

**RATNAPALA**  
**v.**  
**DHARMASIRI, HEADQUARTERS INSPECTOR,**  
**RATNAPURA AND OTHERS**

SUPREME COURT.  
G. P. S. DE SILVA, C.J.,  
KULATUNGA, J. AND  
RAMANATHAN, J.  
SC APPLICATION 162/91.  
MARCH 01, 1993.

*Fundamental Rights – Torture – Article 11 of the Constitution – Responsibility of superior officers for acts of subordinate officers – Factors affecting relief.*

The 3rd (S.I. Samaratunga), 5th (Sgt. Tillekeratne), 6th (P.C. Waduge), and 7th (P.C. Jayaratne) respondents had assaulted and brutally tortured the petitioner over a period of three weeks. The injuries suffered by the petitioner were irreparable, particularly in view of the fact that one of his lungs had to be surgically removed. The 1st (Hector Dharmasiri, Headquarters Inspector) and 2nd (I.P. Gunasekera, officer-in-charge), respondents deliberately encouraged, tolerated and acquiesced in the acts of torture and inhuman treatment inflicted on the petitioner on whom the J.M.O. found 26 injuries. Hence the 3rd, 5th, 6th and 7th respondents who have been identified by the petitioner along with their superior officers the 1st and 2nd respondents are personally responsible along with the State.

The State and the 1st, 2nd, 3rd, 5th, 6th and 7th respondents must pay compensation to the petitioner.

*Per Kulatunga, J.*

" So it seems to me that despite so many decisions, torture at police stations continues unabated, in utter contempt of fundamental rights guaranteed by the Constitution. In granting relief this Court must necessarily have regard to this development " .

Cases referred to :

1. *Sirisena v. Perera* [1991] 2 Sri LR 97.
2. *Amal Sudath Silva v. Kodituwakku* [1987] 2 Sri LR 119.
3. *Geekiyanage Premalal Silva v. Rodrigo*, SC Appl. No. 24/89 SC Minutes of 05.09.90.
4. *Jayarathne v. Tennakoon*, SC Appl. No. 18/89 with No. 10/89 SC Minutes of 04.07.91.
5. *Gamlath v. Neville Silva*, SC Appl. No. 78/90 SC Minutes of 27.08.91
6. *Wimal Vidyamani v. Lt. Col. Jayatileke*, SC Appl. No. 852/91 (Spl.) SC Minutes of 22.07.92.
7. *Ratnasiri v. Devasurendra*, SC Appl. No. 4/91 with No. 3/91 - SC Minutes of 21.10.92.
8. *Weerakoon v. Weeraratne*, SC Appl. No. 42/92 SC Minutes of 16.11.92.

APPLICATION for infringement of fundamental rights.

*K. Thiranagama* for petitioner.

*Anil Silva* for 1st to 7th respondents.

*Hector Yapa, D.S.G.* for 8th and 9th respondents.

*Cur. adv. vult.*

April 28, 1993.

**KULATUNGA, J.**

The petitioner was 23 years of age at the time of his arrest on suspicion of having been a party to a robbery of cash, gold and jewellery worth Rs. 704,400 alleged to have been committed on 02.07.91, from the residence of a Thai national, within the Ratnapura Police area. At the hearing before us Counsel for the petitioner informed us that he would not press the alleged violation of Articles 13 (1) and (2) but would confine the petitioner's case to the alleged violation of Article 11. The relevant facts are as follows :-

In the course of investigations into the said robbery, the police recorded the statements of suspects Sarath Perera (2R3) and Upul Nisantha (2R4), on 21.07.91. They implicated the petitioner (a resident of Kalutara) in the commission of the alleged robbery. According to the said statements the petitioner was armed with a knife whilst the other suspects were armed with a gun and a pistol. They overpowered the inmates of the house, committed robbery and later shared the loot among themselves. Thereafter, the Ratnapura Police were looking for the petitioner. On 18.08.91 they visited his residence, but found him missing. He was then employed at a hotel in Kollupitiya. The petitioner alleges that the police took away three of his brothers and an uncle as hostages to compel him to surrender ; this information was conveyed to him by his mother.

