

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Application under and in
terms of Article 17 and 126 of the
Constitution of the Republic.

Korawage Ranjith alias “Shantha”,
Masdeniya, Pathawita,
Beralapanathara.

PETITIONER

-Vs

1. Rukman Kumara, Officer-in-
Charge,
The Police Station, Urubokka.

2. Sudusingha, Police Driver
The Police Station, Urubokka.

FR Application No: 338/2017

3. Mahesh Widanapathirana,
Nawarathnawila Tea Factory,
Moragala, Kirulapone.

4. J.A. Janaka Witharana,
Bengamuwa, Urubokka.

5. Pujith Jayasundara, Inspector
General of Police, Police
Headquarters, Colombo 01

6. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS

BEFORE : S. THURAIRAJA, PC, J.
K. KUMUDINI WICKREMASINGHE, J
ACHALA WENAGAPPULI, J

COUNSEL : Mr. Pulasthi Hewamanna with Ms. Githmi Wijenarayana for the Petitioner.

Mr. Shantha Jayawardena with Hiranya Damunupola for the 1st Respondent.
Ms. Ganga Wakishta Arachchi, DSG, for the 5th and 6th Respondents .

ARGUED ON : 29.04.2024

WRITTEN SUBMISSIONS : Petitioners on 28.10.2021 and Further written Submissions on 30.05.2024.
Respondents on 16.08.2021 and Further Written Submissions on 06.06.2024.

DECIDED ON : 06.03.2025

K. KUMUDINI WICKREMASINGHE, J.

The Petitioner filed the instant application alleging that his Fundamental Rights guaranteed by the Constitution were infringed by the 1st to 6th Respondents. After considering the said application, the Supreme Court granted leave to proceed on 05.02.2018 for the alleged infringement of Article 11 and Article 12(1) of the Constitution.

The Petitioner stated that the incident concerning this application occurred on 11.09.2016 around 4.40 p.m., when the Petitioner went with one Chandika Samantha, in Chandika's motor bicycle to find one Vitharana Gamage Gamini who had borrowed the Petitioner's motor bicycle to visit a friend. Having met Gamini at Katapola Urubokka Street, in Kirulapone Junction of Beralapanathara

they stopped nearby and parked next to a shop on the said street. The Petitioner further stated that Gamini parked a few feet away from where Chandika had

parked. Thereafter, the Petitioner mounted his motorcycle and both the Petitioner and Chandika waited for Gamini who went to the nearby shop. For disclosure the Petitioner stated that the motorcycles were parked beside the pavement of the Urubokka Street which is a two way lane approximately 12 feet wide which can sufficiently accommodate the passage of two vehicles without any inconvenience to any party.

Photographic evidence explaining the above situations have been marked as **P1(a)** and **P1(b)**.

The Petitioner stated that shortly afterwards, the 3rd Respondent (whose identity the Petitioner was unaware of at the time) arrived in a small white coloured van and stopped behind Chandika's motorcycle. The 3rd Respondent shouted at Chandika who was on his motorcycle to move his bike so that the van could proceed. The Petitioner stated that the following altercation ensued afterwards;

- a) Chandika explained to the 3rd Respondent that there was sufficient space for him to move through without disturbing him;
- b) The 3rd Respondent threatened Chandika and refused to proceed unless he moved his motorcycle;
- c) Thereafter, the 3rd Respondent confronted Chandika and insisted him to move his motorcycle;
- d) The Petitioner stated that having noticed that a congregation of people had gathered around Chandika, the Petitioner arrived at the scene; in the ensuing commotion anticipating that the 3rd Respondent was going to attack Chandika, the Petitioner intervened and shoved the 3rd Respondent away which pacified any further confrontation;
- e) Thereafter, whilst returning to his motorcycle, he heard a sound of glass shattering and turned around to find the 3rd Respondent with a stone in his hand

and the windscreen of the 3rd Respondent's vehicle was shattered.

The Petitioner stated that the 3rd Respondent walked away leaving his vehicle behind and threatened the Petitioner, Chandika and Gamini, who had also arrived by that time, by stating that they would have to suffer in jail for two weeks' time. The Petitioner stated that in response, Chandika left to lodge a complaint in the Urubokka Police Station. Chandika was unaccompanied in such endeavour and left his motorcycle in the care of the Petitioner and Gamini. The Petitioner stated that while waiting for Chandika, the 3rd Respondent arrived and remained next to the Respondent's van. Shortly afterwards, two police officers of the Urubokka Police arrived and one of them grabbed the Petitioner by the hand and forced him into the back seat of the 3rd Respondent's van. The Petitioner specifically stated in the Petition that no reasons were given to the Petitioner. Meanwhile, Gamini was asked to come to the Urubokka police station which he did on Chandika's motorcycle. Thereafter, the said company proceeded to the Urubokka Police station. The Petitioner further stated that he called Chandika who was at the Police station and informed him of the situation. The Petitioner stated that after he arrived at the police station, at or around 6.10 p.m. Chandika and the Petitioner were forced into a Police cell.

