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.

1. **PALLE KANKANAMGE SUNIL SHANTHA**,
   Imbulgahakanda, Sadagoda,
   Meegahathenna.

2. **LOKUNARANGODAGE SHANTHA**,
   Amundara, Rideewita,
   Meegahathenna.

2A. PALLE KANKANAMGE YAMUNA NANDANI WIJEGUNAWARDENA,
597/01, Imbulgahakanda,
Sadagoda, Meegahathenna.

PETITIONERS

SC (FR) Application 479/2009

VS.

1. **SUB-INSPECTOR SENEVIRATNE,**
   Police Station, Meegahathenna.

2. **MUKUNANA KARIYAKARANAGE ANURUDDHA MANGALA,**
   Amundara, Rideewita,
   Polgampala.

3. **OFFICER IN CHARGE MEEGAHATHENNA POLICE STATION,**
   Police Station, Meegahathenna.

4. **THE INSPECTOR-GENERAL OF POLICE**
   Police Headquarters,
   Colombo 1.

5. HON. ATTORNEY GENERAL
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: S. Eva Wanasundera, PC, J.
Prasanna Jayawardena, PC, J.
Murdu Fernando, PC, J.

COUNSEL: Ms. Ermiza Tegal with Ms. Thiyagi Piyadasa and Ms. Shalomi Daniel for the Petitioners.
Shyamal Collure with A.P. Jayaweera for the 1st and 3rd Respondents.
Ms.S. Herath, SSC, for the 4th and 5th Respondents.

WRITTEN SUBMISSIONS FILED: By the Petitioners, on 17th October 2016, 30th March 2017 and 05th April 2018.
By the 1st and 3rd Respondents, on 11th May 2018.
By the 4th and 5th Respondents, on 31st May 2018.

ARGUED ON: 22nd March 2018

DECIDED ON: 23rd October 2018

Prasanna Jayawardena, PC, J.

The two petitioners filed this fundamental rights application complaining that the 1st, 2nd and 3rd respondents arrested the petitioners without a warrant and without any reasonable basis, wrongfully detained the petitioners and subjected them to torture and cruel, inhuman and degrading treatment. The petitioners also complained that the 1st and 3rd respondents failed to afford the petitioners their right to equal protection under the law. The petitioners stated that, thereby, the 1st, 2nd and 3rd respondents have violated the petitioners' rights guaranteed by Articles 11, 13 (1), 13 (2) and 12 (1) of the Constitution.

The petitioners state that these violations of their fundamental rights have caused grave physical, psychological and financial harm, damage and loss to them and claim substantial compensation from the respondents.

At the time of the filing of this application, the 1st petitioner was a 40 year old man, who was unemployed and says he was dependent on his two sisters. The 2nd petitioner was a 47 year old man who was married to the 1st petitioner's sister. They had three children, two of whom were in school and the other a student at a vocational training centre. The 2nd petitioner says he was a coconut plucker.

At the time of the relevant events, the 1st respondent was a Sub-Inspector of Police attached to the Meegahathenna Police Station, the 2nd respondent was a corporal in the Sri Lanka Army and the 3rd respondent was the Officer-in-Charge of the Meegahathenna Police Station. The 4th and 5th respondents are the Inspector-General of Police and the Hon. Attorney General.

When this application was supported by learned counsel for the petitioners, this Court granted the petitioners leave to proceed under Article 11 of the Constitution. When this application was argued before us on 22nd March 2018, all learned counsel agreed that the reference to Article 12 in Journal Entry dated 25th November 2009, was an inadvertent error and this Court has only granted the petitioners leave to proceed under Article 11 of the Constitution.

The 3rd respondent filed his affidavit dated 16th September 2010 and the 1st respondent filed his affidavit dated 14th October 2010. The 1st petitioner and 2nd petitioners filed separate counter affidavits, both dated 18th January 2011.

Subsequently, the 2nd petitioner died on 10th October 2011. In view of the nature of this application, this Court made an Order dated 27th January 2017 directing that the deceased 2nd petitioner's wife be substituted in his place as the 2A petitioner, for the purpose of continuing with the application.

The factual positions taken by the 1st and 2nd petitioners on the one hand and those taken by the 1st and 3rd respondents on the other hand are very different. In view of these widely disparate stories, this Court will have to ascertain what did occur with regard to these events. Setting out the cases pleaded by the parties, shorn of embellishment and unnecessary detail, will assist that endeavour.

The 1st petitioner's case.

In the petition, the 1st petitioner alleges that the officers of the Meegahathenna Police Station had ill will towards him after an earlier dispute and had brought a *"false charge of theft"* against him in Matugama Magistrate's Court Case No. 30046, which is pending trial.

The 1st petitioner says that he was in his house in the afternoon of 01st March 2009 and that around 2.30pm, the 1st respondent and two unidentified men came to his house, got hold of him, hit him repeatedly and dragged him to a Police *"cab"*, which was parked nearby. The 1st petitioner was taken to the Meegahathenna Police Station. The 1st petitioner found it difficult to get off the vehicle and walk inside the

Police Station since his legs had been cuffed together. When he asked that his legs be freed, the 1st respondent beat him with a pole and compelled him to crawl into the Police Station.

Once the 1st petitioner was inside the Police Station, he was taken to the Crimes Division where the cuffs fixed on his legs were removed. Then, two police officers brought a pole which looked like a *mole gaha* [a long and sturdy pestle] and some rope. The rope was used to tie the petitioner's wrists and ankles together. The *mole gaha* was then passed between the arms and legs of the 1st petitioner and its two ends were placed on two tables. As a result, the 1st petitioner was left hanging from the *mole gaha* by his wrists and ankles. Thereafter, the 3rd respondent beat the 1st petitioner on his back and on the soles of his feet with a pole, while asking him to return the goods he stole ["ගත්න බඩු දීපං"]. When the 1st petitioner denied knowledge of any stolen goods, the 3rd respondent took hold of the 1st petitioner's legs and turned him around the *mole gaha*, leaving him feeling *"blinded and dizzy"*. The 3rd respondent continued the beating ordering the 1st petitioner to *"tell the truth at least now"* ["දැන්වත් ඇත්ත කියපං"]. The 1st petitioner was screaming in pain. Despite this, the 3rd respondent kept beating him for a while and then left him hanging from the *mole gaha* until about 5.30 pm [on 01st March 2009] when two other police officers untied him and brought him to the ground.

After being brought down to the ground, the police officers cuffed the 1st petitioner's left ankle to one leg of a table and his right wrist to another leg of the same table. He was left in that position until about 4pm on 03rd March 2009 without any food or water and he was not allowed to use the toilet. No one, including his sisters who had come to the Police Station, was allowed to see him during this time. Around 4 pm on 03rd March 2009, the 1st respondent removed the handcuffs and forced the 1st petitioner to sign a statement, which he was not allowed to read.

Thereafter, the 1st respondent took the petitioner to the Meegahathenna Hospital and showed him to a doctor who examined the petitioner and filled a form. The 1st petitioner told the doctor that he had been assaulted by the police.

