petitioner answered in the negative, he had asked the petitioner as to why he had closed his but and gone to Colombo. The petitioner had given him the reason for his visit to Colombo. Thereafter the 1st respondent started assaulting the petitioner all over his body with a piece of wood of about 2 feet long and 1 1/2 inch in diameter. Then the 1st and 2nd respondents tied the petitioner's hands and legs and put a piece of wood between his hands and knees. The 1st respondent assaulted him all over the body, till about 5.00 p.m. Around 6.00 p.m. the 1st and 2nd respondents untied the knots and took the petitioner and his wife

in the 3rd respondent's van to the petitioner's house. While travelling in the van they used obscene language and accused the petitioner and his wife of theft. When they went to the petitioner's house at Shanthipura, the 1st respondent threatened the petitioner's father, mother and his 5 year old daughter and asked them as to where the stolen goods were kept. When the petitioner's father denied any knowledge of stolen goods, they used obscene language and damaged the ceiling of the house. The 3rd respondent threatened the 5 year old daughter of the petitioner and asked her for the cap with the hair at the back. The child had said that there was no such cap the father had given her and had shown an ordinary cap the petitioner had given her earlier. The petitioner and his wife were taken back to the Police Station and the 1st and 2nd respondents took the petitioner back to the Crime Detection Branch inside the Police Station and the 1st and 2nd respondents removed his clothes and tied his hands and hung him up and assaulted him with batons. Then they put him down and he could not even stand up on his own. Thereafter the 1st respondent had threatened by saying that if the petitioner does not accept that he had committed theft that they will assault him again and send his wife to the Badulla Remand Prison and get her raped by the prisoners. In the night they had put the petitioner in the cell but had kept his wife's cell open. Two policeman had been discussing whether they should take the petitioner's wife in a three-wheeler to find out the stolen goods. The petitioner got scared and had begged another policeman to close his wife's cell. This he had done when the other two officers had left. On 09.05.1997 the 1st and 2nd respondents took the petitioner towards the Crime Detection Branch and asked him as to the place where he has hidden the stolen goods. When the petitioner had denied any knowledge of it, the 1st and 2nd respondents had tied the petitioner's hands and legs and put a pole between his knees and hands and assaulted him. After the 1st respondent left the 2nd respondent again hit the petitioner all over the body and the petitioner was feeling faintish. Then the 4th and 5th respondents poured buckets of water on to his body. Then they untied the petitioner and asked him to stand before a table and the 4th and 5th respondents were holding his hands which were on the table while the 2nd respondent assaulted him with a piece of wood. Again the petitioner was feeling faintish. The 4th and 5th respondents again threw water on him. The petitioner saw the 1st respondent standing inside the room and the 4th and 5th respondents kicked the petitioner and he fell down. The 1st respondent kicked the petitioner asking him to accept that he had stolen the goods threatening him that he would be assaulted again but the petitioner refused to accept the allegation. Around 12 noon they took the Petitioner to the cell. Around 3.30 p.m. the petitioner saw his wife being brought back to her cell by the 1st, 2nd and 3rd respondents. Around 5.30 p.m. the 2nd respondent wanted the petitioner to put his signature on something he had written and the petitioner did so. Later they had taken the petitioner's fingerprints and his photograph. At that time the petitioner's father-in-law had come and the 1st respondent had told the petitioner and his wife that if they had done something wrong, to pardon them. The 1st respondent had given the petitioner, his wife and the father-in-law, pieces of fruit cake and tea and they were released on Police bail.

This Court granted leave to proceed in respect of the alleged infringement of Articles 11, 13 (1) and 13 (2) in SC (Special) No. 117/97 and Articles 13 (1) and 13 (2) in SC (Application) No. 858/97.

The 1st respondent in his affidavit avers that when he was on his way to Labukelle along with the 2nd and 5th respondents and other Police Officers, the 3rd respondent had met him at the Old Bazaar, Nuwara-Eliya and complained to him that his house at Top Pass had been broken into and that certain items valued at Rs. 4,900/- were missing. He had arrived at the scene of crime at 3.10 p.m. on 03.05.1997 and the 3rd respondent was present. On 08.05.1997, the 3rd respondent had informed him that he had received information that the petitioner and his wife had been seen going through a thicket in the vicinity of his house on the day of the crime and that the petitioner had suddenly left the area having closed his boutique. He had arrested the petitioner and his wife who were pointed out by the 3rd respondent at 6.40 p.m. on 08.05.1997 having informed them that they were arrested as suspects for the aforesaid housebreaking and theft. He had taken them to the Police Station and had them fingerprinted. The petitioner was taken to his house at Shanthipura, leaving his wife at the Police Station and the house was searched. No stolen items were found. The petitioner had wanted to use the toilet and as he was taking him, the petitioner had started to run away and had fallen down in the process. He had caught him and brought him under control. Upon making inquiries in the area he had come to know that the petitioner had been earlier charged for housebreaking and theft but was acquitted. The petitioner, according to the 1st respondent, was known in the area as a person who often stole vegetables. The 1st respondent had also received information that the petitioner and his wife were planning to go abroad. At 10.10 p.m. on 08.05.1997, the 1st respondent had arrived at Top Pass and has made further inquiries. He became aware that the information regarding the petitioner was given by a person known in the area as 'Malakadaya'. Further information was received that on the day of the alleged crime, the petitioner had sold the vegetables in his boutique and had left through a thicket. The 1st respondent had returned to the Police Station and had questioned the petitioner regarding several cases of housebreaking and theft in the area. On being questioned whether he was planning to go abroad, the petitioner stated that applications for Passports would be at his house. The 1st respondent then took the petitioner's wife to the house and searched the house and he found 4 Passport size photographs and an application for a Passport. The statements of the petitioner and his wife were recorded and they were released on Police bail on the instructions of the 6th respondent at 4.30 p.m. on 09.05.1997.

