

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

In the matter of an application under
and in terms of Article 126 of the
Constitution read with Article 17 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Wijewickrama Manamperig Leelawathi
Udahawatta,
Ulahitiyawa,
Middeniya.

Petitioner

S.C.(FR) Application No. 85/2015

Vs.

1. Priyantha Kulathunga,
Police Sergeant (54471),
Sooriyawewa Police Station,
Sooriyawewa.
2. Chaminda Prabath,
Police Constable (35079),
Sooriyawewa Police Station,
Sooriyawewa.
3. J. Chandana,
Police Constable (38261),
Sooriyawewa Police Station,
Sooriyawewa.
4. Sunil Shantha,
Police Constable (40720),
Sooriyawewa Police Station,
Sooriyawewa.
5. K.A.Sampath Peiris,
Police Constable (39716),
Sooriyawewa Police Station,

- Sooriyawewa.
6. Sisira Padma Kumara,
Police Constable (61985),
Sooriyawewa Police Station,
Sooriyawewa.
 7. N.K.Illangakoon
Inspector General of Police,
Police Headquarters,
Colombo 01.
 8. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

Respondents

- BEFORE** : L.T.B. DEHIDENIYA, J.
A.L. SHIRAN GOONERATNE, J.
ACHALA WENGAPPULI, J.
- COUNSEL** : Lakshan Dias with Maneesha
Kumarasinghe for the Petitioner.
Anuja Premaratne P.C. with Naushalya
Rajapaksha for the 1st, 2nd, 3rd and 6th
Respondents.
Dushantha Kularatne with Roshan Pathirana
instructed by Iranga Wijegunawardena for the
4th and 5th Respondents.
Ms. Induni Punchihewa SC for the Hon.
Attorney General.
- ARGUED ON** : 09th August, 2021
- DECIDED ON** : 12th January, 2023

ACHALA WENGAPPULI, J.

The Petitioner, one *Wijewickrama Manamperige Leelawathi* of *Middeniya*, invoked the jurisdiction conferred on this Court under Articles 17 and 126 of the Constitution by her petition dated 13.03.2015, and sought a declaration that the fundamental rights guaranteed to her son *Liyana Arachchige Samantha*, under Articles 11, 12(1), 13(3), 13(4) and 13(5), had been violated by the executive or administrative actions of the 1st to 6th Respondents on the allegation that he had died whilst being held under Police custody, after he was severely beaten with pipes, poles and sticks at the time of his arrest. It was averred by the Petitioner in her petition that 35-year old *Liyana Arachchige Samantha* is the third of her six children. He was living with one *Kadukannage Sriyalatha* at the time of his death and earned his living as a mason. He was known to his fellow villagers as *Pallam Sudu Putha* or *Pallam Sudu Aiya*.

When this application was supported on 09.01.2017, this Court granted Leave to Proceed for alleged infringement of Articles 11, 12(1) and 13(4) of the Constitution.

In describing the chain of events that culminated with the death of her son, the Petitioner stated that her son was arrested by two Police officers on 19.02.2015 between 4.00 – 5.00 p.m. while returning home on his motorcycle. Two Policemen had stopped *Samantha* near the 2nd sluice gate of the 4th bund of *Viharagala* Tank and questioned him about a hidden stock of illicit liquor. Thereupon, the Policemen removed his shirt and tied his hands with it. They had then questioned *Samantha* and demanded to reveal where he had kept his stock of illicit liquor concealed. The questioning by the two Policemen had turned violent,

when they repeatedly assaulted *Samantha* with a hose pipe, which continued even after he had fallen on the ground. *Samantha* was initially crying out loud calling for help but started screaming murder as the assault had continued with heightened intensity. Upon hearing his screams, some of his fellow villagers have come near the place and saw the attack on *Samantha*. He was thereafter taken to his house, that had been lay abandoned after his wife deserted him few years back, and there too the assault continued. He was initially beaten with a black hose pipe by the two Policemen and when joined by another four, who were in uniform and had arrived there in two motorcycles, poles and sticks were also used. The reinforcements had arrived after one of the two Policemen gave a call to someone asking to come. One of the Policemen had emerged from the nearby abandoned house with a bottle in his hand and poured its contents into a 10 litre can, which the officers had brought along with them. Thereafter, the group of Policemen had left the scene, carrying *Samantha* with them, in one of their motorcycles.