The Petitioner specifically stated that no reasons for such detention were given to the Petitioner. The Petitioner is now aware that Gamini after parking Chandika's motorcycle had left the Police station by this time. The Petitioner stated that after about 30-40 minutes following the detention of the Petitioner and Chandika, the 1st Respondent OIC arrived at the police station accompanied by the 3rd and 4th Respondents. The Petitioner stated that the 1st Respondent ordered the cell in which the Petitioner and Chandika were detained to be opened and thereafter assaulted them repeatedly on their chests with his fists and ordered the 2nd Respondent and an unidentified officer to forcefully move them to a room inside the 1st Respondent's office in the Police Station. None of the police officers who were in the nearby vicinity including the 2nd Respondent intervened to prevent the

aforesaid assault.

The Petitioner stated that the following transpired whilst inside the aforementioned room, which due to the harrowing nature and quick turn of events are set out to the best of the Petitioner's recollection;

- a) The 1st-4th Respondents with the aforementioned unidentified officer were present.
- b) The 1st Respondent directed the 2nd Respondent to bring him a pole; as such the 2nd Respondent procured him a thick pole about three (3) feet in length.
- c) The Petitioner and Chandika were ordered to lie face down and to lift their legs from the knees so that the soles of their feet were pointed outward: Thereafter, the 1st Respondent OIC commenced beating the Petitioner and Chandika repeatedly by bringing down the aforementioned pole on the soles of the Petitioner and Chandika,
- d) The Petitioner exhausted by the beating was unable to lift his feet any longer; The 1st Respondent thereafter turned his wrath on Chandika and continued assaulting him until he also could not lift his feet any longer, The Petitioner further stated that the 2nd Respondent and the aforementioned unidentified officer assisted the 1st Respondent assault Chandika by holding his legs;
- e) The Petitioner stated that the Petitioner's soles of the feet were swollen due to the beating and the Petitioner was thoroughly exhausted and in immense pain;
- f) The Petitioner stated that after the assault described above, they were ordered by the 1st Respondent to stand on their feet and jump. However, neither the Petitioner nor Chandika was able to jump as directed but instead collapsed in exhaustion and pain;
- g) Being so assaulted in front of the 3rd and 4th Respondent further humiliated the Petitioner causing intense humiliation from such agony.

The medico-legal report dated 13.09.2016 explains the evidence regarding the above injuries.

The Petitioner stated that after the torture mentioned above, they were dragged and put into the former cell from which the 1st Respondent OIC extracted them. By this time the Petitioner was completely exhausted and was barely conscious.

The Petitioner had, at this point, been aware that Gamini, upon hearing the screams of the Petitioner and Chandika, rushed to the police station. However, Gamini was also detained after the 3rd Respondent informed the police that he had been present during the incident where the Respondent's vehicle was damaged. The Petitioner alleged that the 1st Respondent was acting under the influence or in collusion with the 3rd Respondent. Furthermore, the Petitioner stated that later in the evening, Chandika's wife and some members of his family visited the police station and witnessed the situation of the Petitioner and Chandika.

The Petitioner stated that later in the evening of 11.09.2016, the Petitioner, Chandika and Gamini, were taken in a police jeep accompanied by unidentified police men to the Heegoda Government Hospital. At the said hospital the said party was produced before Dr Ekanayake, the Medical Officer in charge. The Petitioner further stated that a police officer who accompanied them to the hospital instructed them to explain the cause of the injuries as a result of "running". However, the Petitioner revealed the actual situation to the medical officer. After receiving treatment they were taken back to the police station.

The Petitioner stated that around 2.55 a.m. on the following day [12.09.2016] the Petitioner was dragged out of the cell by two unidentified officers and brought before the 1st Respondent OIC. The following transpired afterwards;

The OIC had with him a bottle shaped object, the lid of which was covered by a paper; the Petitioner was asked to smear his thumb with saliva and to keep his thumb on paper, having refused to comply, one of the officers who dragged the

Petitioner out of the cell was asked to forcefully place the Petitioner's thumb on paper; As such the Petitioner's thumb was placed thrice on paper and thereafter the same thumb was immersed in an ink pad and the routine described was repeated. Thereafter the Petitioner was returned to the cell.

The Petitioner stated that in the following morning on 12.09.2016 around 9.00 a.m. the Petitioner, Chandika and Gamini were taken again to the Heegoda Government Hospital and were examined by the medical officer who treated them during the previous night. The Petitioner further stated that the medical officer instructed the Police officers to admit the Petitioner and Chandika to a hospital immediately.

The Petitioner, Chandika and Gamini were produced before the Learned Magistrate of Mórawaka on the same day [12.09.2016] around 11.30 a.m. as accused in the case bearing number 39592. The Petitioner further states that he was also accused separately in case No. 39596. Having perused the B-reports submitted by the 1st Respondent in the said cases the following, inter alia, is revealed;

In the case No. 39592, it is stated that the 3rd Respondent had been assaulted, threatened and that his vehicle had also been damaged; thereafter, the 3rd Respondent had visited the police station and lodged a complaint therein. Consequent to such, the 1st Respondent had arrested the Petitioner, Chandika and Gamini.

In the case No. 39596, the narration of facts leading to the arrest of the Petitioner for a separate offence is found in B reports dated 12.09.2016 and 26.09.2016. The said B-reports disclose that following a complaint made by the 3rd Respondent via telephone of an assault, the 1st Respondent accosted the Petitioner who tried to evade arrest with another person in a cab; upon inspection a hand grenade was found on the Petitioner at which point the driver of the cab had driven away from

the area:

The Petitioner specifically stated that although the B report of case No. 39592 disclose the presence of the Chandika and Gamini with the Petitioner at the time of arrest, the B reports in case No. 39596 do not disclose the presence of Chandika and Gamini at the time of arresting the Petitioner, who purportedly had been with another person. The Petitioner stated that where the Petitioner had been purportedly arrested together with Chandika and Gamini as borne out by **P4**, there cannot be a separate incident as borne out by **P5 (a)** and **P5 (b)** relating to the same situation.