The petitioner states that on 24.08.91 he reported to the Ratnapura Police accompanied by one of his uncles and surrendered to the 1st respondent (Headquarters Inspector) whereupon his brothers and the uncle who had been detained as hostages were released ; the 1st respondent then asked the petitioner whether he had brought Rupees 2 1/2 lakhs to which he replied that he was unaware of it. Thereafter, the petitioner was taken to the crime branch. At about 8.00 p.m., the 2nd respondent (Officer-in-Charge of Crimes) produced the petitioner before the 1st respondent on whose orders the petitioner was stripped and put into the cell. At about 10.00 p.m., the 3rd respondent (a Sub-Inspector of Police) and another police officer made him to squat and tied his hands and legs together. He was then hung with his head downwards on a pole (passed behind his knees) the two ends of which were placed on two tables. Whilst the petitioner was in that position, the 3rd respondent assaulted him with a club and also kicked him.

On 26.08.91 the petitioner was again tied up and the 4th respondent (a Police Constable) assaulted him with a club. On 03.09.91 the 3rd respondent assaulted the petitioner with a club whilst the 4th respondent and other officers joined in the assault. The 5th respondent (a Police Sergeant) sprinkled the petitioner's face with chilly powder. On 06.09.91 the 5th respondent and the 6th and 7th respondents (Police Constables) assaulted the petitioner with clubs and rubber hose pipes. On 8th or 9th September, the 5th, 6th and 7th respondents assaulted him with hose pipes and leather belts. The 2nd and 3rd respondents were present at the said assault. The 3rd respondent

questioned him where he had hidden the money ; the 7th respondent squeezed the petitioner's penis ; the 5th and 7th respondents also kicked him. On 15.09.91 the 5th respondent struck the petitioner's head with a brass padlock and caused injuries. On 17.09.91 the petitioner was shown to a foreigner and some other persons and his statement (2R5) was recorded. On the same day the petitioner was produced before a Magistrate and was remanded pursuant to which he was sent to Welikada prison on 18.09.91.

Continuing the narrative of events, the petitioner states that on 19.09.91 the prison doctors treated him and as his condition deteriorated he was admitted to the prison hospital on 22.09.91. As his condition became worse he was admitted to the General Hospital, Colombo on 04.10.91. During his treatment there, he was given saline and blood transfusions. A tube was inserted to his chest and fluid was extracted from his lungs. On 22.10.91 the petitioner was sent back to the Prison Hospital.

According to a report made to this Court by the Prisons Hospital and information submitted to us by Counsel for the 1st to 7th respondents, on 23.10.91 the petitioner was referred to the J.M.O. Colombo and was examined by the J.M.O. on 26.10.91. Thereafter the petitioner was brought back to the Prison Hospital and treated for an infected wound and fever. On 09.11.91 he was readmitted to the General Hospital as pleural effusion continued. On 08.01.92 one of his lungs was removed by surgery. On 11.02.92 he was sent back to the Prison Hospital and on 13.02.92 he was transferred to the Welisara chest hospital.

While he was at the General Hospital on 18.11.91 the petitioner filed his application alleging infringement of his fundamental rights and sought to be excused for the delay in filing this application on the ground that due to serious illness he had not been able to obtain legal assistance sooner. In the circumstances, Mr. Anil Silva, learned Counsel for the respondents quite properly did not press the objection that the application is time barred. Counsel conceded that in view of the medical evidence he cannot refute the allegation that the petitioner was assaulted whilst in police custody ; he, however, argued that the evidence is insufficient to fix personal responsibility on any police officer ; he submitted that it is improbable that the petitioner could have remembered the identity of the police officers

who assaulted him ; that it is possible that the petitioner has falsely implicated the respondents after obtaining their names through his brother who (according to his statement 2R5) is a Reservist Police Constable ; that, in any event, according to the police records some of these respondents had been on duty away from the Ratnapura Police Station at the time the petitioner is alleged to have been assaulted ; that this clearly shows that the petitioner has falsely implicated the said respondents ; and hence his evidence against individual police officers is not worthy of credit.

