

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

In the matter of an application under and in terms of Article 126
read with Article 17 of the Constitution.

_SC (FR) Application No. 263/2006

Hewa Marambage Premalal,
Hath Hawula Watta,
Nattewela, Wanduramba.

Petitioner

Vs.

1. Sergeant Samaranayake,
2. Constable Lasantha,
3. Constable Nimal Ranjith
4. Officer –in –Charge
All of the Police Station, Wanduramba.
5. Lakshman Kumara, Dolahenawatte, Nattewela, Wanduramba
6. The Inspector General of Police,
Police Headquarters, Colombo 01.
7. Hon. Attorney General
The Attorney General's Department Colombo 12.

Respondents

BEFORE : **Shiranee Tilakawardane,J**
N.E.Dissanayake, J., and
J.Balapatabendi, J.

COUNSEL : Shamine Guneratne for the Petitioner
D.Akurugoda for 1st, 3rd and 5th Respondents.
Harshika de Silva, SC. for 4th 6th and 7th Respondents.

ARGUED ON &
DECIDED ON **25.01.2008**

Shiranee Tilakawardene, J

The petitioner was granted Leave on 29.11.2006 for an allege infringement of Article 11 of the Constitution. The case presented by the Petitioner describes in much detail the fact that he was arrested on 11.07.2006, when he was sleeping in his house situated at Hath Hawula Watta, Nathavela, Wanduramba. The 1st and 2nd Respondents along with other of the Police Officers whose identities have not been known to the Petitioner had accosted and taken him into custody. The petitioner claimed that he had been assaulted by a club used by the 1st Respondent almost immediately as they came close to the police jeep which had been parked in the vicinity. The 1st Respondent continued the assault inside the jeep during the drive to the Wanduramba Police Station. At the police station his hands had been cuffed to the upper bar of the iron door with a club and he describes the club specifically as constituted by a branch of the Giniseeriyaa tree and that the assault on his back was so severe that the club had broken. Despite this 1st Respondent picked up a broken piece of the club and in the frenzy of the assault had further assaulted him on the left side of his head. Furthermore, he also states that shortly thereafter once again the of the cell and the Petitioner had to stand on his toes due to the manner in which he had been cuffed. He explains in his petition that the 1st Respondent had hand-cuffed up him to the iron bar of the door cell and had assaulted him 1st Respondent had revisited him and using an iron rod had attacked him on his lower limbs and on his buttocks. In the cause of the assault the Petitioner allege that he had also received injuries to his abdomen area and that consequent to all these injuries due to the severe pain and trauma he had lost consciousness. Even though he was given some water he could not swallow it and he had vomited, being even unable to get up from a prone position. Following morning, it appears that the 3rd Respondent who had been previously known to the Petitioner had assisted in having him taken to the Karapitiya Hospital and he states that at that time he was further able to identify the 1st Respondent as he too accompanied him to the hospital.

The case as presented in all the evidence that has been placed through the affidavit before this Court clearly restricts to brunt of the assault as having been caused by the 1st Respondent, and in these circumstances, the 1st Respondent was not represented by the Attorney General and was represented by private Counsel. There is also the allegation against the 3rd Respondent that though he did not directly participate in any assault against the petitioner he had nevertheless sought to mitigate the incident by requesting the Petitioner to cover-up the

incident even offering him the payment of money to do so. But it must be mentioned that apart from this conduct that the 3rd Respondent clearly did not take part in the incident on the night of the alleged assault and it had only been after his arrival at the station on the following morning and at his instance that the Petitioner had been given medical treatment and transported to the Karapitiya Hospital. In these circumstances, we do not see a direct involvement of the 3rd Respondent to either abet or assist in the assault on the Petitioner.