The Petitioner specifically stated that the foregoing narration borne out in **P4** and **P5(a)** and **P5(b)** is contradictory. Further, such B reports are contrary to the narration of the Petitioner. The Petitioner specifically stated that such narration by the 1st Respondent is fabricated for collateral purposes and steeped in *mala fides* and amply demonstrates the arbitrary and adverse nature of the said

Respondent against the Petitioner.

The Petitioner stated that the Learned Magistrate in the aforementioned case made the following remarks regarding the deplorable treatment meted out to the Petitioner by the 1st Respondent and his officers as borne out by the journal entry of the proceedings in the case No. 39592 on 12.09.2016, which is produced below;

“සැකකරුටද පොලිසිය මඟින් පහර දී ඇති බව නීතිඥ මහත්මිය දන්වයි.... සැකකරු ඉතා අපහසුතාවයෙන් සිටින බව නිරීක්ෂණය කරමි”.

The Petitioner stated that in the following morning (13.09.2016), the Petitioner and Chandika were admitted to the Matara General Hospital whilst Gamini remained in the Matara Prison. The Petitioner states that he obtained treatment in the aforesaid hospital from 13.09.2016 up till 19.09.2016. Thereafter, on 19.09.2016 the Petitioner was returned to the Matara Prison. The Petitioner

specifically stated that he had not recuperated completely by this time. The Petitioner stated that as borne out by **P6** the Petitioner, Chandika and Gamini were to be produced in an identification parade before the Learned Magistrate of Morawaka on 20.09.2016. However, due to the absence of the 1st Respondent, the Petitioner had to remain in prison for six (06) more days until 26.09.2016 until the identification parade was held. The Petitioner's contention is that the 1st Respondent was willfully absent from court on 20.09.2016 in order to harass the Petitioner.

The Petitioner stated that on 26.09.2016 the Petitioner, Chandika and Gamini were produced before the Learned Magistrate of Morawaka and Chandika and Gamini were released on bail. However, the Petitioner was refused bail due to the charges of possession of a bomb in case No. 39596, and was detained further. The Petitioner stated that he was granted bail only on 26.11.2016.

The Petitioner stated that after returning home, the Petitioner visited the office of the Assistant Superintendent of Police (hereinafter referred to as ASP) in Matara to submit a statement explaining the arbitrary arrest and the torture inflicted by the 1st Respondent. The Petitioner stated that to date the Petitioner is unaware of any actions taken by the ASP office regarding his complaint. The Petitioner stated that consequent to a complaint to the National Police Commission of Southern Province [hereinafter referred to as the NPC] about the assault by the 1st Respondent, investigations were carried out and the Petitioner submitted statements and evidence in proof of the assault of the 1st Respondent and his officers. Thereafter, by letter dated 08.02.2017 the Petitioner was informed by the Provincial Director of NPC of Southern Province that the investigation reports have been submitted to the NPC unit in Colombo in order to take appropriate steps against the 1st Respondent and his officers. However, the Petitioner is unaware of any further action taken thereafter.

The Petitioner stated that he still continues to suffer from the injuries caused by the 1st Respondent which occasionally inflame during work. The Petitioner further stated that;

- a) The repercussions of the assault has deprived him of his former employment;
- b) The loss of his income has put an extra strain on his family members and they are left to depend on the meager income earned by his wife.

In the Affidavit of the 1st Respondent, the Respondents have taken the following preliminary objections. The Petitioner has suppressed and misrepresented material facts as morefully pleaded and the Petitioner's Application is time barred and therefore the Petitioner's Instant Application should be dismissed *in limine*.

The 1st Respondent denied the convictions of the Petitioner and labelled the Petitioner as a habitual criminal who has at least 5 previous convictions and the petitioner and his friend was influenced by alcohol. As per to the Written Submission of the 1st Respondent, it stated that when the 1st Respondent was inspecting the Petitioner, he found a hand grenade with him and about 6.30 p.m. the Petitioner was arrested by the 1st Respondent for the offence of possession of a hand grenade. Therefore, the 1st Respondent stated that the Petitioner's arrest was legal and within the procedure established by law.

Owing to the above, the Petitioner filed alleging violations of his fundamental rights guaranteed under Article 11, Article 12(1), Article 13(1) and Article 13(2). The Court has been granted leave on Article 11 and Article 12(1).

Having discussed the above sequences of events as narrated by both parties, I will now consider the alleged infringement of the Fundamental Rights of the Petitioner.

Article 11 of the **Constitution of the Democratic Socialist Republic of Sri Lanka** "*No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"

This right is absolute and cannot be waived, applying to all individuals without exception. The unequivocal nature of this right, coupled with its status as a fundamental provision, unmistakably establishes the Constitution's stance of absolute prohibition against any form of cruel, inhuman, or degrading treatment.

As stipulated above, the Petitioner stated that the 1st Respondent assaulted them repeatedly on their chests with his fists and ordered the 2nd Respondent and an unidentified officer to forcefully move them to a room inside the 1st Respondent's office in the Police Station. According to the Petitioner, none of the police officers who were in the vicinity including the 2nd Respondent intervened to prevent the aforesaid assault.