The 1st petitioner was then brought back to the Police Station and was kept there till he was produced in the Matugama Magistrate's Court at about 5.30pm on 03rd March 2009. The 1st petitioner says that the 1st respondent asked him not to inform the Magistrate that he had been assaulted at the police station. The learned Magistrate made Order remanding the petitioner until 11th March 2009. When the 1st petitioner was produced in the Magistrate's Court on 11th March 2009, he was represented by counsel, who informed the learned Magistrate that the 1st petitioner had been assaulted by the 1st and 3rd respondents at the Police Station. The learned Magistrate ordered that the 1st petitioner be treated at the Kalutara Remand Prison Hospital. The 1st petitioner was produced in Court again on 13th March 2009 and released on bail. The case record in Matugama Magistrate's Court case No. BR 334/09 instituted against the 1st and 2nd petitioners with regard to the theft of a

television and cassette recorder was marked “P5”. The 1st petitioner denied any involvement in that theft.

The 1st petitioner says that he continues to suffer severe pain due to the injuries he sustained when he was beaten by the 1st and 3rd respondents and that he had received medical treatment at the General Hospital, Kalutara on 16th March 2009. He says he still has pain and a feeling of numbness in his hands and neck.

The 1st petitioner also stated that, after he was arrested on suspicion of the aforesaid theft, he has been wrongly added as a suspect in Matugama Magistrate’s Court case No.s BR 1275/07 and BR 11/09 instituted with regard to alleged offences of armed robbery and house trespass. He produced the B-Reports in these two cases marked “P6A” and “P6B” and denied any involvement in these incidents.

Finally, the 1st petitioner said that one M.K.Gunawathie *“had been influenced by the police”* to make a statement that she saw the 1st and 2nd petitioners walking away from the house where the theft occurred with the items that were stolen. An affidavit by Gunawathie to that effect was marked “P7”.

On an Order made by this Court, the General Hospital, Kalutara has submitted a copy of Admission Form No. 19276 recording the details of the treatment the 1st petitioner received at that hospital on 16th March 2009.

The 2nd petitioner’s case

The 2nd petitioner says that in the evening of 02nd March 2009, the 2nd respondent came to his house and inquired about a theft of goods from the 2nd respondent’s house. When the 2nd petitioner replied that he was unaware of a theft, the 2nd respondent hit him on his face, mouth and chest and he fell to the ground. The 2nd respondent then shouted “එස් අයි මහත්තයා...අල්ලා ගත්තා...” [*“Sub-inspector, I caught him”*]. The 1st respondent, who had been hiding outside the house, then ran into the house shouting “උඹ දුවන්න එපා මම පොලීසියෙන්...” [*“Don’t run, I am a police officer”*], and handcuffed the petitioner. The 1st and 2nd respondents took the 2nd petitioner to a small unused house and made him raise his hands and stand against a wall, while the 1st respondent beat him on the back and chest with a club. Thereafter, the 2nd petitioner was taken to the Meegahathenna Police Station in a three wheeler.

When they arrived at the Meegahathenna Police Station at about 7pm [*ie:* on 02nd March 2009], the 2nd petitioner was handcuffed to an iron rod on a door near the Armoury. He was kept in this position and was not given any food or water and was not allowed to go to the toilet until about 6.30 am the next day - *ie:* 03rd March 2009 - when his handcuffs were removed and he was permitted to use the toilet. While being escorted by a Home Guard towards the toilet, he vomited and there was blood in the vomitus. The 2nd petitioner then fainted and fell.

The 2nd petitioner regained consciousness in the General Hospital, Kalutara and he remained there receiving medical treatment until he was discharged on 09th March 2009 and taken to prison. On 11th March 2009, he was produced before the Magistrate's Court of Matugama, and was released on bail on 13th March 2009.

The 2nd petitioner states that he had to receive further medical treatment from the General Hospital, Kalutara and that he is unable to engage in his job of coconut plucking because he feels weak and dizzy and suffers constant body aches.

On an Order made by this Court, the General Hospital, Kalutara has submitted a copy of Admission Form No. 15676 recording the details of the admission of the 2nd petitioner to that hospital on 03rd March 2009 and the medical treatment he received until he was discharged from hospital on 09th March 2009.

The 3rd respondent's position

In his affidavit, the 3rd respondent states that, prior to the events which form the subject matter of this application, the 1st petitioner had been accused of committing offences of robbery and house trespass and had been identified as the culprit by the virtual complainant. Matugama Magistrate's Court Case No. 30046 had been filed against the 1st petitioner in respect of these offences and that case was pending. The 1st petitioner had absconded and evaded arrest for some time in this case. A copy of the case record in that Case was marked "3R1". The 1st petitioner had also been arrested on 10th March 2004 for having a large quantity of illicit liquor in his possession. Matugama Magistrate's Court Case No. 66298 had been filed against the 1st petitioner in respect of this offence and a copy of the case record was marked "3R2".

With regard to the allegations made by the 1st petitioner, the 3rd respondent flatly denied that the 1st petitioner was brought to the Meegahathenna Police Station on 01st March 2009.

With regard to the events of 02nd March 2009, the 3rd respondent states that he left the Meegahathenna Police Station at 6.15 am on that day and proceeded to Dodangoda to attend to official duties and returned to the Meegahathenna Police Station at about 8.45 pm on the same day. When he arrived at the Police Station, he was informed that the 1st respondent had arrested the 1st and 2nd petitioners and brought them to the Police Station at around 7.35pm on that day - *ie:* on 02nd March 2009. In this connection, the 3rd respondent produced Extracts from the Routine Information Book marked "3R3" and Extracts of the Running Chart of the Police Vehicle bearing registration No. 61-7508 marked "3R4".

The 3rd respondent states that the records maintained at the Meegahathenna Police Station establish that the 1st petitioner had been arrested around 5.30pm on 02nd March 2009. Earlier on the same day, the 2nd petitioner had been arrested around

4.50pm with the use of minimum force, as set out in the 1st respondent's notes. These arrests were made in connection with the theft of a television and cassette recorder from W.A. Amarawathie's house on 28th February 2009. He said that the only Police *"cab"* belonging to the Meegahathenna Police Station had not been used on 02nd March 2009. In this connection, Extracts of the Running Chart of the Police *"cab"* of the Meegahathenna Police Station were marked "3R5(a)" to "3R5(d)".

The 3rd respondent denied the 1st petitioner's allegations of assault, torture and ill treatment. He denied that the 1st petitioner was kept cuffed to a table in the Crimes Division and said the 1st petitioner was detained in the police cell within the Police Station. The 3rd respondent also produced, marked "3R6", the Medico Legal Examination Form issued in respect of the 1st petitioner. The 3rd respondent said that the 1st petitioner was provided with food and water and was allowed to use the toilet.

The 3rd respondent stated that, on 03rd March 2009, the 1st petitioner was produced in Matugama Magistrate's Court Case No. B 334/09 with regard to the aforesaid theft of a television and cassette recorder from Amarawathie's house and was remanded. A copy of the case record in this case was marked "3R7". The 1st petitioner was also produced in Court in connection with Matugama Magistrate's Court Case No.s 53217/07 and BR 11/09 involving other offences of robbery and assault. Further, the 1st petitioner was remanded in Matugama Magistrate's Court Case No. 1275/2007 on suspicion of offences of robbery and assault and was remanded till 11th March 2009. The 1st petitioner has been identified by the virtual complainant in that case as one of the offenders. Copies of these case records were marked "3R8" and "3R9".

