

**SRIYANI SILVA**  
**v**  
**IDDAMALGODA, OFFICER-IN-CHARGE, POLICE STATION  
PAIYAGALA AND OTHERS**

SUPREME COURT  
FERNANDO, J.  
YAPA, J., AND  
J.A.N. DE SILVA, J.  
SC NO. 471/2000 (FR)  
13TH JUNE AND 14TH JULY, 2003

*Fundamental Rights – Death by torture of person arrested by police – Right to life – Articles 11, 13(2), 13(4) and 17 of the Constitution – Right of heirs or dependants to complain against violation of rights – Purposive construction of Article 126(2) read with Article 4(d) of the Constitution.*

The petitioner is the widow of an army deserter (deceased) against whom there was also an open warrant signed by the Magistrate for possession of illicit liquor and distilling equipment.

On 12.06.2000 the 2nd respondent OIC (Crimes) Paiyagala Police Station, arrested the deserter and took him to the police station where he was detained until the 17th. The petitioner and deceased's mother and sister stated that they visited the deceased on 12th, 13th, 14th and 15th and observed the deceased

being assaulted and with serious injuries. The deceased also told them that he had been assaulted by police officers. On the 15th the deceased's sister complained to the Assistant Superintendent of Police, Kalutara. The police produced the deceased before the Magistrate on the 17th which was a Saturday and he was remanded until the 29th and sent to Kalutara prison from where he was transferred to Welikada remand prison on the 18th where he died on the 20th.

According to the post-mortem report the deceased had twenty injuries on all parts of the body, his head, chest, abdomen and every section of every limb. His upper right arm was swollen and black. The cause of death was "acute renal failure due to muscle cutaneous trauma".

According to the police, the deceased was arrested on the 16th after using reasonable force. They denied assaulting him as alleged.

On 18.07.2000 an attorney-at-law had filed the application on behalf of the deceased when in fact it was the wife who had given instructions. When the application was supported on 23.8.2000 the court was informed of the facts, namely that the instructions given were to pursue the application for compensation to the dependants. Accordingly, permission was granted by court to amend the application by substituting the petitioner, in view of Rule 44(4) of the Supreme Court Rules. The petitioner claimed relief in terms of Articles 11, 13(2) and 17 read with Article 126 of the Constitution.

**Held :**

1. The petitioner's version was credible. The police version was contradictory, improbable and had to be rejected. The deceased died of torture by the police and that prevented him from seeking relief personally under Article 126(2).
2. Articles 11 and 13(4) by necessary implication recognize the right to life. Hence if a person died by reason of torture or unlawful death (by the executive) the right of any person to complain against violation of a fundamental right guaranteed by Article 17 read with Article 126(2) should not be interpreted to make the right illusory; but Article 126(2) should be interpreted broadly especially in view of Article 4(d) which requires the court to "respect, secure and advance" fundamental rights.
3. The right of every person recognized by Article 17 to apply under Article 126 in respect of the infringement of a fundamental right is an independent fundamental right.
4. The deceased's fundamental rights under Articles 11,13(2) and 17 were infringed by the 2nd respondent; and also by the 1st respondent on the ground of culpable enaction to monitor the activities of his subordinates. The deceased's rights accrued or devolved on the petitioner and their minor child. The deceased was put to death "in order to prevent him total-

ly and permanently from complaining.....” On that ground also Article 126(2) should be interpreted expansively.

5. On the question of compensation, a person who has a “bad-record” is entitled to the same rights as any other person. The deceased was entitled to have the allegation against him determined by a competent court, after a fair trial. As such there is no reason to mitigate the compensation due to the deceased's dependants on the ground of deceased's character.

### Cases referred to

1. *Lakshman v Fernando* SC 24/90 SCM 29.9.95.
2. *Sanjewa v Suraweera* SC 328/2002 (FR) SCM 4.4.2003.

**APPLICATION** for relief for infringements of fundamental rights.

*J.C. Weliamuna with Shantha Jayawardena and Charuka Samarasekera* for petitioner.

*Manohara de Silva with W.D. Weeraratne* for 1st respondent.

*Saliya Peiris with Upul Kumaraapperuma* for 2nd and 4th respondents.

*K.A.P. Ranasinghe, State Counsel* for 5th to 7th respondents.