Chandika's wife visited the police station and witnessed the situation of the Petitioner and Chandika as per the written submission of the Petitioner (as depicted in the affidavit as **P2**). Pathirage Karunawathi Perera (Chandika's wife) through the Affidavit which stated that,

“I state that in the police station I saw my husband and Shantha sprawled in a police cell. I state that I saw that my husband's and Shantha's legs were swollen and were bleeding, I further state that I saw Gamini in the same cell with them.

I further state that my husband was in immense pain and was barely conscious at the relevant time.”

The 1st Respondent has submitted document **1R19**, which is claimed to be a record of the Petitioner's prior convictions. The Petitioner has not disputed the existence of these convictions in their written submissions. However, it is important to recognize that, regardless of the nature of an individual's criminal history, law enforcement authorities, acting as officers of the State with significant statutory powers, must exercise such powers in a manner that preserves the

inherent dignity of the individual. Even the worst criminals are entitled to dignity, and it is imperative that police officers uphold and respect this principle.

The Court has given recognition to the right to human dignity.

As observed by Justice White in **Wolff v. McDonnell [1974] (418 U.S. 539, 555-6,**

“[A] prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons...”

In the recent case of **Rathnayake Tharanga Lakmali v. Niroshan Abeykoon [SC FR 577/10 SC Minutes of 17.12.2019], at page 13** Thurairaja, PC, J affirmed the principle that even suspects of serious crimes must be treated with dignity.

*“The Fundamental Rights Chapter in our Constitution does not expressly refer to a right to life. However, the Constitution, as a living document, should not be construed in a narrow and pedantic sense. I am of the view that constitutional interpretation should be informed by the values embodied in it. The preamble/ svasti of the Constitution recognises Dignity and Well-being of the People as a fundamental value that should be furthered by assuring to all People **FREEDOM, EQUALITY, JUSTICE , FUNDAMENTAL HUMAN RIGHTS** and the **INDEPENDENCE OF THE JUDICIARY**. In my view, recognition of a right to life is in furtherance of this fundamental value.”*(Emphasis Added)

In the case of **Amal Sudath Silva v. Kodituwakku Inspector of Police and Others [1987] 2 Sri LR 119, at Page 126-127** Athukorala J stated as follows,

“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 torture some, 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.”

In Ajith C. S. Perera v. Minister of Social Services and Social Welfare and Others [2019] 3 Sri LR 275, at page 301 Prasanna Jayawardena, PC, J mentioned as follows

“ ... it seems to me that the concept of human dignity, which is the entitlement of every human being, is at the core of the fundamental rights enshrined in our Constitution. It is a fountainhead from which these fundamental rights spring forth

and array themselves in the Constitution, for the protection of all the people of the country.”

In Kandawalage Don Samantha Perera v. Officer in Charge, Hettipola Police Station and Others [SC (FR) Application No. 296/2014; SC Minutes of 16.06.2020], at page 05 Thurairaja, PC, J referring to the above passage stated that,

“I am in respectful agreement with his Lordship that ‘Human Dignity’ is a constitutional value that underpins the Fundamental Rights jurisdiction of the Supreme Court. I am of the view that ‘Human Dignity’ as a normative value should buttress and inform our decisions on Fundamental Rights.”

Considering the facts of this case, physical torture against the Petitioner and Chandika in the presence of the 3rd and 4th Respondent whilst the arrest and detention, has been established by the Petitioners.

Learned Magistrate on 12.09.2016 has observed that the Petitioner was in immense discomfort (as depicted in the **P6**):

“1 වන සැකකරුටද පොලීසිය මගින් පහර දී ඇති බව නීතිඥ මහත්මිය දන්වයි. 1 වන සැකකරු මාතර මහ රෝහලේ අධිකරණ වෛද්‍යවරයා වෙත කායික පරීක්ෂාවක් සඳහා ඉදිරිපත් කිරීමට බන්ධනාගාර අධිකාරීවරයාට නියම කරමි. අධිකරණ වෛද්‍යවරයා වෙත ඉදිරිපත් කරන තෙක් බන්ධනාගාර රෝහලේ වෛද්‍යවරයා වෙත ඉදිරිපත් කිරීමට නියම කරමි. සැකකරු ඉතා අපහසුවෙන් සිටින බව නිරීක්ෂණය කරමි.”

According to the Petition, the Medical Officer in charge (Dr. G.D.K.K.Ekanayake) of Urubokka Regional hospital has observed that the Petitioner was in pain and discomfort at the time he was produced to the doctor by police and that the Petitioner complained of pain in his feet.

“නිරීක්ෂණය:- පොලීසිය මඟින් අත් අඩංගුවට ගෙන ඉදිරිපත් කළ අවස්ථාවේ ඔහු අපහසුවෙන් වේදනාවෙන් සිටින බව පෙනුණි. පාද රිදෙන බව පමණක් ප්‍රකාශ කරන ලදී. වේදනා නාශක ඖෂධ ඉල්ලා සිටින ලදී.”

As per the Medical Report of the Medical Officer in charge (Dr. G.D.K.K.Ekanayake), it further stated that,

පොලීසිය මඟින් දෙවන වරටත් ඔහු ඉදිරිපත් කරන ලදී. එහිදී ඔහු පවසා සිටියේ පාද දෙක රිදෙන බවයි. ඇවිදීමට අපහසු බව ප්‍රකාශ කරයි. පොලීසිය තුළදී පහරදීමක් සිදුවූ බව ප්‍රකාශ කරයි.