With regard to the allegations made by the 2nd petitioner, the 3rd respondent denied that the 2nd petitioner had been handcuffed to an iron rod fixed on a door near the Armoury and said the 2nd petitioner was detained in the police cell within the Police Station and was provided with food and water and allowed to use the toilet.

The 3rd respondent stated that, at about 6.30am on 03rd March 2009, the 2nd petitioner complained of a stomach disorder and said that he wished to use the toilet. Sometime later, the 2nd petitioner had complained of an abdominal pain and said that he had previously undergone abdominal surgery. The 3rd respondent directed that the 2nd petitioner be taken to the Meegahathenna District Hospital. The doctor there instructed that the 2nd petitioner be admitted to the General Hospital, Kalutara.

The 3rd respondent stated that another suspect named Indika Namal who was suspected of having committed the aforesaid theft with the 1st and 2nd petitioners, had been absconding immediately after the theft took place on 28th February 2009. Indika Namal had been arrested on 27th March 2009. The stolen television and cassette recorder had been recovered on a statement made by him. A copy of the further B Report filed in Matugama Magistrate's Court Case No.BR 334/2009 on 27th March 2009, was marked "3R13".

The 3rd respondent stated that Gunawathie voluntarily made a statement marked "3R12(b)" identifying the 1st and 2nd petitioners as the thieves.

The 1st respondent's position

In his affidavit, the 1st respondent states that, on 02nd March 2009, Amarawathie made a complaint regarding the theft of goods from her house on 28th February 2009 and he telephoned the 3rd respondent and informed him of the complaint. The 3rd respondent instructed him to make investigations and apprehend any suspects.

In pursuance of these instructions, the 1st respondent left the Meegahathenna Police Station at about 2.55pm on the same day, with a Home Guard. The 1st respondent requested the 2nd respondent, who was the son of the complainant, to accompany him and give directions to the scene of the crime. They travelled in a privately owned three wheeler. They proceeded to the complainant's [Amarawathie's] house and the 1st respondent inspected the scene of the crime and made his notes.

Thereafter, the 1st respondent, accompanied by the others, went to the residence of the 2nd petitioner who had been identified as one of the thieves by Gunawathie. The 1st respondent took cover behind a boulder near the 2nd petitioner's house and sent the 2nd respondent to speak to the 2nd petitioner. When the 2nd petitioner saw the 2nd respondent, the 2nd petitioner drew a knife from his waistband and attempted to stab the 2nd respondent. The 1st respondent ran to the aid of the 2nd respondent and they both grappled with the 2nd petitioner to subdue him. The 2nd petitioner tried to stab them and escape. However, the 2nd petitioner fell to the ground and injured his upper lip. When the 2nd petitioner fell, the 1st respondent was able to handcuff him and inform him of the reason for his arrest. This was at about 4.50pm on 02nd March 2009.The 1st respondent then went to the 1st petitioner's house and arrested him at about 5.30 pm on the same day. He informed the 1st petitioner of the reasons for his arrest. The 1st and 2nd petitioners were brought to the Meegahathenna Police Station at about 7.35pm.

The 1st respondent denied the petitioners' allegations of assault, torture and ill-treatment.

Determination

Article 11 of the Constitution declares *"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*. This Court has consistently recognised that this constitutional prohibition is an absolute ban which protects all persons in Sri Lanka and which expresses the fundamental obligation of every civilized State to protect all those within its territory from torture or cruel, inhuman or degrading treatment or punishment. Thus, Article 11 echoes Article 5 of the Universal Declaration of Human Rights, 1948 and is mirrored in Article 7 of the International Convention on Civil and Political Rights, 1966. The high importance and

absolute inviolability of the right enshrined in Article 11 was recognised by the makers of our Constitution when it was entrenched by Article 83 (a). In VELMURUGU vs. THE ATTORNEY GENERAL [1981 1 SLR 406 at p.453], Wanasundera J referred to the *"preferred position"* of Article 11 and commented that it *"should rightly be singled out for special treatment."*. Further, in recognition of the duty of the State to ensure that the prohibition declared by Article 11 is obeyed by those acting on its behalf, the Legislature has, giving effect to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, enacted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994 providing a statutory framework to punish acts of torture or cruel, inhuman or degrading treatment or punishment committed by or on behalf of public officers.

Accordingly, when allegations of a violation of Article 11 are made before us, this Court, as guardian of the fundamental rights enshrined in our Constitution, must ensure that it gives full and meaningful effect to the protection afforded to all persons by Article 11. A careful examination of the facts is required of the Court. Appropriate relief has to be given when a violation of Article 11 is established.

At this point, it is also relevant observe that the Case Records and B Reports marked "3R1", "3R2", "3R8", "3R9" and "3R13" show that the 1st petitioner is an accused or suspect in several cases filed on charges of robbery, house trespass, assault, theft and possession of a large quantity of illicit liquor. Indika Namal has said that the theft of Amarawathie's goods was committed by the 1st and 2nd petitioners and himself and Gunawathie has clearly stated in "3R12(b)" that she saw the 1st and 2nd petitioners leaving Amarawathie's house carrying the stolen goods. I am not inclined to place weight on the subsequent affidavit marked "P7" which Gunawathie furnished to the 1st petitioner claiming that the Police influenced her to make a false statement. I think the much more likely turn of events is that the 1st petitioner persuaded or intimidated her into giving him "P7". The 1st petitioner's friend, Jayasinghe has, in the statement marked "3R12(h)", said he and the 1st petitioner spent the early part of the evening of 28th February 2009 drinking toddy and then they both went to the stream to catch fish using the shameful method of drawing electricity from a power line using a wire and then placing the other end of the wire into the stream to electrocute fish. Jayasinghe says that, at around 7.30pm [which is shortly before the theft occurred], the 1st petitioner joined two other unidentified men [whom Indika Namal had identified as the 2nd petitioner and himself] and asked Jayasinghe to go back to his own house. Jayasinghe saw the two men then heading towards Rideewita, which is where Amarawathie's house is and where the theft took place. He did not clearly state whether or not the 1st petitioner went with these two men and he said it was dark at that time. This material suggests that the 1st petitioner is suspected of being a habitual petty criminal and a thug - a nuisance and, at times, a menace, to the peaceful and law-abiding people of his village. There is certainly evidence to suspect the 1st petitioner of the theft of goods from Amarawathie's house.

As for the 2nd petitioner, he has been positively identified by both Gunawathie and Indika Namal as one of the thieves. Although the 2nd petitioner is not stained by the dubious past record of the 1st petitioner, he is suspected of being a cohort of his brother-in-law, the 1st petitioner, in carrying out the theft.

However, it hardly has to be emphasised that the 1st petitioner being suspected of a litany of crimes and both petitioners being identified as the culprits in the theft for which they were arrested, does not, in any way, prejudice their entitlement to the full scope of the protection guaranteed to all persons by Article 11 of the Constitution. Thus, from the beginning of the exercise of its fundamental rights jurisdiction, this Court has assured the protection of Article 11 to every man, however heinous a crime he is alleged to have committed. As Samarakoon CJ said in KAPUGEEKIYANA vs. HEETIARACHCHI [1984 2 SLR 153 at p.158] *"…Counsel for the Petitioner submitted that even a suspect on the blackest of criminal charges is entitled to his fundamental rights. This is no doubt true."* Similarly, Atukorale J stated in AMAL SUDATH SILVA vs. KODITHUWAKKU [1987 2 SLR 119 at p.127], *"The petitioner may be a hard-core criminal whose tribe deserve no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set-up, it is essential that he be not denied the protection guaranteed by our Constitution."*

To move to the facts before us, the petitioners and the respondents tell widely disparate stories. The key areas on which there are irreconcilable differences are: (i) the date on which the 1st petitioner was arrested; (ii) the circumstances and manner of the arrest of the 1st and 2nd petitioners; and (iii) the manner in which the petitioners were treated at the Meegahathenna Police Station after the arrests.