On 10.05.1997, the petitioner was admitted to the Nuwara Eliya Base Hospital. On a direction of this Court the Medico-Legal Report and the Admission Form relating to the petitioner were received. The Admission Form gives the following details:

Assaulted by Police on 08.05.1997

Pain in the back

Vomited twice blood stain

Headache +

Small abrasions +

Contusion

Chest pain

General body ache

Small abrasions all over the body

The Medico-Legal Report gives the following details:

INJURIES

1. Abrasion Circular 0.5 x 0.5 cm at L elbow
2. Linear abrasion 9 cm at R side buttock
3. Contusion 3 x 3 cm at 1 side back loin region
4. Contusion 3 x 3 cm at side abdomen
5. Contusion 1 x 1 cm at L Tibial region (Anterior leg)
6. Contusion 3 x 4 cm at L buttock region

OPINION

Non-grievous injuries (Nos.) - 1, 2, 3, 4, 5 and 6

GRIEVOUS INJURIES

No

INJURIES CAUSED BY

Blunt Weapon (Nos.) - 1, 3, 4, 5 and 6

The position of the 1st, 2nd, 4th and 5th respondents is that if the respondents assaulted and tortured the petitioner as alleged, the petitioner would have informed the Medical Officer of such assault and torture. It is submitted that the petitioner should have complained of the assault to a superior Police Officer. The respondents' position is

that there is no such material before this Court that the petitioner has done any of these and therefore it is unsafe to find the respondents liable for assault and torture. I am not inclined to accept the position set out by the respondents. According to the Admission Form it is clear that the petitioner had informed the hospital authorities at the time of his admission to the hospital that he was assaulted by the Police Officers. Moreover and most importantly, the injuries set out in the Medico-Legal Report are consistent with the details given by the petitioner as to the inhuman and degrading treatment meted out by the respondents. I do not think that it is either necessary or always possible for a person to complain to superior Police Officers of the treatment meted out to him/her by fellow police officers. I accept the version given by the petitioner as it is consistent with the medical evidence. I hold that the respondents have violated the petitioner's rights enshrined under Article II of the Constitution.

The position of the petitioner is that on 07.05.1997, when he was in Colombo his wife telephoned him and informed him that the Police had come in search of him and left a message asking him to come to the Police Station (P1). The message, which is undated, was for D. M. Gamini to be present at the Crime Investigation Branch of the Police Station, Nuwara-Eliya, as soon as possible. The note is signed by Police Constable 18138. According to the petitioner he had gone to the Police Station with his wife around 3.00 p.m. on 08.05.1997 and both were kept in the Police Station until about 5.30 p.m. on 09.05.1997.

The position of the 1st, 2nd, 4th and 5th respondents is that the 1st respondent had arrested the petitioner and his wife who were pointed out to him by the 3rd respondent at 6.40 p.m. on 08.05.1997. In fact this has been averred by the 1st respondent in his affidavit tendered for the SC (Special) No. 117/97. The 1st, 2nd, 4th and 5th respondents are of the view that the 1st respondent had a reasonable suspicion that the petitioner and his wife had committed the crimes in question. The complaint of the 3rd respondent according to them was clearly a genuine complaint and the 1st respondent himself had proceeded to the scene of the crime and made inquiries. As the circumstances gave rise to a reasonable suspicion, the 1st, 2nd, 4th and 5th respondents were of the view that the 1st respondent was entitled to arrest the petitioner and his wife. Their position is that the petitioner and his wife were kept in detention pending investigations and were released within 24 hours of the arrest. Therefore, the position of the 1st, 2nd, 4th and 5th respondents is that the arrest and detention were lawful. **I hold that the petitioner has proved that he and his wife were arrested not at 6.40 p.m. as stated by the respondents but at 3.00 p.m. as averred by the petitioner. The respondents have not produced the petitioners before the Magistrate but released them on Police bail. Therefore, there was no reason for the respondents to keep the petitioners over 24 hours in the Police Station. I hold that the 1st, 2nd, 4th and 5th respondents have violated the petitioner's fundamental rights guaranteed under Articles 13 (1) and 13 (2).**

There is no evidence to show that what took place at the Police Station between the Police Officers and the petitioners were with the connivance of the 3rd respondent. Also there is nothing to show that the 3rd respondent had derived any benefit from the

actions taken by the respondents. Accordingly I make no order against the 3rd respondent.

I direct the 1st and 2nd respondents to pay Rs. 7,500/- each as compensation and Rs. 2,500/- each as costs; the 4th and 5th respondents to pay Rs. 2,500/- each as compensation and Rs. 1,000/- each as costs to the petitioner in SC (Special) No. 117/97. The State will pay him Rs. 3,500/- as compensation and Rs. 2,000/- as costs. In all he will be entitled to Rs. 23,500/- as compensation and Rs. 9,000/- as costs. I also direct the 1st respondent to pay Rs. 5,000/- as compensation and Rs. 1,500/- as costs to the petitioner in SC (Application) No. 858/97. The State will pay her Rs. 2,000/- as compensation and Rs. 1,000/- as costs. In all she will be entitled to Rs. 7,000/- as compensation and Rs. 2,500/- as costs.

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, CJ. - I agree.

ANANDACOOMARASWAMY, J. - I agree.

Relief granted.