අපහසුවෙන් ඇවිදින බව පෙනේ. පාද දෙකෙහි යටිපතුල් ඇමුණුම 01 රූපසටහනේ පෙනෙන පරිදි නිල් පැහැ ගැන් වී ඇත.

පොලීසිය මඟින් අත් අඩංගුවට ගෙන පසුව පහරදීමක් සිදු කළ බව පවසන නිසාත් වැඩිදුර පරීක්ෂාවන් සඳහා අධිකරණ වෛද්‍යවරයා වෙත ඉදිරිපත් කිරීමට උපදෙස් ලබා දෙන ලදී.”

As set out in the written submission of the Petitioner, the Petitioner by complaining that there was pain in his legs and requesting for pain medication coupled with the doctor’s observations clearly establish that the petitioner was in pain and discomfort at the time he was produced to the doctor by the police.

Moreover, Medico-Legal Reports of the JMO’s office clearly state that the Petitioner had a laceration measuring 1 cm × 1cm on the lateral aspect of left foot to the ankle joint and 6 cm × 4 cm contusion on the dorsal aspect of the right foot. According to the Affidavit of the Sergeant Kumarawansa marked as **1R4(a)**, he stated that,

“I state that at that moment Korawakage Ranjith alias Shantha was arrested for the offence of possessing a hand grenade, I state that at the time of arrest Korawakage Ranjith alias Shantha was smelling of alcohol.”

However, the Medico Legal Report of JMO's office of the General Hospital, Matara stated that the patient was not under the influence of liquor. This observation further disproves the Respondents position as to the Petitioners condition at the time of arrest.

It is a fundamental right that police officers should respect the right of all arrested persons and detainees to be free from torture, or other cruel, inhuman, or degrading treatment, as guaranteed by Article 11 of the Constitution. Such prohibited acts include the use of threat and language that may impair the detainee's capacity to think and act voluntarily and make voluntary statements.

A police officer should resort to the use of force only to achieve a legitimate objective associated with discharging their duties, and in a manner that is prescribed by law. In the event that a police officer is required to use such force, such force must strictly adhere to principles of necessity, reasonableness and proportionality. Any order by a senior police officer authorising the use of force should set out clear parameters for the use of force in compliance with the law. Such senior police officers should take full responsibility for any unnecessary, unreasonable or disproportionate use of force taken in terms of such orders. Where the use of force is lawfully required, all deployed police officers must make every effort within their capacity to avoid the loss of life and to minimise damage and injury to any person, including a person being arrested or an arrested person or detainee who is being transferred. Such efforts include providing medical aid to any injured or affected persons as a consequence of the use of force by the police.

Considering Article 11, in **W.D.K. de Silva v Ceylon Fertilizer Corporation [1989] 2 Sri L.R. 393, at page 405** Per Amerasinghe, J.

“ In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental, is without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a

person (whom I shall refer to as the 'victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach of a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be.”

Article 1 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** defines torture as any intentional act that causes severe physical or mental pain or suffering. This includes acts committed to obtain information or confessions, to punish someone for an act they or others have committed or are suspected of committing, or to intimidate or coerce them or others. It applies when such pain or suffering is inflicted by or with the consent or acquiescence of a public official or someone acting in an official capacity.

In Landage Ishara Anjali (Minor) and another v. Waruni Bogahawatte and Others [SC (FR) No.677/2012 SC Minutes of 12.06.2019]at page 16 Justice Aluwihare, PC refers to Dr. Amerasinghe J, in **Silva v. Chairman, Fertilizer Corporation**, analyzing the concept of inhuman treatment observed that;

“The treatment contemplated by Article 11 wasn’t confined to the realm of physical violence. It would rather embrace the sphere of the soul or mind as well.”

Section 12 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No.22 of 1994** defines "torture" as any act causing severe physical or mental pain to another person. This includes acts done to obtain information or confessions, to punish for an alleged offence, or to intimidate based on discrimination.

Article 5 of the **Universal Declaration of Human Rights** sets out that everyone has the right to be protected from torture and from cruel, inhuman, or degrading treatment or punishment.

When evaluating the evidence of the Petitioner in demonstrating the alleged violation of Article 11. Cases involving allegations of torture, the standard of proof required is that of a balance of probability, but it necessitates a higher degree of certainty in favor of the petitioner's case.

In the case of **Channa Pieris and Others v. Attorney-General and Others [1994] 1 Sri LR 1, at page 6** Amerasinghe J held that in considering whether Article 11 has been violated, three general observations apply:

- I. *“The acts or conduct complained of must be qualitatively of a kind that a Court may take cognizance of. Where it is not so, the Court will not declare that Article 11 has been violated.*
- II. *Torture, cruel, inhuman or degrading treatment or punishment may take many forms, psychological and physical.*
- III. *Having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a petitioner endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment.”*

The necessity for such a high degree of proof is reaffirmed in **Nandasena v. Chandradasa Officer in Charge Police Station Hiniduma and Others [2006] 1 Sri LR 207, at page 213** where it was held that:

“...it would be necessary for the Petitioner to prove his position by way of medical evidence and/or by way of affidavits and for such purpose it would be essential for the Petitioner to bring forward such documents with a high degree of certainty for the purpose of discharging his burden...”