In this case, the fact that assault was perpetrated on the Petitioner has not been denied and indeed the 1st Respondent in his affidavit dated 30.04.2007, explains that the assault on the basis that when he had sought to arrest the Petitioner as the Petitioner had evaded such arrest and had to be taken into custody only after the exercise of minimum force for the purpose of arresting the Petitioner. Further injuries were also sought to be explained on the basis that the Petitioner whilst running away had fallen and had impacted with a 'Galwetiya', in other words that in the process of running away he had impacted with a stone wall. It is therefore incumbent upon this Court to analyze incident and ascertain as to whether injuries that were clearly reflected in the medical reports produced to this Court marked as P2 and a preliminary Medical Legal Report that had been tendered to this Court dated 08.11.2006 whether such injuries had occurred in the process of assault by the 1st Respondent or sustained in the process of arresting the escaping suspect by using minimum force.

Undoubtedly P2 reflects that the Petitioner upon admission to the Karapitiya Teaching Hospital had been examined by the Consulting Physician on 11.07.2006 and had given history of the assault which had cumulatively resulted in the acute renal failure caused by myoglobinuria. Several treatments that had been afforded to the Petitioner who had been hospitalized for 18 days clearly reflect severe injuries caused by blunt trauma and this has been more specifically explained both in the descriptive photographs that have been annexed P1, show scars of the Petitioner in clear unambiguous photographs, also described with much clarity in the Report that has been filed by Dr. Kumudu Dahanayake, the Assistant JMO and Dr.U.C.P. Perera of the department of Forensic Medicine, of the Teaching Hospital at Karapitiya, and the Faculty of Medicine of the University of Ruhuna, Galle dated 08.11.2006. This Medical Report was prepared consequent to an examination conducted on the Petitioner dated 14.07.2006 at 3.36pm, and has cross reference to the bed-head ticket that has been produced as P2. The contemporaneous history given at the time of the examination of the patient, Petitioner in this case was that on 11.07.2006 around 1.30 am, that he had been taken into custody by 3 Police Officers and he had been assaulted with wooden clubs, iron rods and hands repeatedly for several hours. This is in conformity and his consistent with the averments alleged by the Petitioner and pleaded in the affidavit of the pleading presented to this Court. It is important to note that the injuries described from 1 to 14 include, injuries to the scalp, the upper lip, the left shoulder, the left arm, the back of the right arm, the back of the left elbow, the wrists, the right chest, the upper abdominal wall, the right thigh, the left buttocks, the anterior aspect the right knee joint, and tram-line contusions the right leg. It is extremely significant in this case and a corroboration of every injury which that has been described by the Petitioner that which are concise, explicit and relevant in great detail to the narrative as set out by the Petitioner in this case. Indeed it corroborates to a great extent through independent medical evidence the injuries that were exhibited and scene reported to by the doctors who had attended to the Petitioner serves as independent corroborative evidence of the versions set out by the Petitioner, operate significance is the conclusion that have been arrived at in the report adverted to above. Each one of the conclusions systematically explain the consistency of events and the method of assault as described so explicitly by the Petitioner in this case. Indeed it is of special significance with reference to the injuries of both wrists which have been described as due to the application of hand-cuffs and the consequent fracture force which has been caused in printed injuries on the wrists of the Petitioner. Indeed, furthermore, injuries to the lips are also compatible with the history given contemporaneously to the Medical Officer as well as to the narrative set out in this Court.

In comparison to this evidence, the evidence presented before this Court by the Respondents reflect inconsistencies both within the evidence of the Respondents themselves as well as inaccuracies and improbabilities in the narration of the sequence of events as set out specially by the 1st Respondent in his affidavit adverted to above. According to him they have received a complaint marked 1R1, from the 5th Respondent the content of this statement reflects that the allegation was that the Petitioner had been armed with a gun and threatened to kill the 5th Respondent and his family and pursuant to this incident 5th Respondent had made a complaint to the Wanduramba Police. The case of the Respondents was the incident that had led to the arrest of the Petitioner. However, it is significant to note that the 'B' Report that had been filed relating to this incident and the notes which have been produced as 1R3, 1R4 and 1R9 which sets out the notes of arrest of the Petitioner, does not accord with the procedure that a normal and reasonable officer would have followed in the light of such a complaint. Though at least one officer was armed with a T-56 gun and several cartridges, that officer hardly was being involved in the incident and it appears that the heroic efforts of the 1st Respondent's alone being unarmed and without any assistance whatsoever which has both apprehended and brought the fleeing Petitioner by the use of 'minimum force' on apprehension. It is most unlikely that had there been an officer present with a T-56 weapon that he would have at least not shooting in the air and warned the Petitioner when the Petitioner even sought to evade arrest by fleeing from the officers seeking to arrest him. Though the use of the gun was perhaps the most serious aspect of this investigation it appears that investigating notes do not reflect that there had been any endeavor by the arresting officers who had gone ungodly hour of 2.55. in the morning to make an urgent arrest, even having made the slightest effort to discover or recover a gun matters alleged to have been used in the complaint that was purportedly made by the 5th Respondent. Furthermore, the manner in which the vehicle