We are now called on to decide which version of the factual events is most likely to be the true one. When doing so, we have to keep in mind that, while cogent evidence is required to establish a charge of torture or cruel, inhuman or degrading treatment or punishment, the applicable standard of proof is one of a balance of probability; and the degree of proof required to establish that balance of probability could rise with the severity of the alleged torture and the gravity of the consequences of a finding of torture by the Court - *vide:* VELMURUGU vs. THE ATTORNEY GENERAL [*supra* at p.440-442], JEGANATHAN vs. THE ATTORNEY GENERAL [1982 1 SLR 295 at p.302], GUNAWARDENA vs. PERERA [1983 1 SLR 305 at p.313], KAPUGEEKIYANA vs. HETTIARACHCHI [*supra* at p.165], SAMAN vs. LEELADASA [1989 1 SLR 1 at p.12-13], DE SILVA vs. RODRIGO [1991 2 SLR 307 at p. 315, CHANNA PIERIS vs. THE ATTORNEY GENERAL [1994 1 SLR 01 at p. 107], AMARASINGHE vs. SENEVIRATNE [2011 BALJ 1 at p.3-4] and SAJITH SARANGA vs. PRASAD [SC FR 727/2011 decided on 22nd July 2016 at p.13].

It also has to be recognised that a petitioner who is placed in a situation such as this can, in many cases, do no more than state what he says happened and rely on the affidavits of his relations or friends who witnessed part of the events and any available medical reports, to corroborate his account. If there is no dispute about when a petitioner was brought to the police station, the police records are likely to fix the time period when he was in custody. However, if the time period of custody is in

dispute, as in the present case, the police records can be sometimes tailored to suit what the police want to say. It has also to be kept in mind that it is fanciful to expect a petitioner to furnish supporting affidavits from persons who may have witnessed the alleged torture such as, for example, police officers attached to the police station whose loyalties are firmly with their colleagues who are charged with torture or other detainees in the police station who are under the thrall of the police. These realities have been identified by this Court from the commencement of the exercise of its fundamental rights jurisdiction. Thus, in VELMURUGU v AG [*supra* at p.438], Sharvananda J, as he then was, citing the decision of the European Commission of Human Rights in the oft-cited "Greek Case", referred to the fact that *"There are certain inherent difficulties in the proof of allegations of torture or ill-treatment."*.

Consequently, where a Court is faced with a situation, such as in the present case, where a petitioner complains he was tortured and the respondents completely deny any torture, reliable medical records which indicate that the petitioner was, in fact, tortured, are not only cogent evidence of the charge of torture but would also disprove the very foundation of the respondents' position and, thereby, discredit the respondents and cast grave doubt on their other claims too.

I will begin by examining the case presented by **the 1st petitioner** and the positions taken in reply by the 1st and 3rd respondents.

As set out earlier, the 1st petitioner says he was tortured using a method where the victim's wrists and ankles are tied together and he is then suspended from a pole passed through his arms and legs while he is beaten and also turned around to disorient him further. If these charges are true, there can be no doubt that this is unmistakably "torture" within the meaning of Article 11 of the Constitution. In DE SILVA vs. RODRIGO, RATNAPALA vs. DHARMASIRI [1993 1 SLR 224], JAYASINGHE vs. SAMARAWICKREMA [1994 2 SLR 18], WEERASINGHE vs. PREMARATNE [1998 1 SLR 127], DISSANAYAKE vs. PREMARATNE [1998 2 SLR 211] and UKWATTA vs. MARASINGHE [2011 BLR 120] where the petitioners were subjected to similar ordeals, charges of torture were upheld by this Court.

Next, the 1st petitioner has also said that he was forced to crawl into the police station when he was brought there on 01st March 2009.

In my view, compelling a man to crawl into a police station strips him of his dignity and grossly humiliates him. It seeks to reduce the victim to the level of an abject slave. If this charge is true, it would undoubtedly amount to degrading treatment within the meaning of Article 11 of the Constitution. In SUBASINGHE vs. SANDUN [1999 2 SLR 23], Bandaranayake J, as she then was, held that the petitioner who had been made to walk in handcuffs across a busy road junction, had been subjected to degrading treatment within the meaning of Article 11. In SAJITH SARANGA vs. PRASAD, H.N.J. Perera J, as he then was, held that the Police publicly parading the petitioner while identifying him as a *"Grease Yaka"*, constituted degrading treatment within the meaning of Article 11. In the "Greek Case", the

European Commission was of the view that a manner of treatment which grossly humiliates a man, could be regarded as being "degrading".

The 1st petitioner goes on to say that, after the torture ended and he was brought down to the ground [at about 5.30 pm on 01st March 2009], police officers cuffed his left ankle to one leg of a table and cuffed his right wrist to another leg of the same table. He says he was left in that position until about 4pm on 03rd March 2009 - *ie:* for almost 48 hours. He says that, despite his pleas, he was not given any food or water and he was not allowed to use the toilet during this time. He says no one, including his sisters who had come to the Police Station, was allowed to see him.

A man whose left ankle is cuffed to one place and whose right wrist is cuffed to another place, is made to assume an awkward posture in which he must remain so long as the cuffs are in place. When this is prolonged over 48 hours and the victim is not given any food or water or allowed access to a toilet during that time, the victim will, inevitably, suffer discomfort, disorientation and grave humiliation. If these charges are true, they, combined together, constitute cruel, inhuman or degrading treatment or punishment within the meaning of Article 11 of the Constitution.

As observed earlier, it will be useful to commence with the medical evidence relating to the 1st petitioner.

In support of their complete denial of any torture, the 1st and 3rd respondents rely on the Medico-Legal Examination Form marked "3R6" issued by the District Medical Officer of the Meegahathenna District Hospital, who is said to have examined the 1st petitioner on 03rd March 2009. The District Medical Officer stated that the 1st petitioner showed no external injuries. Although the 1st petitioner says that he complained of having been assaulted, "3R6" does not mention that.

However, the Admission Form of the General Hospital, Kalutara at which the 1st petitioner received medical treatment on 16th March 2009 after he was released on bail, tells a different story. The medical officer has recorded that the 1st petitioner complained he had been tortured by the police who put him in the *"dhammchakka position"* and assaulted him with a wooden pole and that the 1st petitioner suffers from body aches, pain and numbness of both hands. The medical officer has observed that the left suprascapular area of the 1st petitioner's back was tender and that the 1st petitioner suffered from paresthesia, which is a burning or prickling or numb sensation in the hands or feet or limbs. The medical officer has stated that there were no external injuries to be seen. The medical officer has then directed that the 1st petitioner be examined by the Judicial Medical Officer.