As per the Learned Magistrate's observations which is produced below,

“සැකකරුවාද පොලීසිය මඟින් පහර දී ඇති බව නීතිඥ මහත්මිය දන්වයි.... සැකකරු ඉතා අපහසුතාවයෙන් සිටින බව නිරීක්ෂණය කරමි.”

The medical reports clearly state the nature of the injuries of each accused. The Petitioner's medical report corroborates the Petitioner's version of how he sustained injuries. Also the Affidavit of Chandika's wife which is marked as **P2**, states that she saw her husband lying injured on the floor of the police cell.

Further, according to the letter submitted by the Assistant Superintendent Police of Special Investigation Unit dated 31.07.2019, it stated that,

“මාතර මහරෝහලේ අධිකරණ වෛද්‍ය නිලධාරීනි පී ඩී එන් එච් පී ගුණවර්ධන මහත්මිය විසින් තුවාලකරුවන් පරීක්ෂාවට ලක් කර ඇති අතර, තුවාලකරු වන්දික

සමන්ත යන අය පරීක්ෂා කර පාද වල තුවාල නිරීක්ෂණය කර වාර්තාවට තුවාල 6ක් සම්බන්ධවද, රංජිත් නොහොත් ශාන්ත යන අය පරීක්ෂා කර පාද වල තුවාල 02 ක් සම්බන්ධවද, එතුමියගේ වාර්තාවේ සඳහන් කර ඇත”.

Considering all available evidence in this regard, I find the Fundamental Rights of the Petitioner enshrined in Article 11 of the Constitution has been violated by the Respondents. When considering the available evidence, the conduct and actions of the Respondents clearly demonstrate the gravity of the offenses they have committed.

I will now consider the alleged infringement of Article 12(1) of the Constitution.

Article 12(1) of the Constitution guarantees,

'All persons are equal before the law and are entitled to equal protection of the law.'

The fundamental aim of Article 12(1) is to protect individuals from arbitrary, capricious, irrational, unreasonable, discriminatory, or vexatious actions by executive or administrative bodies. Article 12(1) of the Constitution guarantees

both equality before the law and equal protection under the law. In its Full Bench decision in **Sampanthan et al. v. Attorney-General et al.** [SC FR 351-356 & 358-361/19, SC Minutes of 13.12.2018], this Court affirmed that the right guaranteed by Article 12(1) also includes the protection of the 'Rule of Law,' referencing jurisprudence established in **Jayanetti v. Land Reform Commission** [1984] 2 Sri LR 172 and **Shanmugam Sivarajah v. OIC Terrorist Investigation Division and others** [SC FR 15/2010, SC Minutes of 27.07.2017].

In the case of **Rajapaksha v. Rathnayake and Ten Others** [2016] Sri L.R 1 119, at page 130, His Lordship Justice Sisira de Abrew stated that;

“When the 1st Respondent arrested the petitioner without any reasons and fabricated a false charge against him, can it be said that he got equal protection of law and that the 1st Respondent applied the principle that 'all persons are equal before the law' to the petitioner? This question has to be answered and is answered in the negative. It is now proved that the petitioner was arrested and detained in the police station without any reason and the charge framed against him was a fabricated charge. Thus the principle that 'all persons are equal before the law and are entitled to the equal protection of the law' has not been applied to the petitioner by the 1st Respondent.”

It is clear that the power of arrest must not be exercised arbitrarily, as doing so would violate the Petitioner's right to equal protection under the law. **Section 32(1)** of the **Code of Criminal Procedure Act, No. 15 of 1979 as amended** describes that a peace officer could arrest a person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion. In the present case, according to the Affidavit of the 1st Respondent, it stated that the 3rd Respondent has made a complaint to the personal mobile phone of the 1st Respondent.

According to the letter submitted to the Legal Aid Commission by the ASP of Special Investigation Unit dated 31.07.2019, it stated that,

“කිරිලපන හංදියේදී සිදු වූ සිද්ධියට අදාලව අත් අඩංගුවට ගත් සැකකරුවන්ට විරුද්ධව උතුරු බොක්ක පොලිස් ස්ථානයේ ස්ථානාධිපති පො.ප. රුක්මන් කුමාර නිලධාරියා විසින් සිදු කරනු ලැබූ විමර්ශන සඳහා සිද්ධිය දුටු බවට ප්‍රකාශයක් ලබා දී ඇති දෙණියාය පාර, සිරිසෙවන, වරලේල, කොස්මෝදර පොලිස් වසමේ පදිංචි මදරසිංහ සිරිවර්ධන රජීත් යන අයගේ ප්‍රකාශ සටහන් කළ අතර ඔහු විසින් ප්‍රකාශ කර සිටින්නේ අලාභ වූ වැන් රථයේ අයිතිකරු මහේෂ් විදාන පතිරණ යන අයගේ කීම මත හා උතුරු බොක්ක පොලිස් ස්ථානාධිපතිවරයාගේ කීම මත උතුරු බොක්ක පොලිස් ස්ථානය වෙත හා මාතර පොලිස් අධිකාරි කාර්යාලයට අසත්‍ය ප්‍රකාශ ලබා දුන් බව සහ ඵ්වැනි සිද්ධියක් තමා නොදුටු බවයි.”

