

AMAL SUDATH SILVA
v.
KODITUWAKKU, INSPECTOR OF POLICE AND OTHERS

SUPREME COURT.

SHARVANANDA, C.J. ATUKORALE, J. AND L. H. DE ALWIS, J.

S.C. APPLICATION No. 186/86.

MAY 5, 1987.

Fundamental Rights—Torture and/or cruel, inhuman and degrading treatment—Article 11 of the Constitution—Police an organ of the State—Liability of State to pay compensation.

The petitioner has established that he has been subjected to torture and cruel treatment by the Police whoever they be, despite doubts about the exact identification of the particular Police Officers, when he was under arrest. The police force is an organ of the State. The State is liable to pay compensation to the victim.

Per Atukorale, J. "The report of the M.O. is in my view, valueless and unworthy of acceptance. On his own showing it is evident that he has not carried out an independent examination of the petitioner to ascertain whether he had any injuries. It seems to me to be preposterous for any medical officer before whom a suspect is produced for a medical examination in the custody of a police officer to expect him to tell the officer in the very presence of that police officer that he bears injuries caused to him as a result of a police assault. I therefore reject the report of the M.O. as being worthless and unacceptable. The circumstances of this case disclose a gross lack of responsibility and a dereliction of duty on the part of the M.O., Bandaragama."

Per Atukorale, J. "The facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman."

APPLICATION under Article 126 of the Constitution for violation of fundamental rights.

H. L. de Silva P.C with *Anton Fernando, C. J. Fernando* and *Miss L. N. A. de Silva* for the petitioner.

D. S. Wijesinghe with *Miss D. Dharmadasa* for the 1st to 4th respondents.

D. P. Kumarasinghe S.S.C for the 5th and 6th respondents.

Cur. adv. vult.

July 3, 1987

ATUKORALE, J.

This is an application under Article 126 of the Constitution alleging infringements of certain fundamental rights of the petitioner by the 1st to the 4th respondents (hereinafter referred to as the 4 respondents) who were at all times material police officers attached to the Panadura police station. The petitioner pleads that he was arrested by the police on 9.10.1986 on suspicion of having committed theft of side mirrors from several motor vehicles. He was thereafter taken to the Panadura police station and kept in custody for 5 nights without being produced before a Magistrate. During this period of 5 days he states he was severely beaten up by the 4 respondents with batons and was also subjected to physical torture by them by being hung to a beam at the police station by his hands tied to a rope and by his penis being crushed as a result of it being put into a drawer and closed causing him unbearable pain and suffering. He further states that when he asked for water he was given water mixed with chilli powder which he was forced to drink. In his petition he thus alleges infringements of the fundamental rights guaranteed by Articles 11, 12(1) and 13 of the Constitution. At the hearing before us, however, learned President's Counsel appearing for him was content with confining his case to the alleged violation of the right guaranteed by Article 11 only. He contended that there was sufficient material to establish that the petitioner had been subjected to torture and/or to cruel, inhuman or degrading treatment at the hands of the 4 respondents. It was not disputed that such action, if proved, constituted executive or administrative action and that the State would be liable to compensate the petitioner.

The 4 respondents deny that the petitioner was arrested on 9.10.1986. Their position is that he was arrested at or about 6.45 p.m. on 13.10.1986 near the Panadura bus stand by a police party comprising the 1st and the 4th respondents and two other police officers; that when the police party arrived at the bus stand the petitioner dropped his bicycle and took to his heels but was chased and arrested; that whilst being questioned he again attempted to escape when a certain amount of force as was reasonably necessary under the circumstances was used on him to bring him under control and that after conducting investigations the police party returned to the police station at 11.35 p.m. when the petitioner was handed over to the reserve officer who put him in the lock-up. The 4 respondents deny that they assaulted the petitioner or that they subjected him to torture or such treatment as alleged by him.

