

WEERASINGHE
v.
PREMARATNE, POLICE SERGEANT AND OTHERS

SUPREME COURT
DHEERARATNE, J.,
ANANDACOOMARASWAMY, J. AND
GUNAWARDENA, J.
S.C. (F.R) APPLICATION NO. 477/96
SEPTEMBER, 2, 1997
OCTOBER 16, 31, 1997.

Fundamental Rights – Articles 11 and 13 (2) of the Constitution – Detention at Police Station for over 24 hours – Torture by Police Officers.

The petitioner was arrested by police officers of the Pannala Police, for alleged burglary and theft of jewellery. He was taken to the Police Station and detained there for over 24 hours. Whilst the petitioner was in police custody, he was stripped on the orders of the 7th respondent, a Sub Inspector of Police. The petitioner's hands were tied together and on to his legs below knees, keeping him in a squatting position; a rice pounder was sent through under the knees and above forearms; the two ends of the rice pounder were then kept on the top of two boxes thus making the petitioner's body to suspend on the rice pounder. He was assaulted whilst he remained so suspended.

Held:

The petitioner had been illegally detained at the Police Station in violation of his rights under Article 13 (2) of the Constitution. He was also subjected to torture by Police Officers in violation of his rights under Article 11.

Per Dheeraratne, J.

- (i) "This court has time and again emphasized that, not only those whose records are not particularly meritorious, but even hard-core criminals are entitled to enjoy the constitutional guarantee of their fundamental rights".
- (ii) ". . . depending on the circumstances, an allegation of a violation of Article 11 could be proved even in the absence of medically supported injuries".

Cases referred to:

1. *Senthilnayagam v. Seneviratne* (1981) 2 Sri LR 187.
2. *Amal Sudath Silva v. Kodituwakku* (1987) 2 Sri LR 119.
3. *Sudath Peiris v. Adikari and others* S.C. (F.R.) 94/93 S.C. minutes 7th March 1995.
4. *Re. Dr. S. Abeykoon*, SC Application 454/93 S.C. Minutes 14th June 1995.
5. *Ansallim Fernando v. Sarath Perera and others* (1992) 1 Sri LR 411.

APPLICATION for relief for infringement of fundamental rights.

A. A. de Silva with *M. C. Jayaratne* and *Kithsiri Jayalath* for petitioner.

Dr. Jayampathy Wickramaratne for 1st to 8th respondents.

Dilan Perera SC for AG.

Cur. adv. vult.

31st October, 1997

DHEERARATNE, J.

The petitioner, a young man aged 20 years, complained that his fundamental rights guaranteed under Articles 11, 13 (1) and 13 (2) of the Constitution were violated by the 1st to 8th respondents, who at the material time, were attached to the Pannala police station. He stated that on 7.5.96, about 8.30 a.m. his neighbour one Mehuran Nissa informed him that her house had been burgled and sought his

assistance to search for her missing jewellery. The petitioner advised Nissa to make a complaint to the police. Nissa made a statement that very morning at the Pannala police station which is situated about 1.5 km from her house. He stated that about 10 a.m. the same day the 1st and the 5th respondent police officers came to Nissa's house and with the assistance of some villagers made a search for the stolen articles. The petitioner saw two police officers who came on inquiry that morning, talking to some people who were antagonistic towards him on account of politics. After some time, the 1st respondent, saying that the petitioner is the person whom they wanted, arrested him and took him to the police station. A fellow villager named M. Mohamed Siyam too stated that the petitioner was so taken away by the police on that day. The petitioner stated that Nissa questioned the policemen as to why they were taking an innocent man to custody on whom she had no suspicion. The petitioner further stated that he was unable to obtain an affidavit from Nissa to speak to that fact, as the 1st and 3rd respondents have prevented her from giving an affidavit under intimidation.

The petitioner stated he was taken to the 7th respondent sub-inspector who asked him to remove his clothes. On the petitioner refusing to do so, the 1st respondent forcibly removed his clothes. The 7th respondent thereafter hit the petitioner with a club several times on his hands and legs. Thereafter the 1st respondent too assaulted him on his buttocks with the same club. The petitioner, still naked, was then put inside the cell at the police station witnessed by several persons. Petitioner's mother and father both saw the petitioner in the cell in that state, sans clothes. That was about 5 p.m. on 7.5.96. Petitioner's mother having returned home, sent some clothes to the petitioner. As to what happened to the clothes the petitioner wore at the time of his arrest, probably gets clarified later, in the narration of the respondents' version of the events.

On 8.5.96, in the morning, petitioner's father went to the police station with one Padmini Ariyawansa to secure the release of the petitioner, but he failed. The petitioner recounted that on that day he was taken upstairs of the police station by the 1st, 2nd, 3rd and 7th respondents, where his clothes were forcibly removed. His hands were tied together and on to his legs below knees, keeping him in a squatting position; a rice pounder was sent through under the knees and above the forearms; the two ends of the rice pounder were then kept on top of two boxes thus making the petitioner's body to suspend

on the rice pounder. The 4th respondent hit the swinging buttocks of the petitioner with a hose-pipe. The petitioner's father having heard his screams of pain, went upstairs and pleaded with the respondents to release the petitioner, only to be abused in filth and chased away.