Mr. Hector Yapa, Counsel for the 9th and the 10th respondents (The Inspector-General of Police and the Attorney-General respectively) said that he did not wish to make any submissions.

In the circumstances, the infringement of the petitioner's rights under Article 11 is established. This leaves us with only two questions namely ; (a) whether personal responsibility of the respondents has been established and (b) the relief to which the petitioner is entitled. In the consideration of these questions, I shall first refer to the relevant medical evidence appearing in the following reports :-

1. Report dated 10.12.91 made by the Medical Officer, Welikada prison hospital.
2. Report dated 29.02.92 made by the Director, General Hospital, Colombo, with copy of Bed Head Ticket showing treatment given to the petitioner in wards 49 and 34.
3. Report dated 17.06.92 made by the Judicial Medical Officer, Colombo containing the record of the examination of the petitioner on 26.10.91 and the J.M.O's observations as to the cause of injuries.

These reports have been made in compliance with the directions of this Court.

The report of the prison hospital supports the history deposed to by the petitioner and states, *inter-alia*, that the petitioner was admitted to that hospital on 22.09.91 with a history of assault and with cough, haemoptysis and difficulty in breathing. He had contusions of front of chest, back of chest and lower back and suspected rib fractures on the right side.

According to the report of the General Hospital, Colombo, the petitioner was transferred from the Prison Hospital with suspected multiple contusions of the right lung and multiple rib fractures ; he was in a very poor general state. His breathing was short and rapid due to pain. He was given blood transfusions, saline, dextrose, vallium and antibiotics. After resuscitation he was transferred to the surgical ward where he continued to be treated with antibiotics until 22.10.91.

He had pleural effusion and a fracture of the metacarpal bones of the left hand. A tube was inserted and fluid removed from his lungs throughout this period.

I reproduce in full the report of the J.M.O. which is as follows :-

*Examination and Report on K. V. Ratnapala*

*History*

Assaulted by Sgt. Tillakaratne, P.C. Baduge, P.C. Jayaratne and S.I. Samarakoon of the Ratnapura Crime Branch from 24.08.1991 to 11.09.1991 with clubs and rubber hoses.

*Examination*

The scars and marks of the following injuries were present :-

1. Linear scar 3/4" obliquely placed lateral to the left side eyebrow on the left forehead.
2. Swelling with blackening below the left eye.
3. Elongated scar 1" x 1/4" and linear scar 3/4" long, placed obliquely one below the other on the left side of the face, between the eye and ear.
4. Six, oval, circular and elongated scars, varying from 1/4" to 3/4" in size, on the left side of the face.
5. Swelling with blackening below the right eye.

6. Eight, circular scars about 1/4" diameter on the right side face.
7. Three circular scars, each about 1/4" diameter on the left side of the neck, antero-laterally.
8. Depigmented scar 1" x 3/4" on the root of the left side of the neck, above the outer third of the collarbone.
9. Elongated depigmented scar 7" x 1/2" on the front of the right upper chest, below the collarbone, extending downwards and medially across the midline, to the front of the left upper chest.

A little to the left of the midline, on the lateral border of the breast-bone, were two elongated scars, each about 1,1/4" x 1/4" obliquely and parallelly placed across the earlier mentioned scar.

10. Depigmented scar 1" x 3/4" front of the left lower chest.
11. Depigmented scar 1" x 1/2" across the back of the right lower chest, overlying the shoulder spine.
12. Mark of a contusion 2" x 1/2" obliquely placed on the back of the right upper chest, placed below injury No. 11 overlying the shoulder blade.
13. Mark of a contusion 3" x 3/4" obliquely across the back of the left mid chest.
14. Depigmented scar 1, 1/2" x 1/2" across the back in the upper left loin area.
15. Semicircular depigmented scar 3" x 1/2" across the back in the midline, overlying the spine.
16. Mark of a contusion 6" x 1/2" obliquely placed on the back in the right loin area, extending downwards and medially towards the hip.
17. Small scar, dosum of the left hand, on the middle phalanx of the left middle finger.