It further stated that,

“උතුරු බොක්ක පොලිස් ස්ථානයේ බුද්ධි අංශයට අනුයුක්ත පො.කො. 60855 සේනාරත්න නිලධාරියා විසින්, මෙසේ අත්අඩංගුවට ගන්නා ලද වන්දික සමන්ත පොලිස් ස්ථානයේදීද රංජීත් නොහොත් ශාන්ත කිරිලපන හංදියේදීද යතුරු පැදි සංචාරයේ පො.කො. 77858 ධනුෂ්ක හා පො. කො. 89342 රංගජීව යන නිලධාරීන් විසින් අත්අඩංගුවට ගැනීම සම්බන්ධයෙන් තොරතුරු ලැබුණු බවටත්, ඔවුන් අත්අඩංගුවට ගන්නා අවස්ථාවේ අත්බෝම්බයක් නොතිබූ බවට තොරතුරු ලැබුණු බවත්, දන්වා ප්‍රකාශ ලබා දී ඇත.”

According to the Affidavit of Manage Somadasa, a bystander to the incident (as depicted in the affidavit as **P3**) confirms the position that it was not the Petitioner who smashed the windscreen. He stated that on his Affidavit,

“ I state that to my surprise as Chandika and Shantha left Mahesh, I saw Mahesh pick a large stone nearby his vehicle and smash the windscreen of his vehicle with it.”

The 1st Respondent averred that he was out on patrol on 11.09.2016 with the 2nd Respondent and three others when the 3rd Respondent made the complaint at 5.30 p.m. according to the paragraph 7(c) of the Affidavit of the 1st Respondent. Further, according to the documents marked **1R1** and **1R3**, it stated that police officers left the police station for an investigation. However, it is clear that when the Petitioner was arrested by the Respondents, the team did not have even one set of handcuffs between them. The 1st Respondent averred in his Affidavit that when he was searching the Petitioner, he found a hand grenade hanging from his trouser belt. After that the Petitioner was arrested by the 1st Respondent and the team for the offence of possessing a hand grenade and that at the time of arrest the Petitioner smelled alcohol. The Petitioner specifically stated that no reasons were given to the Petitioner regarding the arrest or detention.

As per to the Section 23(1) of the Code of Criminal Procedure Act, No 15 of 1979 as amended, *“In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the -custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.”*

Police officers should respect the right of every person to be presumed innocent until proven guilty as guaranteed by Article 13(5) of the Constitution. This requirement is designed to provide the arrested person with the opportunity to challenge the arrest promptly. While there is no need for a specific form or a detailed description of the charges, it is essential that the arrested person is informed in straightforward, non-technical language that they can understand, outlining the fundamental legal and factual grounds for their arrest as soon as reasonably possible. Where a person is arrested on suspicion that he or she has committed an offence, such suspicion must be reasonable. In **Dumbell v. Roberts [1944] 1 All ER 326** Scott LJ observed:

“The principle of personal freedom, that every man should be presumed innocent until he is found guilty, applies also to the police function of arrest.....For that reason it is of importance that no one should be arrested by the police except on grounds which in the particular circumstances of the arrest really justify the entertainment of a reasonable suspicion.”

In **Muttusamy v. Kannangara [1951] 52 NLR 324**, Gratien J emphasised that the arresting officer must entertain such reasonable suspicion before he arrests the person concerned. Thus, the arresting officer cannot arrest a person in the course of a voyage of discovery. In **Suriyarachchige Lakshman de Silva and others v. OIC Police Station, Kiribathgoda [SC(FR) 09/2011 SC Minutes of 03.03.2017]**, at page 14 H.N.J.Perera, J refers to Priyasath Dep, PC, J, in **Dhammarathana Thero v. OIC Police Station, Mihintale, [SC(FR)313/2009 SC Minutes 9.11.2011]** the Court observed that

“...there should be a reasonable complaint, credible information or a reasonable suspicion where arrests are made without a warrant.”

In the **“General Guidelines and Recommendations to Sri Lanka Police on Preventing Custodial and Encounter Deaths”** by the Report of Human Right commission, **11.12.2023** emphasised that,

“During preliminary investigations, all suspects should be afforded the right not to self-incriminate. Police officers should respect the right of any suspect to remain silent and not be forced under any circumstance to make any self-incriminating statements.

An arrested person should be immediately afforded the opportunity to communicate with their family or a friend of their choice regarding the arrest. Such right is guaranteed by section 15(2) of the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018. Such

arrested persons should be afforded the opportunity to communicate the reason for their arrest, the place of arrest, the police station from which the arrest was made, and the place of detention.”

The actions of the Respondents in arresting and detaining the Petitioner without proper justification or reasonable suspicion, and their failure to inform the Petitioner of the charges at the time of arrest, constitute a clear violation of the Petitioner's rights under Article 12(1) of the Constitution. The Respondents' conduct was not in accordance with the constitutional guarantees of equality before the law and protection from arbitrary detention.