*Cur.adv.vult.*

August 8, 2003.

### FERNANDO, J.

The petitioner in this case is the widow of M.K. Lasantha Jagath Kumara (“the deceased”). Admittedly, he was arrested by the 2nd respondent, the Officer-in-Charge (Crimes) of the Paiyagala Police, in June 2000, and died on 20.6.2000 whilst in remand custody at the Magazine Prison, Welikada, The petitioner alleges that the deceased died in consequence of torture by the Paiyagala Police during an excessive period of detention and was thereby prevented from filing a fundamental rights application under Article 126, in violation of his fundamental rights under Articles 11, 13(2) and 17. In this application under Article 126 filed by her, she claims – for herself and for their minor child – the com-

pensation which the deceased would have received but for his untimely death.

### THE PETITIONER'S VERSION

According to the petitioner's affidavit, she married the deceased in June 1997; in September he joined the Army and served at the Puttur Army camp, Jaffna; their child was born in 1998; and after 22.1.1999 he did not report back for service.

It is admitted that an open warrant had been issued against the deceased by the Magistrate's Court of Kalutara, in case No. 4097/99 relating to the possession of illicit liquor and distilling equipment. 20

The deceased was arrested at about 7.00 a.m. on 12.6.2000 at the petitioner's family home at Weragala, Paiyagala, by the 2nd respondent (who was accompanied by a sergeant and a constable) as being an Army deserter. They tied his hands with a rope. The deceased asked the petitioner to send a message to his family home, whereupon the 2nd respondent slapped him three or four times and put him into the Police jeep. Thereafter the petitioner and her mother went to the Paiyagala Police. At first she was not allowed to see the deceased, but later he was brought and shown to her, given three or four slaps, and put back in the cell. Later still, she was allowed to go near the cell and to speak to him for five minutes. When asked whether the Police had assaulted him, he replied in the affirmative. 30

On the 13th, the petitioner went to the Police station at 8.30 a.m., mid-day, and 4.00 p.m., bringing his meals, but it was only on the third occasion that she was allowed to see him. He said that he was in pain, and could not eat as he was feeling nauseous. He asked her to request the Police to hand him over to the Military Police. 40

On the 14th, in the morning and again in the afternoon, the petitioner went to the Police station. In the afternoon she was told that the deceased had been taken to the Head of the Crimes Section for questioning, and that she too could go there. She saw him there, and noticed that his right arm was terribly swollen, the part above the elbow being quite black; that he was finding it diffi-

cult to talk, and to get up from his chair; and that both legs were swollen below the knee. He was feeling nauseous, and the 2nd respondent said that he had been vomiting frequently for two days, and asked her to get a polythene bag for him to vomit as well as some medicine from a pharmacy to stop him vomiting. On that occasion he vomited blood, and was given a king coconut to drink. That fell to the ground because he could not hold it as all his fingers were swollen. The 2nd respondent ordered that he be taken back to the cell, but he could not stand up. When she tried to help him, he shouted out not to touch him in the abdominal region. Back in the cell, when he had the chance to speak to her privately, he said that he had been severely assaulted by Police officers. 50

The mother and the sister of the deceased also submitted affidavits, giving details of their visits to the Police, substantially corroborating the petitioner's narrative, especially as to the pitiful condition in which he was. Certain other facts emerged from their affidavits. On the 13th, Police officers told them that the petitioner would not be produced in Court, but handed to the Military Police. 60

The sister further stated that on the 15th she and her sister complained to the Assistant Superintendent of Police, Kalutara. He did not record their complaint but telephoned the Paiyagala Police and ordered that the deceased be handed over to the Military Police. That evening when she went to the Paiyagala Police she was told that the deceased had been taken out of the station. Some time later she saw the deceased being brought back in a Police jeep - unable to walk, and bent in two. The 4th respondent, a constable, pushed him into the cell. She then asked the 2nd respondent why the deceased was being assaulted in that way without being produced in Court. He replied that the deceased would be produced on the 16th. Later she asked him for permission to take the deceased to a doctor. He refused, and asked her to meet Dr A who lived nearby and to obtain some medicine from him. Dr A refused to prescribe for a patient whom he had not seen, particularly one who had been assaulted by the Police. 70 80