The 1st, 2nd, 3rd and 6th Respondents have collectively filed their objections resisting the application of the Petitioner, whereas the 4th and 5th Respondents have filed their objections individually. Despite being represented by their respective Counsel, the 1st to 6th Respondents were unanimous in adopting their stance that the deceased *Liyana Arachchige Samantha* did not die in Police custody and his death had occurred whilst in the custody of Prison officers, who kept him under their detention, until he fulfilled his bail conditions. They also specifically deny having assaulted *Samantha* and assert that he did not disclose of any assault by 1st to 6th Respondents, either to the medical staff or to the Magistrate, who visited him at *Hambantota* Hospital.

According to the 1st, 2nd, 3rd and 6th Respondents, they left their station at 8.30 a.m. on 19.02.2015, as they were to conduct preventive measures under the Excise Ordinance. Whilst on duty, the 2nd Respondent received information that a person possessing a quantity of illicit liquor was travelling near *Viharagala* junction. The officers decided to make a detection and have positioned themselves near *Viharagala* tank, awaiting the arrival of that person. Then they saw one person, matching with the description given by the informant, walking along the bund carrying a can. When they approached him, he started to run, leaving behind his can. After giving a chase, he was apprehended and the officers have identified him as *Samantha* alias *Pallan Sudda*, who by then had several prosecutions for illegally possessing illicit liquor. According to the 1st, 2nd, 3rd and 6th Respondents, *Samantha* had sustained injuries due to a fall, after fleeing from them. They recovered 8250 ml of suspected illicit liquor from the possession of *Samantha*. None of the officers involved with the arrest did assault him. He was then produced at the Station at 6.48 p.m. along with the productions and his personal belongings, which included some cash and a hand phone.

In replying to the allegation of assault, the 1st, 2nd, 3rd and 6th Respondents state that *Samantha* had sustained abrasions “on the back of his body” after being tripped over the protruding *Margosa* roots, while running away from them. They further state that, in the following morning it was found that *Samantha* had suffered injuries to his eyebrow, nostrils and cheek after a fall from a cement bench, whilst being kept in the cell of *Sooriyawewa* Police, subsequent to his arrest. The 1st to 6th Respondents tendered their notes of investigation along with their individual affidavits, in support of their respective positions.

The 4th Respondent takes up a preliminary objection in his objections as to the standing of the Petitioner to invoke jurisdiction of this Court and further claims that it was the 2nd and 6th Respondents, who made the arrest and he had merely gone to the place of arrest, having assumed duties just four days before. He makes an allegation that *Samantha* had been brutally assaulted by Prison guards, after he made a failed attempt to escape from their custody. The 4th Respondent challenges the accuracy of the out entry made by the 1st Respondent on 19.02.2015 at 8.30 a.m., which indicated that he (the 4th Respondent) too had left the station with other Respondents and thereby contradicting his claim that he went there only after the arrest was made.

The preliminary objection on the standing of the Petitioner was also taken up by the 5th Respondent. He too claims that *Samantha* was taken to the Station by the 1st Respondent in his motorcycle and despite the arrest was made by the 3rd Respondent, the 1st Respondent had made notes claiming responsibility to the arrest. The 5th Respondent also takes up the position that he had merely visited the place of arrest and *Samantha* had no visible injuries when the latter was handed over to the reservist. The 5th Respondent also alleged that it was the Prison guards, who have assaulted *Samantha* after his failed attempt to escape and as a result his "*condition has got worsen*". He further suspects foul play, in stating that *Samantha* had died after he was administered an injection by the medical staff at *Hambantota* Hospital.

At the hearing, the 4th and 5th Respondents did not pursue their preliminary objection, perhaps in view of the pronouncement made by this Court in rejecting a similar objection, in the Judgment of *Lama Hewage Lal (Deceased), Rani Fernando (Wife of deceased Lal) and*

Others v Officer in Charge - Minor offences, Seeduwa Police Station and Others (2005) 1 Sri L.R. 40, by observing thus;

“It is therefore settled law that the lawful heirs and/or dependants of a person who is deceased as a result of an act of torture should be entitled to a declaration of the violation and compensation”.