18. Small scars of the left palm of the hand, on the terminal phalanx of the left ring finger.
- 19 - 21. Three small scars of the right palm of the hand, on the base of the ring finger, proximal phalanx of the little finger and middle phalanx of the middle fingers.
22. Mark of a contusion 2, 1/2" x 3/4" across lateral upper right upperarm.
23. Mark of a contusion 2" x 3/4" postero-lateral lower right upperarm.
24. Elongated scar 2, 3/4" x 1/2" across the dorsum of the right wrist.
- 25 & 26. Two marks of contusions each about 3" x 3/4" on the lateral upper left thigh.
27. Scar of an injury, following the insertion of an intercostal tube.

### *Conclusions*

1. Scars and marks of injuries :  
1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, and 26 are those that could be caused by blunt trauma.
2. Scars and marks of injuries 9, 12, 13, 15, 16, 22, 23, 15 and 26 are consistent with those caused by elongated blunt weapons like clubs, rubber hoses, batons and like weapons.
3. Scars and marks of injuries grouped under 4, 6 and 7 could be those of burns caused by a lighted cigarette.
4. Scars of injury No. 24, could be caused by the application of a ligature around the wrist.
5. It is not possible to explain the totality of the injuries as a result of a fall or falls for the following reasons :

(a) Very many of the scars and marks of the injuries have been identified as those likely to have been caused by blunt weapons, lighted cigarettes and application of ligatures.

(b) No scars or marks of injuries have been identified as those characteristic of fall/falls.

e.g. like grazed abrasions on projecting surfaces of the body.

6. Injuries individually are non-grievous, but taken collectively are of a grievous nature.

Dr. L. B. L. de Alwis  
Deputy J.M.O., Colombo.

### PERSONAL RESPONSIBILITY OF THE RESPONDENTS

The petitioner told the J.M.O. that he was assaulted by the 3rd, 5th, 6th and 7th respondents. He has failed to mention the 4th respondent who is alleged to have assaulted him on 26.08.91 and 03.09.91. These are the officers who are alleged to have subjected the petitioner to actual physical assault. In his petition, the petitioner has also joined the 1st and the 2nd respondents as being responsible for such assault in view of alleged orders or other conduct on their part amounting to deliberate encouragement, tolerance or acquiescence in relation to such assault or other treatment violative of Article 11 of the Constitution. I am of the view that in the light of Article 4(d) which provides that fundamental rights shall be respected, secured and advanced by all organs of government, such conduct should also be construed as giving rise to personal responsibility for infringement of Article 11. I shall examine the available evidence against the respondents in that light.

The 1st respondent admits that the petitioner surrendered to the Ratnapura Police on 24.08.91 and that the 2nd respondent arrested him for committing robbery of cash and jewellery from the residence of a Thai national. He states that there are 4 cases pending in the Magistrate's Court wherein the petitioner is charged with criminal trespass, mischief, theft of a cow, unlawful assembly and robbery, respectively. Copies of the relevant proceedings have been produced marked 1R1, 1R2, 1R3 and 1R4. He has also produced

from the Kalutara Police a list of complaints made against the petitioner by a number of persons for alleged insult and intimidation (1R5). The 1st respondent states, in view of the use of firearms in committing the robbery in question and the possibility of a J.V.P. connection he obtained a detention order dated 24.08.91 under Regulation 19(2) of the Emergency Regulations (1R8), to detain the petitioner in his (2nd respondent's) custody at the Ratnapura Police Station. It was under the said order that the petitioner was detained there until 17.09.91. He, however, denies having ordered the petitioner to be stripped and put into the cell on 24.08.91. He states that from 6.30 p.m. on the 24th until 4.30 a.m. on the 25th he was not at the Police Station but on mobile duty in connection with the Ratnapura Saman Devale Perahera and has produced in support a copy of his notes marked 1R6.

The 2nd respondent admits having arrested the petitioner on his surrender on the 24th but denies complicity in the alleged torture. According to his notes (2R1) the petitioner had scars of healed injuries on his chest and hands and adds that the petitioner informed that he suffered from a heart disease for which he had taken treatment. The 2nd respondent further states that he too was on mobile duty in connection with the Saman Devale Perahera from 6.30 p.m. on the 24th until 4.10 a.m. on 25th and has produced in support a copy of his notes marked 2R2.