The Medico-Legal Report marked "P2" records that, on 17th March 2009, the Judicial Medical Officer examined the 1st petitioner, who said that he had been beaten on 01st March 2009 while he was suspended from a pole by his wrists and ankles which had been tied together. The Judicial Medical Officer has observed *"Two healed linear abrasions measuring 3" and 1 1/2" situated at the back of the right wrist"* and

"Two healed linear abrasions measuring 2" and 1" situated at the back of the left wrist" and has stated *"Injuries are compatible with the history given by the injured."*.

It is seen that the observations of the medical officer at the General Hospital, Kalutara are in line with the symptoms the 1st petitioner would be expected to exhibit after being tortured in the manner he describes. Common sense dictates that, if the 1st petitioner had been suspended from a *mole gaha* by his wrists and ankles, the assailant had to stand to one side of the 1st petitioner and would be able to easily reach the upper part of the 1st petitioner's back during the course of the beating. Hence, tenderness in only the left suprascapular area of the 1st petitioner's back [approximately, the upper left shoulder area of the back] is in line with what the 1st petitioner says. Similarly, paresthesia is what one would expect in a man who has been hung from his wrists and ankles and beaten on the soles of his feet.

With regard to the medical officer of the General Hospital, Kalutara not having seen external injuries, it is likely that bruises and marks after a beating on 01st March 2009 would have faded away by the time the medical officer examined the 1st petitioner at the General Hospital, Kalutara on 16th March 2009. It has to be also realised that it is not invariably the case that there will be tell-tale bruises and marks to reveal a beating. The regrettable truth is that those who have custody of prisoners and detainees in the course of their duties and are disposed towards cruelty or sadism, have ample time and opportunity to practice the dark arts of torture on a plentiful supply of victims. It is known that many such persons have developed an ability to administer a painful and traumatic beating but leave little external trace of it which can be seen after any immediate bruising or discolouration fades away in a few days. As Sharvananda J, as he then was, said in VELMURUGU v AG [*supra* at p.438] *"…..traces of torture or ill-treatment may with lapse of time become unrecognizable, even by medical experts, particularly where the form of torture itself leaves.... few external marks."* Similar views were expressed in FERNANDO v PERERA [1992 1 SLR 411 at p.419], DE SILVA v EDIRISURIYA [SC FR Application No. 09/2011 dated 03rd March 2017 at p.27], SAJITH SURANGA v PRASAD [*supra* at p.16] and NANDAPALA v SERGEANT SUNIL [SC FR Application No. 224/2006 at p.12]

Therefore, I cannot read overmuch into the medical officer of the General Hospital, Kalutara not recording external injuries in the Admission Form when he examined the 1st petitioner two weeks after the alleged torture.

However, the more specialized eye of the Judicial Medical Officer who examined the 1st petitioner and issued "P2" has unerringly observed the healed linear abrasions on both wrists, which are the remnants of distinctive tell-tale wounds caused by rope abrasions when a man is hung from his wrists. As the Judicial Medical Officer has stated, these marks are compatible with the method of torture the 1st petitioner described.

In NALIKA KUMARI vs. NIHAL MAHINDA [1997 3 SLR 331 at p. 340] where, as in the present case, the respondents denied the petitioner's claim that she had been

suspended by her wrists and beaten, Fernando ACJ held that the medical report of injuries which encircled the petitioner's wrists *"like a bangle"* constituted *"conclusive"* evidence which corroborated the petitioner's claim and disproved the respondent's denial.

The medical reports produced in the present case are cogent evidence that the 1st petitioner was tortured in the manner he described in such graphic detail. This medical evidence also exposes the 1st and 3rd respondents' total denial of torture, as being a deliberate falsehood. This discredits their entire case and casts strong doubt on their other claims. The rest of the evidence too has to be examined keeping in mind this doubt.

In the aforesaid circumstances, I am inclined to believe the 1st petitioner's allegation that he was tortured in the manner he describes and I disbelieve the respondents' denial.

Accordingly, I hold that the 1st petitioner has established that he was tortured by the 3rd respondent, assisted by the 1st respondent, in the manner the 1st petitioner describes and that the 1st and 3rd respondents have, thereby, violated the 1st petitioner's fundamental rights guaranteed by Article 11 of the Constitution.

Before parting with this issue, it is necessary to say a word about the Medico-Legal Examination Form marked "3R6" issued by the District Medical Officer of the Meegahathenna District Hospital. In light of the tell-tale symptoms observed by the medical officer of the General Hospital, Kalutara and the healed injuries recorded by the Judicial Medical Officer a full two weeks after the torture carried out on 01st March 2009, it is inconceivable that the District Medical Officer of the Meegahathenna District Hospital could have failed to see, at the very least, the wounds on both wrists. Therefore, I am compelled to say that the report marked "3R6" issued by District Medical Officer of the Meegahathenna District Hospital is false. Perhaps, the District Medical Officer issued a false report to please the police or perhaps he did not bother to carefully examine the 1st petitioner. Either way, the District Medical Officer has acted in breach of his professional duties. It is stressed that, in instances where the police present a prisoner to a Government medical officer for a medico-legal examination, the medical officer must do his duty diligently and impartially and issue an accurate report. On previous occasions too, this Court has had occasion to emphasise this duty where it was found that a false medical report had been issued - *vide:* AMAL SUDATH SILVA vs. KODITHUWAKKU [*supra* at p.125], SUMITH DIAS vs. RANATUNGA [1999 2 SLR 8 at p.15-16] and SAJITH SARANGA vs. PRASAD [*supra* at p.16].

Next, it is necessary to examine the 1st petitioner's claim that he was arrested at about 2.30pm on 01st March 2009 and brought to the Meegahathenna Police Station and that, after he was tortured, he was cuffed to the table in the manner he described and left there from 5.30pm on 01st March 2009 for almost 48 hours without food and water or access to a toilet.

The 1st and 3rd respondents deny that the 1st petitioner was arrested on 01st March 2009, and say that he was arrested and brought to the police station at 7. 35pm on 02nd March 2009. They say the 1st petitioner was detained in the police cell and given food and water and allowed access to the toilet, until he was produced in Court in the evening of 03rd March 2009.

When seeking to ascertain which of these versions is to be believed, it is relevant to observe that the theft of the television and cassette recorder from Amawarathie's house occurred around 7.30pm on 28th February 2009. There is a high degree of probability that Amarawathie or her son, who is the 2nd respondent and a Corporal in the Sri Lanka Army, verbally informed the Meegahathenna Police of the theft that very night or in the morning of the next day - *ie:* on 01st March 2009. It is also likely that the Meegahathenna Police would have paid prompt attention to the complaint of theft. The fact that Gunawathie saw the 1st and 2nd petitioners walking away with the stolen goods would have been conveyed to the police. As mentioned earlier, the 1st petitioner was suspected to be a habitual criminal and the 3rd respondent has stated that the 1st petitioner had absconded on an earlier occasion when he was about to be arrested for offences of robbery and house trespass. In these circumstances, the 1st petitioner was an obvious suspect and there were reasonable grounds for the Meegahathenna Police to arrest him on 01st March 2009, pending the recording of Amarawathie's complaint on 02nd March 2009.

In the present case, the 1st petitioner had categorically stated in his affidavit that he was arrested by the 1st respondent at around 2.30 pm on 01st March 2009 and that he was within the Meegahathenna Police Station from 3.15 pm on that day till he was produced in Court in the evening of 03rd March 2009. His account of his ordeal during that time has been described earlier. The 1st petitioner's account is corroborated by the complaint dated 03rd March 2009 marked "P1A" made by his sister, Sanduni Dilrukshi to the Human Rights Commission and the affidavit dated 28th April 2009 marked "P1B" made by his sister, Sudharma Priyadarshini.