In this instant, the Petitioner is the mother of the deceased person and for that reason she is also one of the lawful heirs of her deceased son. Therefore, she has the necessary standing to invoke jurisdiction of this Court for violation of the fundamental rights of her son.

Now I proceed to consider the merits of her application.

It is the 1st to 6th Respondents’ contention that the Petitioner had failed to establish her allegation of violation of fundamental rights that had been made against them to the required degree of proof, being a *“high degree of certainty”*. The Respondents further contended that when the several discrepancies in the version of events, as narrated by the witnesses of the Petitioner, are considered along with the reason attributed by the deceased himself as to the cause of the injuries he had suffered to his face, the Petitioner has failed to prove that the fundamental rights guaranteed under Articles 11, 12(1) and 13(4) of the Constitution had been infringed by them.

In *Malinda Channa Pieris vs. AG. and Others* 1994 1 Sri LR 1 it was stated that unless the petitioner had adduced sufficient evidence to satisfy the Court, he will fail to obtain a declaration of infringement of his fundamental rights. This has been the accepted norm in International Courts as in *Fillkastre vs. Bolivia* (HRC. 5.11.1991 - UN Committee on Human rights) the U.N. Committee on Human Rights had

held that there was no violation because the allegations had not been substantiated or corroborated.

A series of decided cases *Thadchanamoorthi v Attorney-General* (1980) FRD 129, *Goonewardene v Perera* (1983) 1 Sri LR 305, *Kapugeekiyana v Hettiarachchi* (1984) 2 Sri LR 153, *Channa Peiris & Others v Attorney-General* (ibid) had clearly laid down the principle that the civil standard of persuasion would apply and a high degree of certainty would be required 'before the balance of probability might be said to tilt in favour of a petitioner' who has been attempting to discharge his burden in proving that his fundamental rights guaranteed in terms of Article 11 had been violated by the respondents, whereas the Judgments of *Velumurugu v Attorney-General* (1981) 1 Sri L.R. 406, *Jeganathan v Attorney-General* (1982) 1 Sri LR 294, *Sasanasiritissa Thero and Others v P.A. de Silva, Chief Inspector - CID and Others* (1989) 2 Sri L.R. 356, and *Erandaka and Another v Hawlea, Officer in Charge - Hakmana and Others* (2004) 1 Sri L.R. 268, speaks of "strict proof" of such allegations, in view of the seriousness of the consequences it would carry.

Clearly the Petitioner did not witness the alleged assault on her son but, in order to substantiate her allegation, she had relied on the contents of the sworn statements made by witnesses *Kudakella Gamage Kusumawathie, Ratnayakage Niroshan, Ratnayakage Nandasena* and *Kadukannage Sriyalatha*, tendered to Court along with her petition. Perusal of these sworn statements of the persons who claims to have witnessed the assault on the deceased *Samantha* reveal that none of them had individually identified any of the 1st to 6th Respondents, but they merely claim to have seen the assault on the deceased, which was

initially started by two Police officers, who had their Police helmets on. The assault on *Samantha* had continued even after the joining of four other officers, who arrived at the scene subsequently. They were instructed to do so by the two officers, who were already there. Of the several witnesses, *Kusumawathie* had seen two persons assaulting another, who looked like *Samantha* with what appeared to her as a piece of black hose pipe. The person who was being assaulted pleaded with the two, not to assault him and screamed not to kill him. She then asked one of her neighbours, *Niroshan* to verify the identity of the victim, as she could not properly see him due to the distance. *Niroshan* had confirmed that it was *Samantha* who was being assaulted. This witness saw *Samantha* had no clothes on his upper body and his hands were tied in front with a shirt. He further described the manner of the assault on *Samantha*, comparing it with an instance of assaulting an animal. *Kusumawathie* left the place as she did not wish to witness the brutality of the assault. *Nandasena*, another witness, who happens to ride past the place, had seen *Samantha* lying on the ground bare bodied and his hands tied with a shirt. He also noted that one of the two Police officers, who was standing there, had phoned someone claiming that they made an arrest and asking the other person to come over.