On the 16th, the sister went to the Magistrate's Court, where she was told that since the 16th was a public holiday suspects would only be produced at the Magistrate's residence. The 2nd respondent later informed her that the deceased would be pro-

duced on the 17th. On the 17th, she went to the Police station and shouted out, threatening to complain to the Human Rights Commission if the deceased was not produced in Court that day. The 2nd respondent then had the deceased brought out and stated that he was being taken to Court, and that it was unnecessary for her to go to Court as bail could be obtained on the 29th. When she asked him why the deceased was not being given some medical treatment, he replied that he would get treatment at the prison. After the deceased was handed over to the Prison authorities, he stated that he had not complained to the Magistrate about his injuries through fear of Police assault, then and later. He also said that the 4th respondent and six other Police officers had assaulted him. On the 18th, the Military Police told the sister that the Paiyagala Police had not yet informed them of the arrest and detention of the deceased.

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It is not disputed that the deceased was produced before the acting Magistrate, Kalutara, by the 4th respondent, sometime before noon on the 17th (Saturday), upon a typed report relating to case No 4097/99, signed by the 1st respondent and dated 17.6.2000. However, in the body of the report he referred to production on Court "on 2000.6.16 today", showing that production on the 16th had been in contemplation when that report was typed. Further, according to the journal entry of the 17th, the 4th respondent had informed the acting Magistrate that there were several pending cases against the deceased, and had objected to bail; and he had added that the deceased was due to be handed over to the Army, and that notice had been given. The deceased was remanded till the 29th. The 4th respondent handed over the deceased to the Kalutara remand prison on the 17th. On the 18th, the deceased was transferred to Welikada, where he died on the 20th.

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The Judicial Medical Officer, Colombo, submitted his post-mortem report, which revealed that the deceased had twenty injuries (contusions and abrasions) on all parts of the body: on his head, chest and abdomen, and on every section of every limb - upper arm, fore arm, hand, thigh, knee joint, leg, and foot. His upper right arm was swollen and black in colour. The cause of death according to the Coroner was "acute renal failure due to muscule cutaneous injuries following blunt trauma".

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On 18.7.2000, an attorney-at-law filed an application under Article 126, which was described, both in the caption and in the body of the petition, as being on behalf of the deceased. Among the reliefs sought was compensation in a sum of one million rupees for the dependants of the deceased. The attorney-at-law had no contact with the deceased before his death, and therefore could not have obtained instructions from the deceased to file that application, and I pointed this out to learned counsel when he first supported the application on 23.8.2000. He then stated that instructions had in fact been given by the widow, the present petitioner, and that the relief she sought was compensation for the dependants. He was given permission to amend. Accordingly the present amended petition was filed by the widow, as petitioner, and was supported on 3.10.2000 when the following order was made:

"The petitioner's complaint is that her husband was subject to such extreme torture that he died soon after. Mr Weliamuna submits that in these circumstances the necessary implication of Article 11 is that any dependant of the deceased should be entitled to relief, particularly in the context of Article 14.1 of the Convention against Torture to which, he says, Sri Lanka is a party. The fact that a person other than the victim may in some circumstances be able to invoke the jurisdiction of this Court is implicit in Article 13(4). In these circumstances, as an important question of jurisdiction arises, we grant leave to proceed in respect of the alleged infringement of Articles 11, 13(2) and 17."

At first sight, viewed from the perspective of the Civil Procedure Code, it might appear that this Court had permitted an application filed on behalf of a deceased person – a nullity in law – to be replaced, under the guise of amendment, by an entirely distinct application by a purported successor in interest, after the lapse of the period of limitation. However, the rules applicable to fundamental rights applications are much less strict. Rule 44(4) of the Supreme Court Rules, 1990, provides:

"No application shall be dismissed on account of any omission or defect in regard to the name of the petitioner, the signing of the petition, or the proxy, if the Court is satisfied that the person whose fundamental right ... is alleged in such petition to

have been ... infringed expressly or impliedly authorised or approved, or ratified the filing of such application."