I do not think it is necessary for me to embark on a detailed analysis of the conflicting averments with regard to the date of the petitioner's arrest since learned President's Counsel has frankly conceded that apart from the petitioner's ipse dixit there is nothing else to support the allegation that the petitioner's arrest took place on the 9th as urged by him and not on the 13th as urged by learned counsel for the 4 respondents. It is, however, necessary that I should on this aspect of the matter point out that the notes of inquiry (1R5) produced by the 1st respondent appear to support the position of the 4 respondents that the arrest took place on the 13th as maintained by them. Be that as it may, in view of the oral submissions made to us at the hearing the crucial issue that arises for our determination is the petitioner's allegation that he was subjected to torture or to cruel, inhuman or degrading treatment by the 4 respondents. For a proper appreciation of the relevant matters pertaining to this issue, it will be helpful if I set out certain events in their chronological sequence which have not been controverted before us. The day after his arrest, namely on the 14th (the time is not clear), the petitioner was taken by Police Constable Senaratne firstly to the Panadura hospital to be produced before the D.M.O. for a medical examination and since the D.M.O. was not available thereafter to the M.O. of the Bandaragama hospital. After the M.O. examined him, he was taken by P. C. Senaratne before the acting Magistrate, Panadura, on the same day who made order remanding the petitioner till the 27th, whereupon P. C. Senaratne took him to the Panadura remand prison and entrusted him to the prison authorities also on the same day. Exhibit 1R9, a certified copy of the

Magistrate's Court case, confirms that the petitioner was produced by P. C. Senaratne before the acting Magistrate on the 14th and that he was remanded to Fiscal's custody till the 27th. It further establishes that on the following day (15th) the petitioner's attorney moved court to call for a report from a government doctor regarding the injuries on the petitioner. The 1st respondent then informed court that the petitioner had already been produced before the M.O., Bandaragama. The Magistrate thereupon made order that the petitioner be produced before him on the following day (16th). It seems to me very probable that this order was made because the Magistrate himself wanted to see the petitioner before ordering a medical examination. On the 16th the petitioner was produced in court in fiscal custody. His attorney then informed court that the petitioner had, inter alia, been hung from a beam at the police station and beaten up and that his penis had been inserted into a drawer and closed. He also drew the attention of Court to the fact that the court itself observed the manner in which the petitioner walked up when the case was called. He also referred to the report of the M.O., Bandaragama, according to which the petitioner had been examined at 8 p.m. on the 14th, and pointed out that it only specified that the petitioner had no external injuries as against the 'Remarks Column' and nothing else. He requested court for an order that the petitioner be produced forthwith before the J.M.O., Colombo, and a report be called from him. The Magistrate made order accordingly and directed that the petitioner be again produced in court on the 20th. On the 20th the petitioner was not produced in court as he was stated to be undergoing medical treatment at the Prison hospital in Colombo. Nor had the petitioner been produced for examination by the J.M.O., Colombo. The Magistrate then directed that the case be called on the 22nd and that the petitioner be produced before him on that day. The petitioner again was not produced in court on that day. Observing that no steps had been taken by the Superintendent of Prisons, Welikada, to produce the petitioner before the J.M.O. on the ground that he was being treated at the remand hospital, the Magistrate directed the Superintendent of Prisons to comply with his order forthwith and to report to court on the 29th. He also called for a medical report from the prison doctor who had treated the petitioner. The petitioner was also ordered to be produced in court on the 29th.

On the 29th the petitioner was produced in court. All 3 medical reports, namely those of the Bandaragama M.O., the prison doctor

and the A. J. M. O., Colombo, were also before court. The report of the Bandaragama M.O. shows that the petitioner was examined by him at 8 p.m. on the 14th. All the cages therein are unanswered and are left blank. As against the Remarks Column he states 'No external injuries'. The report of the prison doctor discloses that the petitioner was admitted to the prison hospital on the 17th and that on an examination of him the same evening he was found to be suffering from pyelitis and that he had two abrasions—one just above the right wrist joint and the other at the back of the left wrist joint. The report of the A.J.M.O. reveals that the petitioner was examined by him on the 24th and that he had three scars—one on the left wrist, one on the right wrist and the other on the lower right forearm—and that he was suffering from traumatic urethritis due to erauma on the penis causing pain and difficulty in passing urine. The A.J.M.O. further states that the petitioner gave a history of having been assaulted by the 4 respondents with clubs after being hung and of his penis being crushed by putting it into a drawer and locking it on the 13th. He also expresses the opinion that the scars are consistent with marks caused by ligatures used for hanging him and that the injuries on him are compatible with the history given by him. On the 29th the petitioner's attorney making submissions to the Magistrate in the light of the A.J.M.O.'s report requested him to issue a notice on the M.O., Bandaragama, to explain why he had stated in his report that there were no external injuries on the petitioner. A notice was issued on him accordingly. He appeared in court on 26.11.1986 in response thereto and stated in court that as the petitioner did not complain of any pain or injuries on being asked by him he reported that the petitioner had no external injuries.