had been parked about one Kilometer away where 2 of the 4 officers who had gone to apprehend someone on a complaint of the use of a gun had been kept merely to safeguard the vehicle where the 1st Respondent states that he physically without use of any weapons simply held the hand of the Petitioner at the first point of apprehension and the subsequent narrative as sets out in 1R9 is improbable, unlikely and clearly fractious.

Indeed the more likely version is that presented by the Petitioner who states that he had lodged a complaint against the Wanduramba Police at the Crime Investigation of Southern Province situated inside the Galle Fort the proper investigation had not been conducted regarding the death of his wife's brother-in-law. The Petitioner's version was that the arrest and assault was a revenge act taken by the 1st Respondent in retaliation and pursuant to this complaint lodge against the Wanduramba Police. And the 1st Respondent had taken particularly offences as he had been involved in that investigation. It is also submitted that noteworthy that the State Counsel has informed this Court that on the material that has been held pursuant to an independent investigation against the 1st Respondent that indictment is ready and is only to be signed and forwarded to the relevant High Court which names the 1st Respondent as an accused in an indictment based 'under section 2 (4) of the Convention against Torture other Cruel Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994'. On an analysis of all the evidence in this case specially having considered all the documents tendered by Respondents as well as the Petitioner in this case, it is clear that the 1st Respondent has violated Article 11 of the Constitution and in these circumstances, this court declares that in all the circumstances of this case that the 1st Respondent has acted in violation of the Petitioner's fundamental rights guaranteed under Article 11 of the Constitution.

It is alleged that the Petitioner had several previous cases, that the Court notes, whole the cases that have been referred to in the 1st Respondent's affidavit had been filed after the incident specifically after the motion dated 26.02.2007 wherein the 1st and 3rd Respondents have sought time to file their objections as they needed to trace the previous criminal record of the Petitioner. I further submit that due to some police officers whom are related to this matter, have been transferred from the police station of Wanduramba, objections of these Respondents could not be prepared completely and also the Respondents have to obtain more details with regard to the commitments and involvements of the Petitioner to produce to Court with the objections.

The Court has also considered the position of the 4th Respondent of this case and it is noted the instigation that he was not present at the time in the police station and in all the records that have been produced before the Court that is no indication whatsoever, that he was either directly or indirectly involved in this incident. Indeed it is consequent to his actions that the 1st Respondent, investigation has been initiated and in these circumstances, Court feels that there is insufficient material to hold in vicariously liable to this incident. Especially in due of the injuries reflected in the medical reports, the photographs that have been presented in this Court and in view of the fact that the Petitioner had to have indoor treatment for 18 days after the assault, this Court grants the sum of Rs. 100.000/- to be paid by the 1st Respondent personally who appears to have been presently functioning as an officer attached to the Hikkaduwa Police Station.

Sgd./JUDGE OF THE SUPREME COURT

N.E.DISSANAYAKE.J

I agree.

Sgd./JUDGE OF THE SUPREME COURT

J.BALAPATABENDI,J

I agree.

Sgd./JUDGE OF THE SUPREME COURT

Preliminary Medico - Legal Report

Identification

Name: Hewa Marambage Premalal

Sex: Male

Age: 32years

Address: Hathhavula watta, Nathtuwela, Wanduramba.

Date and time of Initial Examination: 14.07.2006 at 3.36 p.m.
Bed Head Ticket No. 068482.
MLEF No. 06/06 issued by the Police post Teaching Hospital Karapitiya on
12.07.06
Short History Given by the Patient

He was taken into custody by three police officers on 11.07.2006 around 1.30 a.m. at his home. Since then he had been assaulted with wooden and iron clubs and hands repeatedly for a period of several hours.