It is seen that the 1st petitioner's affidavit, Sanduni Dilrukshi's complaint and Sudharma Priyadarshini's affidavit all state that the 1st petitioner was arrested on 01nd March 2009 and make it clear that the 1st petitioner did not return to their house on that day. Sudharma Priyadarshini says that when she and her sister attempted to see the 1st petitioner at the police station at 8am on the next day - *ie:* on 02nd March 2009 - they were not permitted to do so. Sudharma Priyadarshini says that when she and her sister again went to the police station at 4pm on the same day - *ie:* on 02nd March 2009 - they met the 1st petitioner who was cuffed to a table and who told them that he had been inhumanly assaulted by the 3rd respondent on the previous day - *ie:* on 01st March 2009 – and that she saw that his hands had a blueish colour.

It is seen that the averments in all three accounts mesh in every detail within the sphere of each person's knowledge of the events. While, no doubt, this could be the

outcome of careful artifice, it has to be recognised that it could well be that they all tell the same story simply because that was the truth.

Thus, the 1st petitioner has made very serious charges against the 1st and 3rd respondents with regard to the events of 01st March 2009 and the manner in which he was made to crawl into police station and, after the torture ended, was cuffed to a table and kept in one position for close to 48 hours. He has supported his account with the best evidence that was available to him, including medical records.

Faced with these charges, the very least the 1st and 3rd respondents were required to do was to give a reliable account of what they did on 01st March 2009 and seek to establish that they were occupied with other activities or were elsewhere and could not have ill-treated the 1st petitioner on 01st March 2009. The respondents should have also produced a complete set of the records of the Meegahathenna Police Station relating to 01st March 2009 and sought to demonstrate that these records show that the 1st petitioner was not brought to the police station till 7.35pm on 02nd March 2009, as the respondents claim.

However, apart from bald denials that the 1st petitioner was arrested on 01st March 2009, neither the 1st respondent nor the 3rd respondent has said a word in their affidavits setting out what they did on that day.

In my view that omission leads to an inference that the 1st and 3rd respondents are unable to establish that they were occupied with other activities or were elsewhere on 01st March 2009 and, therefore, could not have ill-treated the 1st petitioner on that day, in the manner he claims.

Further, when one looks at the Extracts from Information Books produced by the respondents, it is seen that they have failed to produce photocopies of the relevant pages of the Information Books. Instead, the respondents have produced typed extracts, some of which contain lines which have been `x-ed out'. It has to be kept in mind that an Information Book is maintained by a police station to contemporaneously and sequentially record the events which take place on each day and the entries therein are, invariably, made in hand or are typed on sheets of paper which are then pasted in the book. Thus, a perusal of the photocopies of the relevant pages will, in most cases, be a reliable account of the chronological flow of events.

In this light, and since there is a critically important disparity between the 1st petitioner's statement that he was arrested on 01st March 2009 and the respondents' position that he was arrested on 02nd March 2009, the respondents should have produced photocopies of the relevant pages of the Information Books to support their claim that the 1st petitioner was *not* arrested on 01st March 2009. If the pages were not easily readable, typed copies could have *also* been provided for ease of reading. Instead, the respondents have chosen to furnish only typed Extracts which, needless to say, were open to alteration or change to suit the position taken by them. To my

mind, the respondents' decision to refrain from producing photocopies of the relevant pages of the Information Books for the scrutiny of Court, casts another shadow of doubt on their story. See also CALDERA v LIYANAGE [2004] 2 SLR 262 at p 273].

Next, with regard to the events of 01st March 2009, the Extracts of the Routine Information Book marked "3R3" record that the 3rd respondent had conducted training classes for his police officers in the morning and that at 5.30pm he went on patrol throughout his area travelling in the police station's three wheeler.

Thus, even the typed Extracts marked "3R3" firmly place the 3rd respondent inside the police station when the 1st petitioner says he was brought to the police station on 01st March 2009 and tortured by the 3rd respondent. Further, "3R3" states that the 3rd respondent left the police station at 5.30pm to go on a three hour patrol. This time coincides with the time the 1st petitioner says the torture ended.

Thus, it is clear that, on 01st March 2009, the 3rd respondent was in the Meegahathenna Police Station during the time period the 1st petitioner says he was tortured by the 3rd respondent.

As for the 1st respondent, apart from the fact that he offers no account of what he did on 01st March 2009, there is nothing in any one of the large number of documents produced by the respondents which sheds any light on what the 1st respondent did on that day.

The resulting inference is that, on 01st March 2009, the 1st respondent was on duty during the time period the 1st petitioner says he was arrested by the 1st respondent and brought to the Meegahathenna Police Station and then tortured by the 3rd respondent with the assistance of the 1st respondent.

It is also relevant to observe here that, when the petition and annexed documents were filed in this Court on 22nd June 2009, the 1st petitioner and his sisters stated that he was arrested and tortured on 01st March 2009. I cannot think of a reason why the 1st petitioner would claim that he was arrested and tortured on 01st March 2009 if, in fact, these events had occurred on 02nd March 2009. The 1st petitioner had everything to lose and nothing to gain by falsely claiming that he was arrested on 01st March 2009 if, in fact, he was arrested on the next day; especially since, in either scenario, he was at the police station overnight and could have been subjected to the torture he claims. Further, the 1st petitioner had no way of knowing that the 1st and 3rd respondents will take up a position that he was arrested only on 02nd March 2009, since the respondents filed their affidavits only on 16th September 2010 and 14th October 2010.

As for the events of 02nd March 2009, the 3rd respondent says he set off from the Meegahathenna Police Station at 6.15am and travelled to Dodangoda in police jeep bearing registration No. 61-7508 to attend the opening Dodangoda Police Station and that he returned to the Meegahathenna Police Station only at about 8.45pm - *ie:*

twelve and a half hours later and that, by then, the 1st and 2nd petitioners had been brought to the police station. The 3rd respondent also states that the police station's double cab bearing registration No. LD 3917 was not used on 02nd March 2009.

This account is also stated in the Extracts of the Routine Information Book marked "3R3" which records an extensive circuit covering the towns and villages of Meegahathenna, Morahela, Horawela and Matugama on the way to Dodangoda and then the towns and villages of Kalutara, Katukurunda, Rendapala and Walallawita on the way back to Meegahathenna, covering a total journey of 210 kilometres.

However, these claims are starkly contradicted by the jeep's Running Chart marked "3R4" which unequivocally records that the jeep travelled only 40 kilometres on 02nd March 2009 and consumed only 05 litres of fuel with an average rate of consumption of fuel of 08 kilometres per litre. Further, the Running Chart only refers to the 3rd respondent going out on a patrol covering Meegahathenna, Morahela, Horawela and Matugama, which also appears to tally with the travelled distance of 40 kilometres recorded in the Running Chart [since the distance from Meegahathenna to Matugama is about 17 kilometres and a return journey would cover close to 40 kilometres]. It is unlikely that this patrol could have occupied twelve and a half hours, as claimed by the 3rd respondent.

Next, the 3rd respondent's categorical statement that the police station's double cab was not used on 02nd March 2009 is contradicted by the double cab's Running Charts marked "3R5(a)" which record that the vehicle was used on that day.