Despite the defect in the name of the petitioner – i.e. that it was filed on behalf of the deceased – it was clear that it was the widow who had authorised the filing of the petition, and that defect was capable of being cured. That was what this Court permitted, in keeping with the spirit of that Rule. Whether the widow had enforceable rights accruing upon or flowing from the death of her husband was a question of law, to be determined at hearing. 170

### THE RESPONDENTS' VERSION

The three affidavits relied on by the petitioner did not implicate the 3rd respondent, who is therefore discharged. Affidavits were filed by the 1st, 2nd and 4th respondents, who denied or pleaded unawareness of most of the averments in the petition and affidavit of the petitioner. They did not specifically respond to the affidavits of the mother and the sister, but I will take them as denied by implication.

While stating that he had not ordered the arrest of the deceased, the 1st respondent stated in his affidavit that according to the Police records the deceased had been arrested on the 16th and not on the 12th, and had been produced in Court on the 17th. He pleaded that there were "no marks or any indication that he had been assaulted", that "he did not appear to be suffering from any ailment"; that the deceased had not been assaulted or tortured, and that he did not witness any assault or torture; and that neither the deceased nor any one else complained of torture or assault, or of any need for medical treatment. He did not say anything about his movements and conduct between the 12th and the 17th. 180

In his affidavit the 2nd respondent claimed that he arrested the deceased on the 16th, but did not explain the circumstances in which he had set out from the Police station. As for the arrest, he claimed that the deceased brandished a knife and tried to stab "us", and attempted to escape, whereupon he had to strike the deceased several times on his *right* arm to make him drop the knife, using minimum force. The deceased then surrendered. He gave no explanation for the other injuries which the deceased had. Soon 190

after arrest he recorded the deceased's statement at 10.45 a.m., on the basis of which the deceased was taken at 11.25 a.m. to various places from which stolen property had been recovered. He annexed and pleaded as part and parcel of his affidavit his notes of arrest recorded (in the grave crime information book) at 9.45 a.m., but not his second set of notes recorded at 9.50 a.m. and pasted in the minor offences information book at 4.00 p.m. on the 17th. 200

Both respondents annexed, in bulk, a host of IB extracts, consisting of statements, complaints and notes.

The 4th respondent's affidavit was similar to the 2nd respondent's, and contained details relating to the deceased being produced in Court and handed over to the prison authorities. He stated that the deceased made no complaint of ill-treatment to the Magistrate. 210

The 6th respondent, the Inspector-General of Police, failed to file an affidavit either his own or that of any responsible officer aware of the facts. It must be assumed that he found himself unable to deny the allegations made in the petition (a) that the C.I.D. had informed the Magistrate's Court that they were unable to investigate the death as they were busy with other matters, and (b) that it was very likely that the Police would not investigate a killing in Police custody. The petitioner has not alleged any infringement by him, and accordingly it is unnecessary to consider his liability on the basis of inaction. 220

## **CREDIBILITY OF THE TWO VERSIONS**

The 1st and 2nd respondents failed to respond specifically to the affidavit of the sister of the deceased, which referred to several significant matters calling for some explanation from them. Firstly, the sister stated that on the 15th she had complained to the A.S.P., Kalutara, who had telephoned and ordered the Paiyagala Police to hand the deceased to the Military Police. She also stated that on the 18th the Military Police had told her that they had not been informed of the arrest. The journal entry of the 17th proves that there was in fact either an order or a decision to hand the deceased to the Military Police. The 1st and 2nd respondents failed to produce any document or entry pertaining to that matter, probably for the reason that that question arose before the 16th, showing 230

that the deceased had been arrested before the 16th, and that in fact the Military Police had not been informed. Secondly, the sister claimed that on the 15th the 2nd respondent had told her that the deceased would be produced in Court on the 16th. The 1st respondent's report to Court showed that production had been contemplated on "2000.6.16 today". Finally, she asserted that on the 15th, on the 2nd respondent's directions, she did ask Dr A for medicine. The 1st and 2nd respondents should have been more forthcoming on these matters, perhaps even to the extent of obtaining affidavits from the A.S.P. and Dr A. 240

There are other contradictions and shortcomings in the respondents' version. In an endeavour to make up for the omissions in their affidavits they have tendered IB extracts in bulk. Those cannot be treated as primary evidence. Apart from that infirmity, those extracts reveal further shortcomings. The 2nd respondent's "Out" entry at 7.00 a.m. on the 16th recorded that he was leaving, with an armed Police party, in a private vehicle, with no mention of make, registration number, ownership, or driver's name, and without any reference to mileage. Subsequent entries showed that the Paiyagala Police had at least two jeeps, and that whenever they were used the registration number, mileage and driver's name were recorded. It is difficult to believe that at 7.00 a.m. in the morning both jeeps were unavailable, and that a convenient private vehicle was available. The respondents could easily have produced the records pertaining to the jeeps to show what they were used for, first, on the 12th at 7.00 a.m. (when the deceased was arrested according to the petitioner), and second, on the 16th at 7.00 a.m. 250 260