On 9.5.96, petitioner's father, mother and elder brother Ruwan, went to the police station and pleaded with the 1st, 7th and 8th respondents to release the petitioner, but without any success. About 2 pm on 10.5.96 stated the petitioner, he was taken to the Kandanegedara government hospital by the 8th and 3rd respondents and shown to a lady medical officer to whom he complained that he was tortured by the police and he showed the marks on his wrists. About 3.30 pm on the same day, the police purported to record a statement from him and obtained his signature by force without reading its contents to him. About 5.30 pm he was produced before the Magistrate, Kuliypitiya at his residence. Although the Magistrate ordered bail, it was not until the 11th about 9.30 am, that he could secure his release from remand custody on depositing cash bail. A person called H. M. Gunawardena, by his affidavit filed with the counter affidavit of the petitioner, stated that he was taken into custody by some police officers of the Pannala police station, about midnight on 8.5.96 when he was at his residence. At the time he was put into the cell at the Pannala police station about 1 am on the 9th, the petitioner was already in that cell.

On his release from the remand prison Kuliypitiya, the petitioner admitted himself to the district hospital Dambadeniya, where he was warded for six days from 11.5.96. The affidavits of the petitioner's father and mother are corroborative, at least, of the fact that the petitioner was arrested on 7.5.96 and kept at the police station till the 10th. The petitioner's father stated that on the 8th he telephoned the DIG North Western Province Mr. Jeganathan, and gave him all details about his son's arrest. When the petitioner's mother went to the police station that evening, she was abused by a police officer for complaining to the DIG. On 9.5.96, the elder brother of the petitioner had telephoned the IGP but one Mr. Wegodapola SP has answered the phone, to whom he complained about the arrest of the petitioner. Mr. Wegodapola SP had promised to speak to some officer at the Pannala police. On 19.5.96, petitioner's father wrote the letter P7 to HE the President complaining of the treatment meted out to the petitioner. In that letter, pointed reference was made by him, inter alia, to the following:

- (1) That the petitioner was taken to custody by the Pannala police on the morning of 7.5.96.
- (2) His visits to the police station on 7.5.96 and 8.5.96 with a view to obtain the release of the petitioner.
- (3) His telephoning Mr. Jeganathan DIG on 8.5.96 who promised to speak to the OIC Pannala.
- (4) On 9.5.96 his elder son telephoning the IGP and speaking to Mr. Wegodapola SP in connection with the petitioner. It is significant to note that this letter to HE, which is a contemporaneous document, was copied to the IGP and to the DIG (NWP) among several others.

The respondent police officers denied that the petitioner was arrested on 7.5.96 as alleged by him. They contended that he was arrested only on 10.5.96. Those respondents stated that the petitioner is not a person of good character as there was a case against him for stealing two sarongs from a garment factory where he was employed; that case was compounded but the petitioner was dismissed from service. This court has time and again emphasized that, not only those whose records are not particularly meritorious, but even hard-core criminals are entitled to enjoy the constitutional guarantee of their fundamental rights. (see *Senthilnayagam v. Seneviratne⁽¹⁾*; *Sudath Silva v. Kodituwakku⁽²⁾*)

The respondent police officers admitted that Nissa, the petitioner's neighbour, made a statement to the police in the morning of 7.5.96 regarding the burglary of her house. They stated that the 1st and 7th respondents and a PC went to the house of Nissa on the morning of the 7th for investigation. It was observed that the thief had entered the house through the roof and marks on the wall showed that the thief had slid down along it. The 7th respondent made a note of this fact. The 1st respondent stated that, on 10.5.96, when he proceeded with some police officers to the village where Nissa resided, to investigate some other complaint, one of his private informants informed him that on 7.5.96 about 9.30 am, he saw the petitioner and another person getting on to the road from the compound of the house of Nissa. The informant had observed that the trouser the petitioner wore at that time was smeared with a substance looking like slaked lime. The 1st respondent stated, that on the reasonable suspicion he entertained regarding the complicity of the petitioner with the crime, he arrested him at a nearby junction about 11.15 am on 10.5.96,

having explained the charge to him. The petitioner informed the 1st respondent that he repaired the roof of his aunt's house on the morning of 7.5.96. The 1st respondent then took the petitioner to his house and the petitioner produced the trouser he wore on the 7th morning. That trouser had traces of slaked lime. I may pause here to state that the police did not bother to check whether the story of the petitioner having repaired the roof of his aunt's house on the morning of the 7th was correct or not. She has however sworn an affidavit affirming to that fact thereby explaining how traces of lime could have probably appeared on the petitioner's trouser.