General Examination

He was conscious and rational, conjunctiva appeared pale, was in severe pain, Dialysis being carried out, multiple injuries were observed on various body parts.

Systemic Examination

Cardiovascular System

Pulse rate – 92/min

Blood pressure – 100/70mmHg

Heart – dual rhythm, rate – 70/min.

Respiratory System

Lungs – vesicular breathing

No added sounds

Central Nervous System

Higher function - Normal

Vision - Normal

Cranial nerves – Normal

Injuries

1. A scalp haematoma measuring 4cm x 3cm placed on the vertex of the head just left to the midline with an overlying superficial laceration measuring 1cm x 0.5cm.
2. A superficial laceration measuring 0.5cm x 0.3cm with contusion involving the left side of the upper lip.
3. A scabbed abrasion measuring 5cm x 5cm placed on the left shoulder.
4. A scabbed abrasion measuring 6cm x 1.5cm placed on the front aspect of the upper 1/3 of the left arm.
5. A healing elongated abrasion measuring 5cm x 0.3cm placed obliquely on the back of the right arm on its middle third.
6. A scabbed abrasion measuring 3cm x 2cm was placed on the back of the left elbow joint.
7. A scabbed imprint abrasion with a width of 1cm placed circumferentially on the left wrist joint mostly on the outer aspect.
8. A scabbed imprint abrasion with a width of 1cm placed circumferentially on the right wrist joint mostly on its outer aspect.
9. A diffuse contused area measuring 18cm x 10cm placed on the anterior aspect of the right chest with overlying multiple scabbed imprint abrasions (minimum of 8) ranging from 1cm x 0.3cm to 3cm x 0.3cm in size.
10. A diffusely contused area of 15cm x 3cm placed transversely on the upper abdominal wall.
11. A minimum of 15 tramline contusions measuring about 1cm in width with variable lengths ranging from 2cm to 8cm were placed obliquely on the outer aspect of the upper 2/3 of the right thigh and buttocks. Some contusions were associated with imprint abrasions.
12. A minimum of 06 tramline contusions each measuring about 1cm in width with a variable length ranging from 2cm to 1cm were placed obliquely on the outer aspect of the left buttocks upper 2/3 of the left thigh. Some contusions were associated with imprint abrasions.
13. An imprint abrasion measuring 1cm x 1cm was placed on the anterior aspect of the right knee joint.
14. Two tramline contusions each measuring about 1cm in width and 2cm in length were placed on the anterior aspect of the middle 1/3 of the right leg.

Investigations

Blood urea – 115mg % (13.07.2006)

- 149mg % (23.07.2006)

- 291mg % (24.07.2006)

- 189mg % (26.07.2006)

Serum Creatinine – 9.4mg % (22.07.2006)

- 9.7mg % (25.07.2006)

X rays – No. fractures.

- High blood urea and serum Creatinine values are compatible with acute renal failure.

Conclusion

- The major injury pattern is consistent with repeated assault by an elongated blunt weapon.

- Injuries on both wrists could have been due to application of blunt force around wrists. E.g. application of hand cuff with a traction force.

- Injuries on the lip are compatible with the history and may have been caused by a first blow to the mouth.

- The victim went into the state of acute impairment of the kidneys as a complication of the assault which is fatal in the ordinary course of nature. This is resulted by the release of myoglobin from severe soft tissue trauma involving muscles. When excreted into the urine, myoglobin, a monomer containing a heme molecule similar to hemoglobin, can precipitate, causing tubular obstruction and acute renal insufficiency.

Sgd.

Sgd.

Dr. UCP Perera

Dr. Kumudu Dahanayake

MBBS, DLM, MD, MA, LLB, DMJ (Path) Lond. MBBS, DLM

Senior Lecturer and Medico-Legal Specialist

Assistant JMO

Dept. of Forensic Medicine

Office of the JMO

Faculty of Medicine

Teaching Hospital

University of Ruhuna

Karapitiya.

Galle

2006.11.08