That "Out" entry did not indicate, directly or indirectly, that the journey was to search for or arrest the deceased, but, rather, to investigate information received about a suspect wanted for serious offences. The 2nd respondent's "In" entry at 9.45 a.m. expressly stated that that investigation was **unsuccessful**, and that thereafter while patrolling the area he had seen the deceased whom he had recognised as an Army deserter, for whom an open warrant had been issued in case No 4097/99, and who was wanted for serious offences. Those notes did not even suggest that in giving the deceased reasons for arrest the contents of that warrant had been 270

read out - naturally, because the journey was not in connection with the deceased, and hence there was no reason to take the warrant with him. However, in the second set of notes, purportedly written five minutes later, at 9.50 a.m., (and pasted in a different IB the next day at 4.00 p.m.) it was stated that before they set out on the 12th the 2nd respondent had explained to the others that they were seeking an Army deserter against whom there was an open warrant, etc, and that immediately after subduing the deceased he had read out the open warrant to the deceased. 280

Another shortcoming related to the most serious complaint against the deceased – of attempted rape and other offences – allegedly recorded at 5.00 p.m. on the 12th. No reference was made to that complaint in the 2nd respondent's notes, or in the deceased's statement purportedly recorded by the 2nd respondent at 10.45 a.m. on the 16th – although that statement went into great detail in respect of every other complaint. That suggests that at whatever time the deceased was questioned, that complaint had not yet been recorded – and that tends to confirm the petitioner's version that the arrest was at 7.00 a.m. on the 12th. 290

According to the petitioner, the deceased did not resist arrest, and sustained no injury at the time of arrest, although he did receive a few slaps. The respondents claimed that the deceased sustained some injuries because the Police had to use minimum force to subdue him. There are serious inconsistencies in the Police versions. Going in chronological order, the 2nd respondent stated in his 9.45 a.m. notes that he had dealt the deceased some blows with his baton; and that he had carefully examined the deceased and found contusions on his body which were the result of the deceased having fallen to the ground while grappling with them, as well as signs of contusions resulting from blows received several days previously. In his 9.50 a.m. notes he stated that he had dealt the deceased several blows on his **right** arm, and on examination found that he had swellings on his **right** arm, abrasions as a result of falling to the ground, and chicken pox and other old scars. According to the notes made at 9.50 a.m. by the sergeant who accompanied the 2nd respondent, he too had dealt the deceased a few blows with a stick, and on examining him found that there were abrasions on **both arms** above the elbow, and 300 310

scars of blows received some days previously. However, the constable who took him into custody soon after all those notes were made noted the fact that he had examined the deceased – but apparently found none, because he made no record of any injuries. The deceased was taken out at 11.25 a.m. and brought back to the station at 4.10 p.m., when he was handed over to a different constable, who had examined him, and found contusions on the upper left arm but no other visible injuries. It is highly probable that the deceased did have several visible injuries. In any event, the 1st respondent's claim that there were no marks or any indication that he had been assaulted" is quite unacceptable. 320

The respondents attempted to suggest that most of the injuries had been sustained in prison custody. They relied heavily on the deceased's statements recorded on the 17th at the Kalutara prison in the presence of the 4th respondent, and on the 18th at Welikada. In the former the deceased was recorded as having stated that the swelling of his arm was due to blows by the Police and not by any others, without mentioning any other injury. In the latter, he had stated that he had been arrested by the Paiyagala Police on the 12th and had been kept in custody till the 17th; and that he had been assaulted by about ten officers – he named the 2nd respondent and "Sergeant Ananda" (who has not been identified); that his arms and legs were paining; and that he wished medical treatment. It is probable that the former statement, made in the presence of the 4th respondent, was incomplete due to the fear of further Police assaults, which he had already expressed to his sister. 330