Considering the liability of the 3rd Respondent, it is evident that the torture and degrading treatment inflicted upon the Petitioner were carried out at his instigation and encouragement. The 3rd Respondent not only threatened the Petitioner with incarceration for 14 days but also actively witnessed the 1st and 2nd Respondents torturing the Petitioner and Chandika within the premises of the Urubokka Police Station. Furthermore, the undisputed fact that the 3rd Respondent was present at the Urubokka Police Station during the time in question further underscores his involvement and tacit approval of these unlawful actions, making him liable for the violations committed (as depicted in the P6). Therefore, it can be established that the 3rd Respondent instigated Petitioner's arrest, detention and torture using his influential position. The acts of the 3rd Respondent, considered in isolation, cannot be regarded as 'executive or administrative action'; the question is whether the nexus between those acts and the acts or omissions of the 1st and 2nd Respondents was sufficient to transform what would otherwise have been purely private action into 'executive or administrative action. The infringement of the Petitioner's fundamental rights was the consequence of the actions of the 3rd Respondent.

In **Faiz v Attorney General and others [1995] 1 Sri LR**, at page 376, Mark Fernando J emphasised that,

“Article 126 speaks of an infringement by executive or administrative action; it does not impose a further requirement that such action must be by an executive officer. It follows that the act of a private individual would render him liable, if in the circumstances that act is “executive or administrative”. 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; 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. While I use concepts and terminology of the law relating to agency, and vicarious liability in delict, in my view responsibility under Article 126 would extend to all situations in which the nexus between the individual and the executive makes it equitable to attribute such responsibility. The executive, and the executive officers from whom such authority flows would all be responsible for the infringement. Conversely, when an infringement by an executive officer, by executive or administrative action, is directly and effectively the consequence of the act of a private individual (whether by reason of instigation, connivance, participation or otherwise) such individual is also responsible for the executive or administrative action and the infringement caused thereby. In any event this court would have power under Article 126(4) to make orders and directions against such an individual in order to afford relief to the victim.”

Considering the liability of the State, the Police force is an organ of the State and the State should respect the duty and responsibility to protect the fundamental

rights of the citizens. In **Amal Sudath Silva v Kodituwakku Inspector of Police and Others [1987] 2 Sri LR, at page 119** stated that,

“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.”

The State is liable for all the violations of the Petitioner's fundamental rights, as they resulted from actions taken by the 1st and 2nd Respondents. In **Landage Ishara Anjali (Minor) and another v. Waruni Bogahawatte and Others [SC (FR) No.677/2012 SC Minutes of 12.06.2019], at page 21**, Justice Aluwihare, PC,J stated that,

“This Court also takes an opportunity to note with concern the increasing number of incidents of abuse of power by law enforcement authorities. There is no doubt that what is brought before Courts is a fragment of the totality of incidents taking place across the country...”

Furthermore, in **Rannula Sugath Mohana Mendis v D.K.A.Sanath Kumara and others [SC (FR) No 100/2022 decided on 06.10.2023], at page 14**, Thurairaja, PC, J emphasised that,

“If this Court were to criticise the actions of the Police Force, it need not look further than the police motto itself; “ධම්මෝ භවේ රක්කති ධම්මවාච්චි” which states “those who live by the Dhamma are protected by the Dhamma”. One would expect that the Police force of Sri Lanka would follow this motto when carrying out their duties, without mala fide. However, we observe, they have failed to stick to the basics of their code of conduct and the principles of natural justice.”

The liability of the State arises from its duty to protect and uphold the fundamental rights of its citizens, a responsibility that extends to all its organs, including the Police Force. As an integral part of the State, the Police are expected to act within

the bounds of the law and with respect for individual rights. When the Police, or any state agency, engage in actions that violate these rights, the State is held accountable for the harm caused. This liability is not only a matter of legal obligation but also a reflection of the State's commitment to justice, fairness, and the rule of law. Therefore, when the actions of the Police lead to the infringement of fundamental rights, the State bears responsibility for rectifying those wrongs and ensuring that such violations do not recur. Accountability, transparency, and adherence to ethical standards are crucial in maintaining public trust and upholding the constitutional guarantee of protection for all citizens.

I have carefully considered all material before this Court and it is clear that the 1st, 2nd and 3rd Respondents' versions of facts and evidence are inconsistent. Torturing and assaulting the Petitioner brutally by the Police cannot be accepted.

In Weheragedara Ranjith Sumangala v Bandara, Police Officer and others [SC (FR) No.107/2011 SC Minutes of 14.12.2023], at page 59 stated that,

“.....the amount of compensation awarded must sufficiently reflect the gravity of the offences as well as the audacity of the offenders. Especially where violations of Article 11 are to be found, it is necessary to award compensation in such amounts adequate to deter such degenerates.”

Having examined the facts of the case and material placed before this Court, I allow the Application of the Petitioners and hold that their fundamental rights as guaranteed by Article 11 and Article 12(1) have been infringed upon by the acts of the 1st, 2nd and 3rd Respondents and the State.

Hence, the Respondents are ordered to pay compensation to the Petitioner in the following manner:

1. The 1st Respondent is ordered to pay as compensation a sum of Rs. 1000,000/- (Rupees One Million);

2. The 2nd Respondent is ordered to pay as compensation a sum of Rs. 1000,000/- (Rupees One Million);
3. The 3rd Respondent is ordered to pay as compensation a sum of Rs. 1000,000/- (Rupees One Million).
4. The State is ordered to pay as compensation a sum of Rs.500,000/- (Rupees Five-Hundred Thousand).

The 1st, 2nd and 3rd Respondents are to pay the aforementioned sums, within six months from the date of judgement, out of their personal funds. Furthermore I direct the State to pay as compensation to the Petitioner within six months from the date of this judgment.

Application Allowed.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE SUPREME COURT