Let me now turn to the medical evidence in this case. According to the medico-legal report dated 12.7.96 issued by the medical officer in charge of the government hospital Kandanedegara, the petitioner was produced by the Pannala police on 10.5.96 at 3.30 pm. One wonders why the police took the trouble to produce, a man who was in their custody only for about four hours, before a medical officer and obtain a clean bill of health. No history had been given by the petitioner and he had no injuries on him whatsoever. The medico-legal report issued to this court by the medical officer of the District hospital Dambadeniya, where the petitioner was warded from 11.5.96 to 16.5.96, after he was discharged from the remand jail, shows that the petitioner gave a history of having been assaulted by the Pannala police on 8.5.96. The petitioner was examined by the medical officer on 12.5.96 at 8.30 am; he had three injuries. The first was a contusion on the left scapular region, 1 1/2 inches by 1 1/2 inches in size, which could have been caused either by a fall on a hard object or by a blow with a blunt object. The medical officer states that he is unable to comment on the probable date of the receipt of that injury because the petitioner is dark in complexion. In any event that injury cannot corroborate the petitioner's version of assault because he did not say that he was assaulted in the region of his shoulder blade. The second injury found on the petitioner was an abrasion 1/2 an inch by 1 inch in size at the back of the right forearm 2 inches above the wrist. The third injury found on the petitioner too was an abrasion, 1/2 an inch by 1 inch, at the back of the right forearm, 3 inches above the wrist. The medical officer states the probable time of receipt of the 2nd and 3rd injuries was not more than 24 hours before his examination. He fixed that time, because the abrasions were red in colour and there were no scab formations. In the result, one finds no corroboration of torture on the petitioner coming from medical testimony.

Mr. de Silva for the petitioner submitted that both medical reports are false and that an attempt has been made by the medical officers to protect the police officers. This court no doubt, has come across several cases where medical officers have submitted such false medical certificates acting perhaps in an *esprit de corps* among servants of the state. [for eg. see *Amal Sudath Silva v. Kodituwakku & others (Supra)*; *Sudath Pieris v. Adikari & others*⁽⁴⁷⁾; and *Re Dr. S. Abeykoon*⁽⁴⁸⁾]. In the absence of more positive material I am unable to state that the medical reports produced in this case are false. However, depending on the circumstances, an allegation of a violation of article 11 could be proved even in the absence of medically supported injuries. [See *Ansalin Fernando v. Sarath Perera and others*⁽⁴⁹⁾]

Was the petitioner arrested on the 7th or the 10th of May? This court has often expressed the unreliability of police records when dealing with violations of fundamental rights. According to the counter affidavit of the 1st respondent, deponent H. M. Gunawardena was brought to the police station and put in the cell at 1 am on 11.5.96; by that time the petitioner was no more in the cell but was in remand custody. It is strange that yet H. M. Gunawardena brazenly swore an affidavit to state that when he was put in the police cell in the early hours of the morning on the 8th, the petitioner was there. It is equally strange as to why the respondents failed to file affidavits from Mr. Jeganathan DIG that no one telephoned regarding the petitioner on the 8th and from Mr. Wegodapola SP of the IGP's office to say that no one telephoned to him on the 9th to intervene on behalf of the petitioner. If the respondents are to be believed, the petitioner's father wrote an utterly fictitious letter to HE the President on 19.5.96, with copies both to the IGP and to the DIG (NWP), making specific references to them. I hold that the petitioner has proved that he was arrested on the 7th and not on the 10th. I hold that by illegally keeping the petitioner in custody from 7.5.96 to 10.5.96, the 1st respondent and the 8th respondent OIC have violated the rights of the petitioner guaranteed under article 13 (2) of the Constitution.

What did some of the respondent police officers do with the hapless petitioner from the 7th to the 10th? The trouser the petitioner wore on the 7th, when he was taken into custody, was forcibly removed by the 1st respondent at the police station and it was in that state of nudity his parents saw him. The petitioner's mother had to go home and send some clothes as the trouser the petitioner wore at the time

of his arrest was considered a vital production for the proof of the crime he was alleged to have committed !! The petitioner has produced a drawing to indicate how his body was made to suspend from a rice pounder which was inserted through his arms and legs which were tied together. One does not require medical evidence to prove the intensity of the pain which would have been caused to the body of a person on being forcibly made to perform such a robust 'acrobatic' feat. That probably explains why the petitioner was kept at the district hospital Dambadeniya for six days without being discharged. I hold that the 1st, 2nd, 3rd and 7th respondents have violated the petitioner's rights enshrined in article 11 of the Constitution.

I direct the 1st, 7th and 8th respondents to pay the petitioner a sum of Rs. 5,000 each as compensation and Rs. 1,500 each as costs; the 2nd and 3rd respondents to pay the petitioner a sum of Rs. 2,500 each as compensation and a sum of Rs. 750 each as costs. The petitioner will thus be entitled to Rs. 20,000 as compensation and Rs. 6,000 as costs.

ANANDACOOMARASWAMY, J. – I agree.

GUNAWARDANA, J. – I agree.

Relief granted.