The documentary evidence referred to above establishes that the 3rd respondent's statements that he was away from the Meegahathenna Police Station from 6.15am to 8.45pm on 02nd March 2009, cannot be believed.

With regard to the 1st respondent, he says he arrested the 1st petitioner at 5.30pm on 02nd March 2009 and brought him to the police station at 7.35pm and then detained the 1st petitioner in the police cell till the evening of 03rd March 2009.

In support of this position, the 1st respondent has produced his supporting notes and Extracts from the Information Book of the Meegahathenna Police Station, which he says confirm his position. However, these too are typed documents and not the original pages of the information book or photocopies of those pages. I have earlier referred to the suspicion which will attach to these typewritten documents.

The 1st respondent has also produced supporting affidavits given by the 2nd respondent, the home guard and the three wheeler driver who he says accompanied him when they arrested the 1st petitioner on 02nd March 2009 and who confirm the 1st respondent's account with regard to the arrest of the 1st petitioner. Further, he has produced affidavits from three detainees who were in custody in the Meegahathenna Police Station on 02nd March 2009 and who state that the 1st petitioner was brought to the police station at 7.35pm on that day and detained in the police cell. However, as observed earlier, these affidavits from colleagues and others whose interests are

to cooperate with the respondents, must be viewed with care and circumspection. It has to be recognised that the persons who provided these affidavits have powerful motives to support the respondents' version of events. As Eva Wanasundera J commented in SAMPATH KUMARA v. SALWATURA [SC FR 244/2010 decided on 30th May 2017 at p.9], *"….. affidavits by the inmates of the police cell …. cannot be taken as valid evidence of the absence of the Petitioner in police custody."*. Accordingly, I am unable to regard these affidavits as material which establishes the truth of what the 1st respondent says.

To sum up, the aforesaid infirmities in the 3rd respondent's statements and the fact that his complete denial that the 1st petitioner was tortured has been shown to be false by medical evidence, leads me to reject the 3rd respondent's affidavit and conclude that he cannot be believed. Thereafter, the conclusion that the 3rd respondent's position is false and the medical evidence which proves that the 1st petitioner was tortured, lead me to disbelieve the 1st respondent who has taken the same positions as the 3rd respondent. Their interests are the same and there is little doubt that they are collaborators in their stories and denials.

On the other hand, I have no reason to doubt the truth of what the 1st petitioner says when he states he was arrested on 01st March 2009 and subjected to the treatment he describes. It is supported by what his sisters have seen and said. The fact that he was tortured has been proved by medical evidence.

Further, I am of the view that the 1st petitioner's allegations that he was made to crawl into the police station and, after he was tortured, was kept manacled to a table in an awkward position and without food, water or access to a toilet for close to 48 hours, is the *"much more plausible and probable version"* to use the words of Fernando J in EKANAYAKE vs. HEWAWASAM [2003 1 SLR 209 at p.214]. To echo Kulatunga J's phrasing in FERNANDO v PERERA [*supra* at p.419], the 1st petitioner's story has the *"ring of truth"*. I disbelieve the respondents' claim that the 1st petitioner was kept in the police cell.

In these circumstances, I also hold that the 1st and 3rd respondents have subjected the 1st petitioner to cruel, inhuman or degrading treatment or punishment and have, thereby, violated the 1st petitioner's fundamental rights guaranteed by Article 11 of the Constitution.

Next, it is necessary to examine the case presented by **the 2nd petitioner** and the positions taken in reply by the 1st and 3rd respondents.

As set out earlier, the 2nd petitioner says that, in the evening of 02nd March 2009, he was assaulted by the 2nd respondent on his face, mouth and chest and he fell down. The 1st respondent has specifically stated that he sent the 2nd respondent to accost the 2nd petitioner for the purpose of arresting the 2nd petitioner. Therefore, it would seem that the 2nd respondent was acting with the authority of the 1st respondent when he allegedly assaulted the 2nd petitioner. In this regard, in FAIZ vs.

ATTORNEY GENERAL [1995 1 SLR 372 at p. 383] Fernando J held *"The act of a private individual would be executive if such act is done with the authority of the executive: such authority transforms an otherwise purely private act into executive or administrative action; such authority may be express, or implied from prior or concurrent acts manifesting approval, instigation, connivance, acquiescence, participation and the like (including inaction in circumstances where there is a duty to act); and from subsequent acts which manifest ratification or adoption."*.

The 2nd petitioner says that while the 2nd respondent was assaulting him, the 1st respondent ran in and arrested him. He says he was then taken to a small unused house where he was made to stand against a wall while the 1st respondent beat him on his back and chest with a club.

In this regard, it has to be recognised that identifying what acts constitute torture will depend on the nature of the acts that are being examined and their consequences. Deliberate acts by a state officer [or a person acting on his behalf] which are aimed at inflicting acute physical or mental pain upon a victim, would ordinarily be regarded as amounting to torture within the meaning of Article 11 of the Constitution, especially where such acts are repeated or continued over a period of time or are aimed at subjugation, intimidation, coercion, revenge or extracting information or a confession. Depending on the circumstances, an isolated act or a sudden incident in the course of an unexpected scuffle may not be regarded as amounting to torture as defined in Article 11 of the Constitution. It is always a matter of the degree, persons and circumstances, which result in the threshold of torture being crossed. Thus, in WIJAYASIRIWARDENE vs. KUMARA [1989 2 SLR 312 at p.319], Fernando J observed that the question of whether excessive force had been used amounting to an act of torture or cruel, inhuman or degrading treatment *"….. would depend on the persons and the circumstances. A degree of force which would be cruel in relation to a frail old lady, would not necessarily be cruel in relation to a tough young man, force which would be degrading if used on a student inside a quiet orderly classroom, would not be so regarded, if used in an atmosphere charged with tension and violence."*. See also SAMAN vs. LEELADASA [*supra* at p.13].

This is perhaps an appropriate opportunity to observe that Article 11 specifies no limitation with regard to the purpose for which torture or cruel, inhuman or degrading treatment or punishment is carried out. Instead, the prohibition declared by Article 11 is absolute, irrespective of the purpose of the forbidden acts. It is seen that, in contrast, section 12 of our Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act defines "torture" *attracting criminal liability*, as any act which inflicts severe pain, whether physical or mental *and* which is done *for one of the purposes* referred to in that provision. I am mindful of the comments made *obiter* by Amerasinghe J in W.M.K. DE SILVA vs. CEYLON FERTILIZER CORPORATION [1989 2 SLR 393 at p. 405] and Fernando J in SAMAN vs. LEELADASA [*supra* at p. 13] which appear to draw a connection between the definition of "torture" in Article 1.1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 [which refers to the

"purpose" for which the impugned acts are done] and what constitutes "torture" for the purposes of Article 11 of the Constitution. However, I am of the respectful view that a narrow definition of "torture" on a "*purpose related basis"* should not be applied to restrict the sweep of the absolute prohibition declared by Article 11. Instead, in my view, that narrow definition is relevant only to define criminal liability as set out in section 12 of our Act, which is based on the aforesaid Convention.