Placing much reliance on the report of the M.O., Bandaragama, and stressing the fact that the petitioner had made no complaint of torture or assault to the acting Magistrate or other person in authority prior to the 15th, learned counsel for the 4 respondents and learned Senior State Counsel for the 5th and 6th respondents contended that the allegations levelled by the petitioner were false and untenable. I am, however, unable to agree with this submission. One significant feature which stands out as being incontrovertible in this case is the presence of injuries on the petitioner as evidenced by the reports of the prison doctor and of the A.J.M.O. Thus even on the assumption that the petitioner bore no injuries at the time of his examination by the M.O., Bandaragama, and his production before the acting Magistrate, yet it

seems manifest to me that from the moment of his arrest by the police party on the 13th up to the time he was examined by the A.J.M.O., Colombo, on the 24th in the custody of the fiscal, the petitioner remained during this entire period in the custody of either the police or the fiscal. Assuming, therefore, that the injuries were not inflicted whilst the petitioner was in police custody, then it would necessarily follow that they were inflicted when he was in fiscal custody. In the absence of any material to the contrary, then the only reasonable inference is that they were inflicted by the fiscal officers in which event too the State would be liable to compensate the petitioner in terms of Article 126 of the Constitution as such action on their part would constitute executive or administrative action.

However a close and careful scrutiny of the salient facts and circumstances of this case would seem to indicate that the injuries on the petitioner were inflicted on him at a time when he was held in police custody. They are not self-inflicted injuries. Nor is it the position of the 4 respondents that they were injuries caused at any time prior to or during the course of his arrest. The police party arrested him on the 13th. He remained in their custody till they returned to the station at about 11.45 p.m. that night. He was then handed over to the reserve officer who took over his custody. He remained in the charge of the reserve officer until Police Constable Senaratne took him first to the Panadura D.M.O.'s office, next to the Bandaragama M.O.'s office and finally before the acting Magistrate and to the remand prison, Panadura, all of which took place on the 14th. According to 1R5 (notes of inquiry) Police Constable Senaratne left the station with the petitioner for this purpose at 6 p.m. and returned at 8.20 p.m. On the very next date (15th) the petitioner's attorney, alleging that there were injuries on the petitioner, moved court to have him examined by a government doctor, while on the following day (16th) the attorney specifically stated to court who caused them and how they were caused and also drew the attention of court to the manner in which the petitioner walked up when the case was called in court. As submitted by learned President's Counsel, it is quite probable that the court having directed on the 15th that the petitioner be produced before it on the 16th, and having seen him, was satisfied that the petitioner exhibited some form of discomfort or pain which needed further investigation. These representations made by the petitioner's attorney in court at the very first opportunity that presented itself to him are of the utmost significance and have to be given due weightage. True, no doubt, the petitioner himself made no such