In their objections, the 1st, 2nd, 3rd and 6th Respondents admit the fact that they made the arrest and claim that there were altogether seven officers. The 4th Respondent, having denied the Petitioner's claim that four officers joined the other two, had not provided information as to the circumstances under which the arrest was made. This is understandable as the 4th Respondent admits that he had accompanied the 1st Respondent and he "merely" went to the place of arrest with the 1st Respondent and that too only after the arrest was made by the 2nd

and 6th Respondents. The 5th Respondent also admits that he too had “*merely*” went to the place of arrest, but only after the 3rd Respondent had made the arrest. Thus, all of the 1st to 6th Respondents admit that they were present at the place where the deceased person was arrested, although the 4th and 5th Respondents claimed they have joined only after the arrest was made. In the circumstances, the identities of the officers who were involved with the circumstances relating to the arrest of the deceased, as alleged by the Petitioner through her witnesses, are established through their own admissions.

Since the Petitioner’s primary allegation, that her son’s right to freedom from torture, as guaranteed by Article 11 of the Constitution had been violated by the 1st to 6th Respondents, was specifically denied by these Respondents, I must then examine the available material, in order to determine whether she had established that particular allegation to the required degree of proof. In view of the description of the account on the attack, as contained in the sworn statements of the witnesses, *Samantha* was severely beaten with pipes, sticks and clubs by the officers who arrested him. In allegations of violation of the fundamental right to freedom from torture, ordinarily this Court would consider whether such allegations are supported by medical evidence.

One such witnesses, relied upon by the Petitioner in this regard was *Sriyalatha*. Witness *Kadukannage Sriyalatha* was left destitute when her husband decided to leave her with three children and she was living with *Samantha* at the time of his arrest, since his wife too had deserted him by then, also leaving their three children to him.

On 19.02.2015, at about 5.00 p.m., upon hearing *Samantha* was pleading with someone not to kill him, she too had rushed in to

investigate. She then saw *Samantha*, lying on the ground with his hands tied and being beaten by six Police officers. She also saw them dragging him into an abandoned house and continuing with their assault using sticks and clubs. The officers were questioning *Samantha* as to the place where he kept his stock of illicit liquor hidden. After some time, one of the officers came out of the house and poured contents of a white bottle into a plastic can. Thereafter, the Police party left the scene, taking *Samantha* along with them. She was handed over the motorcycle, which belonged to *Samantha* along with its ignition key.

After the death of *Samantha* on 22.02.2015, *Sriyalatha* made a statement to Police as to what she had learnt from *Samantha* during her visit to see him on 20.02.2015 at *Hambantota* Hospital, where she had quoted him making an accusation against the Police officers that he was severely beaten with clubs (“මට කොදෙම පොලු වලින් ගැනුවා”). It is very relevant to note that she made this statement at 3.00 p.m., on 23.02.2015 and the autopsy on the body of *Samantha* was performed by Consultant JMO on the same day at 5.00.p.m. But she made her statements two hours before the commencement of the autopsy and had stated what she learnt from *Samantha*. *Sriyalatha* had no way of knowing the expert opinion of the Consultant JMO before making her statement to Police that *Samantha’s* death was due to multiple deep contusions following assault with heavy cylindrical weapon like wooden clubs. Clearly, she had accurately narrated what she was told by *Samantha* on 23.02.2015, before she made the sworn statement on 11.03.2015, in support of the petition of the Petitioner.

The Petitioner, in order to substantiate her allegation of torture, has relied on the post-mortem report of the Consultant JMO of *Hambantota* Hospital. The post-mortem examination on the body of

Samantha was conducted by Dr. A.S. Seneviratne on 23.02.2015, who confirms that the cause of death was due to multiple deep contusions over the head, back of the body and limbs. There were altogether 32 ante mortem injuries on the body. Of these injuries, injury No. 2 was found to be a contusion measuring 3X2 cm on the right eyebrow and injury No. 1 refers to a black eye due to haematoma. There was a laceration on the right lip while multiple contusions were observed on his tongue. These were the four injuries observed on his head by the consultant JMO.