The 3rd, 4th, 6th and 7th respondents have filed a joint affidavit denying the alleged torture by them. The 3rd respondent in particular states that from 5.00 p.m. on the 24th until 3.00 a.m. on the 25th he was on mobile patrol duty in the town close to Kahangama Devale as per his notes 3R1, and on 03.09.91 from 9.00 a.m. to 6.45 p.m. he was on mobile patrol duty in Malangama, Lellupitiya areas, as per his notes marked 3R2.

The 5th respondent denies having participated in torturing the petitioner. He states that in consequence of the petitioner's statement 2R5 which he recorded on 16.09.91, he visited the petitioner's residence and recovered a wrist watch and a pair of sun glasses. As per information book extracts 5R1, 5R2 and 5R3, the 5th respondent was accompanied by the 6th and 7th respondents. They took with them the petitioner in a private vehicle. On their return, there was a tyre puncture. While they were replacing the tyre, the

petitioner jumped out of the vehicle and tried to escape and fell down over some rocks. He got up and attempted to run away but got entangled with some thorny creepers and fell down. They lifted him and loosened his handcuffs which had become too tight as a result of the fall. The petitioner sustained abrasions of chest, stomach and legs and swellings on his head. He was limping but said that he did not wish to have his injuries treated.

The position taken in the affidavits of the 1st - 7th respondents is that whilst the petitioner had some scars of old injuries at the time of his arrest, more injuries were sustained by his falling when he attempted to escape. They also allege that the petitioner is a tuberculosis patient, presumably to explain pleural effusion and the disease of his lungs. Learned Counsel for these respondents very properly did not press this version. (So the question is whether the above evidence is cogent enough to fix personal responsibility on the respondents and to make them also liable in addition to the State. The existence of such liability has been reaffirmed in the recent decision of this Court in *Sirisena v. Perera* <sup>(1)</sup>).

In considering whether the evidence of the petitioner as to the identity of the respondents is credible it is relevant to observe :

(a) that the petitioner was in continuous detention at the Ratnapura Police for 3 weeks and thus had the opportunity of coming to know their names and the positions held by each of them ;

(b) that being the victim of brutal acts of torture, he had a strong motive to remember the identity of his assailants ;

(c) that this was not his first experience with police officers in that admittedly he had many brushes with the law ; and that such a person is more likely to remember the identity of his assailants than a novice who first comes into contact with the police ;

(d) that the petitioner has mentioned to the J.M.O. the names and ranks of four out of five officers who he alleges to have joined in the physical assault on him. It is to be noted that in naming the respondents the petitioner does not give their initials or the

distinctive numbers. On the other hand, he appears to have named them following the form used by the respondents themselves in addressing one another. The references to the 6th and 7th respondents illustrate this. Thus the full name of the former is Galwaduge Karunasena whilst that of the latter is Marasinghe Mudiyanseelage Jayaratne. In the notes of the 5th respondent they are referred to as " Waduge " and " Jayaratne " respectively and that exactly is how the petitioner refers to them. These circumstances tend to negative the submission of Mr. Anil Silva that the petitioner had obtained the names of the respondents through his brother who is a Reservist Police Constable ;

(e) that the 1st and 2nd respondents (though they are not alleged to have personally assaulted the petitioner) were the two most senior officers who, from the moment of the petitioner's arrest, directed the investigations into the alleged robbery.

(f) that the notes 1R6 made by the 1st respondent, 2R2 made by the 2nd respondent and 3R2 made by the 3rd respondent by way of proving an alibi, consist of their out and in entries on the relevant dates. Such brief entries on the basis of which they assert that they were on mobile duty away from the Police Station do not necessarily show that they had no opportunity (by reason of such duty) to have been at the Police Station when the petitioner was tortured ;

(g) that whilst the evidence establishes beyond a reasonable doubt that the petitioner was mercilessly assaulted and subjected to cruel, inhuman treatment whilst in Police custody, the respondents have (relying upon the self serving notes made by the 2nd and 5th respondents) falsely alleged that the petitioner's injuries were sustained either prior to his arrest or by a fall when he attempted to escape from police custody.