complaint either to the Bandaragama M.O. or to the acting Magistrate. But his failure to do so must be viewed and judged against the backdrop of his being, at that time, held in police custody with no access to any form of legal representation. The report of the M.O., Bandaragama, is, in my view, valueless and unworthy of acceptance. On his own showing it is evident that he has not carried out an independent examination of the petitioner to ascertain whether he had any injuries. It seems to me to be preposterous for any medical officer before whom a suspect is produced for a medical examination in the custody of a police officer to expect him to tell the officer in the very presence of that police officer that he bears injuries caused to him as a result of a police assault. This seems particularly so when the suspect is produced at the instance of the police themselves and not upon an order of court. I therefore reject the report of the M.O. as being worthless and unacceptable. The circumstances of this case disclose a gross lack of responsibility and a dereliction of duty on the part of the M.O., Bandaragama. I do not entertain the slightest doubt that the A.J.M.O., Colombo, sets out in his report the true and precise nature of the injuries found by him on the petitioner at the time he examined him. Although certain insinuations have been made against the A.J.M.O. in the written submissions filed on behalf of the 4 respondents, at the hearing before us learned counsel, quite properly, made no endeavour to substantiate them or to challenge the description of the injuries or the opinion expressed by the A.J.M.O. in his report. His opinion materially supports the petitioner's position that the injuries on him were inflicted at a time when he was in police custody. I may add that the injuries found by the prison doctor on the petitioner when he examined him on the 17th lends support to the findings of the A.J.M.O. In the circumstances of this case the conclusion is irresistible that the injuries found on the petitioner by the A.J.M.O. have been inflicted on him at a time when he was being held in police custody and this appears to be the real reason for not carrying out, until the 24th, the order of the Magistrate made on the 16th to produce the petitioner forthwith before the A.J.M.O. for a medical examination. I hold that the petitioner has been subjected to torturous, cruel and inhuman treatment as alleged by him by one or more police officers of the Panadura police station whilst being held in police custody at the police station. The petitioner has thus established an infringement of the fundamental right guaranteed by Article 11 of the Constitution by virtue of executive or administrative action and is entitled to relief under Article 126(2).

In view of this finding I do not think it necessary for me on the material placed before this court to arrive at a specific finding as to whether the 4 respondents or any of them perpetrated this crime on the petitioner. In his affidavit the petitioner incriminates all four of them. In the written submissions filed on his behalf it would appear that the allegations are confined to the 2nd respondent only. Exhibit 1R5, a certified extract of the relevant entries in the Information Book, shows that the 2nd and 3rd respondents were not members of the police party that arrested the petitioner on the 13th. Exhibit 2R2, an extract from the Routine Information Book, shows that the 2nd respondent left the Panadura police station at 7 a.m. on the 12th to attend an inquiry at Anuradhapura and returned to the station at 1.50 p.m. on the 15th. It is therefore very improbable that the 2nd respondent had any hand in this sordid episode. This circumstance throws a certain amount of doubt as to the petitioner's identification of the police officers who inflicted injuries on him. Further the petitioner has not set out the material upon which his identification rests. As such it is unsafe, on the material placed before this court, to reach a finding adverse to the 4 respondents. However as the petitioner has established that he has been subjected to torture and cruel treatment by the police, whoever they be, when he was under arrest, the State is liable to pay compensation to the victim of such action.

Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torturous, cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restrictions or limitations whatsoever. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. The police force, being an organ of the State, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances. Just as much as this right is enjoyed by every member of the police force, so is he prohibited from denying the same to others, irrespective of their standing, their beliefs or antecedents. It is therefore the duty of this court to protect and defend this right jealously to its fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental and that the executive by its action does not

reduce it to a mere illusion. This court cannot, in the discharge of its constitutional duty, countenance any attempt by any police officer, however high or low, to conceal or distort the truth induced, perhaps, by a false sense of police solidarity. The facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. They are most revolting to one's sense of human decency and dignity, particularly at the present time when every endeavour is being made to promote and protect human rights. Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects a helpless suspect in his charge to depraved and barbarous methods of treatment within the confines of the very premises in which he is held in custody. Such action on the part of the police will only breed contempt for the law and will tend to make the public lose confidence in the ability of the police to maintain law and order. 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.

For the reasons set out above I hold that the petitioner has succeeded in establishing an infringement of the fundamental right guaranteed by Article 11 by virtue of executive action. In the circumstances of this case I make order directing the State to pay him a some of Rs. 10,000 (Rupees ten thousand) as compensation and a further sum of Rs. 1,000 (Rupees one thousand) as costs of this application. In view of the gravity of this incident I further direct the Inspector-General of Police, who is the 5th respondent to these proceedings, to cause a full inquiry to be made as to who were the officers responsible for inflicting the torture which I have held has been inflicted on the petitioner and to take disciplinary action against such officers. The circumstance that this court cannot, on the material placed before it, bring home to the 4 respondents the allegations made against them by the petitioner will not, in any way, inhibit a finding of guilt against them at such inquiry if further material points to their identity as being the offenders.

SHARVANANDA, C. J. – I agree.

L. H. de ALWIS, J. – I agree.

Application granted, compensation ordered.