Injury Nos. 5, 6, 7, 8, 9, 10, 11 and 18 were categorised as contusions, located on the anterior and posterior aspects of the length of his right arm whereas injury Nos. 16 and 17, termed as two contusions were also located on the posterior aspect of the left shoulder. There were five contusions (injury Nos. 19, 20, 21, 22 and 23) located on the back of the chest. Examination of the genitals had revealed two abraded contusions on both sides of the scrotum, referred to as injury Nos. 13 and 14, while injury No. 15 referred to a contusion on right foot and injury No. 26 was also a contusion deep into the underlying muscle, located on the back of the left upper thigh.

In addition to above, there were three contusions located on the buttocks (injury Nos. 23, 24 and 25) whereas contusions referred to as injury Nos. 26, 27, and 28, were seen on the back of the left thigh. Injury Nos. 29, 30, 31 and 32 were also contusions but located on the back of the right thigh. The Consultant JMO had also noted the contusions referred to as injury Nos. 27, 28, 29, 30, 31 and 32 were deep and extending into the underlying muscles, as in the case of injury No. 26.

Thus, the witnesses of the Petitioner have supported each other's version of what they saw on the assault on the deceased and corroborated by the findings of the autopsy. The witnesses were consistent with the number of officers who participated with the assault, the stages at which others have joined the initial two, the intensity of the assault, what they have used in the attack, the duration of assault and how *Samantha* cried out.

In view of the specific denial of any assault by the 1st to 6th Respondents, and particularly in view of the allegation of the 4th and 5th Respondents that the deceased had suffered injuries at the hands of the Prison officers, this Court must then examine the available material to conclude whether this is a probable proposition, as to the manner in which the deceased had suffered his injuries.

It is stated in the notes of investigation, in relation to the arrest of *Samantha*, indicated that he had suffered abrasions over back of his lumber region. These injuries were caused when he had tripped himself over protruding *Margosa* tree roots, whilst running away from the officers (1R3). However, when *Samantha* was handed over to the reservist PC 81754 *Saman*, there were no such external injuries noted by that officer. On the following morning, the reservist had seen *Samantha* lying on the cell floor, and upon inquiry, it was revealed that he had fallen off from the bench and had suffered injuries to his right eyebrow and was bleeding. The Officer-in-Charge was notified immediately of this development and *Samantha* was thereafter rushed to *Sooriyawewa* hospital, where he was initially admitted, before being transferred out to *Hambantota* Hospital, later in the same day.

Considering the relative probabilities of suffering abrasions over the lumbar region of a person who falls being tripped over roots, while running away in order to escape from his captors, it is significant to note from the Health 1135A form, that *Samantha* did not have a single injury to justify such a proposition. There were no injuries seen on the knees of his legs or to his hands in the form of abrasions, which could reasonably be expected find in the limbs after such a fall, whilst running away from his pursuers. The contradictory positions of the notes of the 1st Respondent with that of the reservist further weakens the reliability of such a claim. After the death of *Samantha*, SI *Pannadasa* of *Sooriyawewa* Police had visited the place of arrest and was shown by a brother of *Samantha*. He had not observed any *Margosa* trees in the vicinity but saw only a *Kumbuk* tree. There was no indication of any protruding roots of that particular tree. He also noted that the house of the witness *Kusumawathie* is the closest to the place of arrest.

In the circumstances, the position of 1st, 2nd, 3rd and 6th Respondents that *Samantha* had suffered injuries to his back after falling down, becomes a proposition on which one could not place any reliance, primarily due to its inherent improbabilities. The other instance in which the 1st to 6th Respondents claim that *Samantha* had sustained injuries was his fall from the bench in the following morning. The 1st to 6th Respondents relied on the inconsistent history given by *Samantha* as to the cause of those injuries. According to them, *Samantha* had claimed that he fell from a push bicycle at the time of his admission to *Sooriyawewa* Hospital and thereafter changed that position to indicate that he had a fall from the cement bench, on which he slept during the night. This factor must be probed further into by this Court.

It is correct that the BHT of *Samantha* (1R1) indicates that the admitting medical officer of *Sooriyawewa* Hospital, had recorded therein “*patient was stating that he got injured after falling from a push bicycle on 19.02.2015.*” It is also evident that the word ‘motorbike’ was cut off from the text and instead, the words ‘push bicycle’ were inserted. *Samantha* was admitted to hospital by one *Susantha* of *Sooriyawewa* Police Station. The BHT indicates that the admission was made at 8.00 a.m. on 20.02.2015, and at that time the admitting medical officer had noted haematoma around right eye and blood clots in his nostrils.