The 2nd petitioner alleges that the 2nd respondent acted on the instructions of the 1st respondent, and assaulted him, as described earlier. In WIJAYASIRIWARDENE vs. KUMARA [*supra* at p.318], Fernando J commented that *"Learned President's Counsel for the Petitioner quite rightly submitted that the Police are not entitled to lay a finger on a person being arrested, even if he be a hardened criminal, in the absence of attempts to resist or to escape."*

The 2nd petitioner says that, thereafter, the 1st respondent beat him in the manner set out above. It is evident that, if this charge is true, the 1st respondent has subjected the 2nd petitioner to a deliberate and sustained beating with a club. There can be no dispute that a beating of such nature is, at the least, within the province of cruel, inhuman or degrading treatment or punishment. It has been repeatedly held by this Court that, a police officer who subjects a victim to a sustained beating inflicts cruel, inhuman or degrading treatment or and punishment and, if the severity of the beating warrants, "torture" within the meaning of Article 11 of the Constitution - *vide:* SAMANTHILAKA vs. ERNEST PERERA [1990 1 SLR 318], GAMLATH vs. DE SILVA [1991 2 SLR 267], WIMAL VIDYAMANI vs. JAYATILLEKE [1993 2 SLR 64], ABASIN BANDA vs. GUNARATNE [1995 1 SLR 244], ABEYWICKREMA vs. GUNARATNE [1997 3 SLR 225], SISIRA KUMARA vs. PERERA [1998 1 SLR 162], RIFAIDEEN vs. JAYALATH [1998 2 SLR 253], PRIYANKARA vs. SISIRA KUMARA [1998 2 SLR 267], DISSANAYAKE vs. SUJEEWA [1998 2 SLR 413], SUMITH DIAS vs. RANATUNGA, CHAMINDA vs. GUNAWARDENA [1999 2 SLR 80], KODITUWAKKUGE NIHAL vs. KOTALAWALA [2000 1 SLR 218], DIAS vs. EKANAYAKE [2001 1 SLR 224], SIRIMAWATHIE FERNANDO vs. WICKREMARATNE [2001 1 SLR 259], ERANDAKA vs. HALWELA [2004 1 SLR 268], KUMAR vs. SILVA [2006 2 SLR 236], SAMARASEKERA vs. VIJITHA ALWIS [2009 1 SLR 213], AMARASINGHE vs. SENEVIRATNE and PERERA vs. 6118, POLICE CONSTABLE [2016 BALJ 123].

Next, with regard to the 2nd petitioner's description of the events after he was brought to the Police Station, I am of the view that, handcuffing a man to an iron rod and making him assume a posture in which he is kept for close to 12 hours without any food or water during that time and without access to a toilet, would cause him to suffer substantial discomfort and a degree of disorientation and pain. I am of the view that, if these charges are true, it would constitute cruel, inhuman or degrading treatment or punishment within the meaning of Article 11 of the Constitution.

When examining which version of the events is to be believed, it will again be useful to commence with the medical evidence relating to the 2nd petitioner.

The Admission Form of the General Hospital, Kalutara records that the 2nd petitioner was brought to the hospital at 8.11am on 03rd March 2009 with a record of one instance of haematemesis [vomiting with blood in the vomitus], having fainted and with abdominal pain. The medical officer has recorded that the 2nd petitioner complained that he had been assaulted by a police officer. The medical officer has also recorded that the 2nd petitioner has a swollen upper lip and a lacerated inner lip. The medical officer has directed that the 1st petitioner be examined by the Judicial Medical Officer. It is seen that these medical records match exactly with what the 2nd petitioner says happened.

The Medico-Legal Report marked "P4" records that the Judicial Medical Officer examined the 2nd petitioner on 04th March 2009 and observed that the 2nd petitioner had a *"Tender back of chest"* and contusions on the right cheek and upper lip. The Judicial Medical Officer has also recorded that an Endoscopy was done and that there was no identifiable cause for the incident of haematemesis. The Judicial Medical Officer has gone on to state that the *"Injuries were in keeping with the history"* of which the 2nd petitioner complained.

It is seen that these medical records corroborate the 2nd petitioner's complaint that the 2nd respondent assaulted him on his face, mouth and chest and that, thereafter, he was taken to the small unused house and the 1st respondent administered a sustained beating on the 2nd petitioner's back and chest. Further, the explicit finding that the Endoscopy did not reveal an internal cause for the haematemesis, raises an inference that the incident of haematemesis and fainting was in some way related to the 2nd petitioner's complaint that he vomited and fainted in the aftermath of the assault and being shackled to an iron rod for close to twelve hours.

The affidavit marked "P3B" by the 2nd petitioner's wife also states that the 2nd petitioner was assaulted when he was arrested and that he was then taken in the direction of the small unused house - *ie:* the location where the 2nd petitioner says he was made to stand against a wall and was beaten with a club by the 1st respondent. The 2nd petitioner's wife also says that, when she saw the 2nd petitioner at the General Hospital, Kalutara on 04th March 2009, the 2nd petitioner complained to her that the 1st respondent had subjected him to a repeated beating.

When examining the evidence with regard to the 1st petitioner, I reached the conclusion that the positions taken by the 1st and 3rd respondents with regard to the 1st petitioner cannot be believed. In view of that finding that the 1st and 3rd respondents are unworthy of credit, I see no reason to think that the denial by the 1st respondent that he administered a beating to the 2nd petitioner, should be believed. Similarly, I have no reason to think that the 1st and 3rd respondents' claim that the 2nd petitioner was detained in the police cell together with the 1st petitioner should be believed. I would think it much more likely that, for purposes of eliciting information regarding the theft, the 1st and 2nd petitioners were kept apart.

On the other hand, I have no reason to doubt the truth of what the 2nd petitioner says. It is supported by what his wife has seen and said. The medical evidence corroborates his statement that he was beaten. In the aforesaid circumstances, I am of the view that the evidence before us is sufficient to establish, on a balance of probabilities, the truth of what the 2nd petitioner says.

In these circumstances, I hold that the 1st and 3rd respondents have subjected the 2nd petitioner to cruel, inhuman or degrading treatment or punishment and, thereby, the 1st and 3rd respondents have violated the 2nd petitioner's fundamental rights guaranteed by Article 11 of the Constitution. I have already held that the 1st and 3rd respondents have violated the 1st petitioner's fundamental rights guaranteed by Article 11 of the Constitution.

I am of the view that this is an instance where the 1st and 3rd respondents should be required to personally pay compensation to the 1st and 2A petitioners. In this regard, it should be mentioned that learned Senior State Counsel has submitted that, although the 2A petitioner was substituted in place of her deceased husband, the 2A petitioner is not entitled to receive compensation which may have been awarded to the 2nd petitioner had he been alive. I cannot accept that contention. The 2A petitioner has been substituted in place of the deceased 2nd petitioner by an Order of this Court and, therefore, stands in his shoes and is entitled to receive compensation that may have been awarded to the 2nd petitioner.

I direct that, as compensation, the 1st and 3rd respondents shall each pay a sum of Rs. 50,000/- to the 1st petitioner and a sum of Rs. 50,000/- to the 2A petitioner. In addition, the State must bear responsibility for the acts of the 1st and 3rd respondents and pay compensation in a sum of Rs. 50,000/- each to the 1st and 2A petitioners.

Judge of the Supreme Court

S.Eva Wanasundera, PC, J.
I agree.

Judge of the Supreme Court

Murdu Fernando, PC, J.
I agree.

Judge of the Supreme Court