I have no hesitation in accepting the petitioner's version, which is consistent, and even finds corroboration in important respects from the material produced by the respondents - whose version is teeming with contradictions and inconsistencies. I hold that the deceased was arrested on the 12th, and unlawfully kept in custody until the 17th; and that during that period he was subjected to repeated brutal assaults by Police officers - who ignored the pleas of family members, manifested callous indifference to his pain and suffering, and denied him even minimal medical treatment - which resulted in his death, thereby preventing him applying to this Court for relief. Even a sentence of death, imposed after trial and conviction. 340

tion by a competent Court, must be carried out with a minimum of pain and suffering. The deceased was denied even that right. 350

## RIGHT TO SUE IN RESPECT OF DECEASED'S RIGHTS

The deceased's fundamental rights under Articles 11, 13(2) and 17 had been seriously infringed, entitling him to obtain substantial compensation had he been able to make an application under Article 126. However, the infringement was so serious that he did not live long enough even to give instructions to file such an application. Article 126(2) gives a person, who alleges that a fundamental right "relating to **such person**" has been infringed, the right (by himself or by an attorney-at-law) to apply to this Court. Several questions arise: does Article 11 include, by implication, a right to life? If the right to life is infringed, are the dependants of the deceased entitled to claim compensation for that infringement? In respect of the infringement of fundamental rights, particularly Articles 11, 13(2) and 17, if the victim dies before making an application, does the right to sue accrue to or devolve on his heirs? 360

Although the right to life is not *expressly* recognised as a fundamental right, that right is impliedly recognised in some of the provisions of Chapter III of the Constitution. In particular, Article 13(4) provides that no person shall be punished **with death** or imprisonment except by order of a competent court. That is to say, a person has a *right* not to be put to death because of wrongdoing on his part, except upon a court order. (There are other exceptions as well, such as the exercise of the right of private defence.) Expressed positively, that provision means that a person has a right to live, unless a court orders otherwise. Thus Article 13(4), by necessary implication, recognises that a person has a right to life - at least in the sense of mere *existence*, as distinct from the *quality* of life - which he can be deprived of only under a court order. If, therefore, without his consent or against his will, a person is put to death, unlawfully and otherwise than under a court order, clearly his right under Article 13(4) has been infringed. In regard to every such instance, upon the infringement taking place, the victim will cease to be alive, and therefore unable to bring an action. If I were to hold that no one else - next-of-kin, intestate heir, or dependant - is 370 380

entitled to sue the wrongdoers, that would mean that there is no remedy for causing death in violation of Article 13(4); and that the right to life impliedly recognised by that Article is illusory, as there is no sanction for its infringement. That would also create anomalies: that there is a sanction for the lesser infringement, i.e. of *imprisonment* contrary to Article 13(4), but none for the much graver infringement, of causing *death*; and that in regard to causing death, there is a remedy for an imminent infringement, but not for an actual infringement. The choice, therefore, is either to interpret Article 13(4) narrowly, as if the words "death or" were not there or to interpret "person" in Article 126(2) broadly, as including the lawful heirs and/or dependants of such person, either to interpret the fundamental right restrictively or the Constitutional remedy expansively. Article 4(d) requires this Court to respect, secure and advance fundamental rights, and that requires me to reject the former course, and to adopt the latter. Where there is an infringement of the right to life implied in Article 13(4), Article 126(2) must be interpreted - in order to avoid anomaly, inconsistency and injustice - as permitting the lawful heirs and/or dependants to institute proceedings.

Likewise, Article 17 recognises that every person is entitled to make an application under Article 126 in respect of the infringement of a fundamental right. That is an independent fundamental right, for the infringement of which relief will be granted: *Porage Lakshman v Fernando* <sup>(1)</sup>. If a person is temporarily prevented from making, or pursuing, such an application, he will certainly be entitled to complain that his fundamental right under Article 17 has been infringed. But if he is put to death in order to prevent him – totally and permanently - from complaining, can it be that no one else can complain? For the reasons already stated, here, too, Article 126(2) must be interpreted expansively.

Article 11 guarantees freedom from torture and from cruel and inhuman treatment or punishment. Unlawfully to deprive a person of life, without his consent or against his will, would certainly be *inhuman* treatment, for life is an essential pre-condition for being human. In any event, if torture or cruel treatment or punishment is so extreme that death results, to hold that no one other than the victim can complain will result in the same anomalies, inconsistencies and injustice as in the case of Articles 13(4) and 17. Here, too,

Article 126(2) must be interpreted expansively.