On the same day, the Officer-in-Charge of *Sooriyawewa* Police Station, reported facts to Magistrate’s Court of *Hambantota* under BR 177/15 (1R2) and requested the Magistrate to examine a suspect, who had suffered injuries due to a fall in the cell. The Magistrate had thereafter visited the Hospital at 4.30 p.m. on the same day and when questioned as to how he had sustained the injury, *Samantha* had replied “නින්ද ගිය වැටලෑ දන්නේ නෑ”. This enquiry was made by the Magistrate, in the presence of the Police officer who described to the Judicial officer as to the nature of the accusation *Samantha* was arrested on. The Magistrate had thereafter decided to enlarge him on bail.

Then why did *Samantha* complain to the admitting medical officer of *Sooriyawewa* hospital at 8.00 a.m., that he fell off from his push bicycle and it was due to that fall his right eye was injured? If he actually fell off from the push bicycle, as he said to the medical officer, then why did he changed that story and replaced it with an obviously a facile version by stating “නින්ද ගිය වැටලෑ දන්නේ නෑ” to the Magistrate? These different and inconsistent versions as to the explanation of the injury on the right eye were highlighted by the 1st to 6th Respondents, in order to convince

this Court that the reliability of the Petitioner's claim is at least questionable and therefore should not be acted upon.

The said answer by *Samantha* to the Magistrate would indeed run contrary to the claim of the Petitioner, which alleged that *Samantha* had suffered injuries due to the beating by the 1st to 6th Respondents. But there is an explanation to the said conduct of *Samantha*. When his partner did pay a visit to him at *Hambantota* Hospital on the same day and that too in the afternoon, she was told that he was severely beaten by the Police officers. He had described the manner in which they assaulted him by relating that they had severely beaten him, after asking him to kneel and then to lie down on the bund. *Sriyalatha* had then clarified from him as to the reason for not making that complaint to the medical staff or to the Magistrate. The reply she received was that he did not wish to antagonise them by making complaints against them. This is a reasonable explanation, coming from a person, who had been placed in a set of circumstances as *Samantha* was. This is not his very first encounter with the Police. He already had several prosecutions pending for committing similar type of offences. Clearly, *Samantha*, in view of his social standing and background, would have considered the probable consequences he might have to endure after making a formal complaint of the beating he received in the hands of the 1st to 6th Respondents of to a person in authority and decided against it.

In this regard, it is relevant to refer to a quotation contained in the dissenting Judgment of *Sharvananda* J (as he then was) in *Velumurugu v Attorney-General & Another* (1981) 1 Sri L.R. 406, where his Lordship had reproduced a passage from the Judgment of *Greek Case*, as reported in the Journal of Universal Human Rights, on the difficulties faced by

litigants alleging that public officers had inflicted or instigated acts of torture, which included the following observation, and is very relevant to the issue at hand.

" a victim or witness able to corroborate his story might hesitate to describe-or reveal all that has happened to him for fear of reprisals. upon himself or his family.

The above quoted observation is only a part of a long quotation, which included several other similar considerations, that had been reproduced in its entirety in the Judgment of *Channa Peiris & Others v Attorney-General* (supra).

After his admission to *Sooriyawewa* Hospital and until his custody was transferred to Prison officers, *Samantha* was under the watchful eye of Police officers. This was more evident from the proceedings in which the examination of *Samantha* by the Magistrate at *Hambantota* hospital are recorded. The Police officer had informed the Judicial officer of the circumstances under which *Samantha* was arrested and had sustained an injury. Thereafter, the Magistrate had questioned *Samantha*, in the presence of that Police officer, who repeated the version that had already been reported to Court. If *Samantha* were to reveal the manner in which he actually suffered that injury at that point of time, that would have had the effect of directly contradicting the version of events, as narrated by the Police. In such circumstances, it is reasonable to expect that *Samantha* would have not wanted to invite more trouble by making such serious accusation against the arresting officers, regarding the severe beating he had received at their hands.