In the circumstances, I am satisfied that the 3rd, 5th, 6th and 7th respondents took part in assaulting the petitioner and carried out the various acts of torture attributed to them. However, the evidence against the 4th respondent is not cogent because the petitioner has failed to mention his name to the J.M.O. and has joined him under the name of " PC Sisira Kumara " when his correct name (as per his affidavit) is Sisira Senaratne. As such, the allegation against him has not been established.

I am also satisfied that the 1st and the 2nd respondents did deliberately encourage, tolerate and acquiesce in the acts of torture and inhuman treatment inflicted on the petitioner. It is incredible that these two respondents were not responsible for such treatment which went on for a period of 3 weeks. By the time the petitioner was remanded and admitted to the prison hospital, he was in a poor state and but for the immediate treatment given to him at the General Hospital, Colombo, the petitioner may well have died. Even though his life was saved, one of his lungs had to be removed. If the injuries to the petitioner were inflicted by subordinate police officers without the complicity of the 1st and 2nd respondents one would have expected these two respondents to have sent the petitioner for medical treatment. The failure to do so confirms the allegation that the petitioner was tortured on their orders or instigation. What is worse, they have stated to this Court that the petitioner did not wish to have his injuries treated, which is still more incredible. I, therefore, hold that the 1st and 2nd respondents were also personally responsible and are liable for the torture of the petitioner.

## RELIEF TO THE PETITIONER

In considering the relief to be granted to the petitioner I consider it appropriate to reiterate the repeated condemnation of torture contained in the pronouncements of this Court in *Amal Sudath Silva v. Kodituwakku* <sup>(2)</sup> ; *Geekiyanaige Premalal Silva v. Rodrigo* <sup>(3)</sup> ; *Jayarathne v. Tennakoon* <sup>(4)</sup> ; *Gamalath v. Neville Silva* <sup>(5)</sup> ; *Wimal Vidyamani v. Lt. Col. Jayatilleke* <sup>(6)</sup> ; *Ratnasiri v. Devasurendra* <sup>(7)</sup> ; and *Weerakoon v. Weeraratne* <sup>(8)</sup>. The judgment in the last-mentioned case, stated that it was the worst case of torture which came before this Court since the decision in *Amal Sudath Silva's* case ; but the instant case surpasses that case in that the injuries sustained by the petitioner are irreparable, particularly in view of the fact that one of his lungs had to be surgically removed in treating his injuries. So it seems to me that despite so many decisions, torture at police stations continues unabated, in utter contempt of fundamental rights guaranteed by the Constitution. In granting relief this Court must necessarily have regard to this development. I grant the petitioner :-

- (a) a declaration that his rights under Article 11 of the Constitution have been infringed by executive or administrative action ;
- (b) compensation in a sum of Rupees seventy five thousand (Rs. 75,000) together with costs in a sum of Rupees five thousand (Rs. 5,000) payable by the State ;
- (c) compensation in a sum of Rupees nine thousand (Rs. 9,000) payable by the 1st respondent and a sum of Rupees eight thousand (Rs. 8,000) payable by the 2nd respondent;
- (d) compensation in a sum of Rupees six thousand (Rs. 6,000) payable by the 3rd respondent and a sum of Rupees five thousand (Rs. 5,000) payable by the 5th respondent ;
- (e) compensation in a sum of Rupees two thousand (Rs. 2,000) payable by the 6th respondent and a sum of Rupees two thousand (Rs. 2,000) payable by the 7th respondent.

I direct the State and the said respondents to make payment accordingly and further direct the 8th respondent (The Inspector-General of Police) to take steps for ensuring that the compensation awarded herein is paid to the petitioner expeditiously and to take such other action as the 8th respondent may consider appropriate.

The application against the 4th respondent is dismissed, but without costs.

The 8th respondent is also directed to make a report to this Court on or before 1st July, 1993 as to what steps have been taken by him.

**G. P. S. DE SILVA, C.J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Relief granted.*