I hold that Article 11 (read with Article 13(4)), recognises a right not to be deprived of life – whether by way of punishment or otherwise – and, by necessary implication, a right to life. That right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively (cf. Article 118(b)). 430

There is yet another reason which compels that conclusion. Article 14.1 of the *Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* provides:

"Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation." 440

The interpretation that the right to compensation accrues to or devolves on the deceased's lawful heirs and/or dependants brings our law into conformity with international obligations and standards, and must be preferred.

## PERSONAL RESPONSIBILITY OF RESPONDENTS

I am satisfied on the evidence that the 2nd respondent lawfully arrested the deceased on the 12th, but made false entries to cover up the fact that he was in unlawful custody thereafter, till the 17th; that he thereby facilitated the torture and the cruel treatment to which the deceased was subjected; and that he was a willing participant in the events which led to the death of the deceased. 450

As for the 1st respondent, learned Counsel on his behalf urged that he had not participated in or authorised, and had no knowledge of any act of torture or cruelty, and that no one had complained to him about any such act. However, his assertions that the deceased had "no marks or any indication that he had been assaulted", and that "he did not appear to be suffering from any

ailment", cast serious doubts on his credibility. Those assertions 460  
imply that he did see the deceased, in which event he could not  
have helped noticing the injuries which the deceased had. Further,  
the deceased was being held in custody subject to the 1st respon-  
dent's orders, and it was his duty to consider the need for further  
detention as well as to check on the deceased's condition. The 1st  
respondent gave no reason why the deceased continued to be  
kept in custody after 4.10 p.m. on the 16th although no further  
investigation was needed. The 1st respondent had knowledge of  
the deceased's condition, neglected to provide him medical treat-  
ment, and failed to have him produced in Court at least on the 470  
16th.

In any event, the 1st respondent's responsibility and liability  
was not restricted to participation, authorisation, complicity and/or  
knowledge. As the officer-in-charge, he was under a duty to take all  
reasonable steps to ensure that persons held in custody (like the  
deceased) were treated humanely and in accordance with the law.  
That included monitoring the activities of his subordinates. He did  
not claim to have taken any steps to ensure that the petitioner was  
being treated as the law required. Such action would not only have  
prevented further ill-treatment, but would have ensured a speedy 480  
investigation of any misconduct as well as medical treatment for the  
petitioner. The 1st respondent is, therefore, in any event liable for  
his culpable inaction.

## ORDER

Counsel for the respondents submitted that only reduced com-  
pensation, if any, should be awarded because of the deceased's  
"criminal record". They sought to distinguish *Sanjeewa v*  
*Suraweera*<sup>(2)</sup>, where Rs 800,000 was awarded as compensation  
and costs to a petitioner who was similarly treated but who had the  
good fortune to survive his ordeal, on the basis that that petitioner 490  
did not have a "bad record". The 1st and 2nd respondents should  
have concentrated their efforts to have the allegations against the  
deceased determined by a competent Court, after a fair trial. Until  
then the deceased was entitled to the benefit of the presumption of  
innocence. But even assuming that the deceased had a bad  
record, the present case is more serious because the deceased

lost his life, and, indeed, the opportunity to redeem his bad record.

I hold that the deceased's fundamental rights under Articles 11, 13(2) and 17 have been infringed by the 1st and 2nd respondents, and other Police officers, and that his rights have accrued to or devolved on the petitioner and their minor child (M.K. Lakshitha Madusankha). I award them a sum of Rs 800,000, in equal shares, as compensation and costs, of which a sum of Rs 700,000 shall be paid by the State and Rs 50,000 each by the 1st and 2nd respondents personally, before 31.12.2003. The sum of Rs 400,000 to which the minor child is entitled shall be invested in the name of the minor child on the terms that the interest shall be paid monthly to the petitioner for the maintenance of the child and that the principal sum shall be paid to the child on majority. I direct the Registrar to forward a copy of this judgment to the National Police Commission for necessary action, particularly in the light of Article 4(d) of the Constitution.

**YAPA, J.** - I agree.

**DE SILVA, J.** - I agree.

*Relief granted.*