

LUCAS APPUHAMY
v.
MATURATA AND OTHERS

SUPREME COURT.
FERNANDO, J.
AMERASINGHE, J. AND
DHEERARATNE, J.
S.C. APPLICATION NO. 87/94
OCTOBER 11TH, 1994.

Fundamental Rights – Arrest and Torture – Constitution, Articles 11 and 13(1).

Where there were sufficient grounds for suspecting that a cognizable offence had been committed by the petitioner, his arrest without a warrant was in accordance with procedure prescribed by the Code of Criminal Procedure and therefore not in violation of Article 13(1) of the Constitution.

Where the medical evidence of the injuries found on the petitioner was consistent with the version of the Police that they had been sustained in the process of the use of reasonable force in making the arrest, it cannot be said that a violation of his rights under Article 11 of the Constitution has been established.

APPLICATION for violation of fundamental rights guaranteed under Articles 11 and 13(1) of the Constitution.

A. H. H. Perera for petitioner.

Asoka Weerasooriya for 2nd, 4th and 5th respondents.

Kumarasiri for 3rd and 6th respondents.

Koliitha Dharmawardena SSC, for 1st, 7th and 8th respondents.

Cur adv vult.

November 7th, 1994.

AMERASINGHE, J.

On 31st March 1994, this Court granted the petitioner leave to proceed in respect of the alleged infringement of Articles 11 and 13(1) of the Constitution.

On 22nd February 1994, the petitioner and one Weeraratna boarded a bus sometime after 7.35 p.m. and assaulted the third respondent, a police officer, who was travelling home after work. The reason for the assault was that the petitioner, who was intoxicated at the time, had been provoked at the sight of the third respondent who had sometime before arrested the petitioner on a complaint of mischief in respect of which proceedings were pending in the Magistrate's Court of Negombo. Having got off the bus, the third respondent complained of the incident to two police officers who were on duty close by and proceeded by taxi to the Negombo Police Station and made a complaint. The third respondent, later complained of the incident to the officer in charge of the Police Station, the first respondent who no doubt would have seen the injury caused. On the advice of the first respondent, the third respondent presented himself for examination before the District Medical Officer who certified that the third respondent had a contusion. The fact that the third respondent was injured is borne out by the notes of the police officers who investigated his complaint, for they recorded observing blood stains on the clothes of the complainant. It is also supported by Weeraratne who said that he joined the petitioner in the assault. There was sufficient evidence to establish the fact that the petitioner assaulted the third respondent.

Although Weeraratne had been arrested by the officers to whom the third respondent had complained soon after the incident, the

petitioner had not been arrested. The first respondent, therefore, ordered his arrest. The arrest was made by a police party comprising the second, fourth, fifth and sixth respondents on the basis of the complaint made by the third respondent.

Since there were sufficient grounds for suspecting that a cognizable offence had been committed by the petitioner, his arrest without a warrant was in accordance with the procedure prescribed by the Criminal Procedure Code and was therefore, not in violation of Article 13(1) of the Constitution.

When the sixth respondent informed the petitioner that he was from the Police, the petitioner attempted to flee and in doing so stumbled against a coconut stump and fell into a pit which was about four feet deep. The production of a plan made by a surveyor in 1969 showing paddy lands in the area did not refute the version of the police.

When the police party "pounced on him", the petitioner offered resistance and "minimum force" had to be used to bring him under control. He was soon afterwards produced before a medical officer who certified that the petitioner was under the influence of alcohol and that he had sustained abrasions. On the directions of this Court, the District Medical Officer, Negombo, examined the petitioner on 23rd February 1994. The D.M.O. confirmed the fact that the petitioner had sustained abrasions. In addition, he reported the existence of "a simple fracture of the radius and ulna left side". No complaint was made to the medical officer who first examined him with regard to the injury to the arm. The sixth respondent suggests that the petitioner was at the time too intoxicated to feel any pain. The petitioner has submitted photographs of himself purporting to show the injuries inflicted on him. However, apart from the plaster cast on his arm, the marks depicted in the photograph have not been interpreted: Were they lacerations, abrasions, medication or some other substance applied for the purpose of the photographs? In any event, the photographs have not been authenticated, and, therefore they are of no probative value.

The injuries reported are more consistent with the fall into the pit and/or the use of minimum force to effect the arrest, than with the several sessions of brutal assault alleged by him. The petitioner's story that he was "divested" of his sarong and that the members of the Police party "sported themselves by pouring hot tea on my body", is not borne out by the medical evidence. The petitioner was obviously exaggerating and reduced the credibility of his version of his injuries and how he came by them. The petitioner was a Bus Conductor in the Peoples Road Transport Service of Negombo. The petitioner was released on bail and handed over to the custody of two officers of the Road Transport Service for which he worked. In their statements to the Assistant Superintendent of Police, no reference is made by the two officers with regard to the alleged assault.

In my view, the petitioner has simply sustained certain injuries in the process of the use of reasonable force in making the arrest and he has failed to establish that his rights under Article 11 of the Constitution were violated.

For the reasons explained in my judgment, I declare that there has been no violation of Article 13(1) or 11 of the Constitution and therefore dismiss the application.

FERNANDO, J. – I agree.

DHEERARATNE, J. – I agree.

Application dismissed.