The Courts, in assessing the reliability of such claims are mindful of such limitations faced by the victims, who are reluctant to make a very descriptive and truthful disclosure of what they have actually experienced during their arrest and detention. It is not uncommon, that persons who made such accusations were severely dealt with by the concerned officers, once his custody is returned back to them by the Magistrates, as revealed in the case of *Somawardena v Superintendent of Prisons and Others* (SC Application 494/93 (Spl) – decided on 22.03.1995). The observations of Atukorale J in *Amal Sudath Silva v Kodituwakku, Inspector of Police & Others* (1987) 2 Sri L.R. 119, aptly describe the approach this Court had adopted in such circumstances, on the assessment of the reliability of claims of torture to a medical officer or to a Judge, as revealed in the instant application;

“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.”

The evasive nature of the answer given by *Samantha* to the Magistrate, in reply to the latter’s query as to how he was injured, by stating “නින්ද ගිය වැට්මද දන්නේ නෑ”, and thereby pleading total ignorance as to the cause of his injuries, is indicative of this unfortunate reality.

Coming back to the issue of how the deceased *Samantha* had suffered 32 *ante mortem* injuries, the Petitioner asserts that the 1st to 6th Respondents have repeatedly beaten him with pipes, clubs and sticks. She also alleged that during this severe physical assault, *Samantha* was

lying on the ground with his hand tied from his shirt to the front of his body. He was crying out loud, not to kill him. Injury Nos. 5, 6, 7, 8, 9, 10 were on his anterior aspect of his right arm and only injury Nos. 11 and 12 were seen on dorsal aspect of his left hand and near root of the left thumb. This pattern of injuries indicates that one hand had suffered more injuries than the other and that too on the outer aspect. Except for six of his injuries, all other injuries were located on the back of his body and the injuries that were noted on the back of the thighs had extended deep into underlying muscles, indicating the degree of force used to inflict them.

It had already been referred to the fact that the Consultant JMO was of the opinion that the contusions and abrasions on the body of *Samantha* were compatible with blunt force trauma following assault with heavy cylindrical weapon like wooden clubs. Thus, the available medical evidence is not only consistent with the Petitioner's allegation of repeated assaults with pipes, clubs and sticks, but also corroborates that assertion. The death of *Samantha* was due to multiple contusions to head, back of the body and limbs. The claim of the 4th and 5th Respondents, that these injuries were caused to the deceased by the Prison guards after his unsuccessful escape attempt, too was effectively negated by the medical evidence as the Consultant JMO had opined that the injuries, he had seen on the body of the deceased were in the process of healing and therefore were 3 to 4 days old. The arrest of *Samantha* had taken place in the evening of 19.02.2015 after 4.00. p.m. and his death had occurred around 5.00 p.m. on 23.02. 2015, just short of less than one hour to complete the four-day duration. The 'witnesses' who had seen the escape attempt say it had happened on 21.02.2015, soon after midnight but no injuries were observed by the Consultant

JMO, matching with this claim. Therefore, I reject the 1st to 6th Respondents' contention that the injuries that resulted in the death of *Samantha* were caused to him while under the custody of the Prison officers and their denial of any responsibility owing to that reason.

It is not clear as to the reason to unleash such a sustained severe assault on *Samantha* at the time of his arrest. There is no material to suggest that he resisted the arrest, and if he had resisted the arrest, obviously the 1st to 6th Respondents would have sought to justify the '*minimum force*' used to make the arrest. The Petitioner's contention was that *Samantha* was tortured by the 1st to 6th Respondents to extract information as to a stock of illicit liquor. Similarly, there is no material even to suggest that *Samantha* was assaulted during the time he was detained in the cell of *Sooriyawewa* Police. When he called *Sriyalatha* after he was put into a cell, he did not claim there too he was assaulted. In view of the consultant JMO's opinion, it is more probable that the black eye was a result of a deep contusion underlying beneath the injury No. 2 and it is not due to the 'fall' from the bench or due to the failed attempt to escape, as per the explanation offered by the 1st to 6th Respondents.

The allegation of the Petitioner that her son had died due to an act of assault by the arresting officers was presented to a person in authority at the first available opportunity. *Samantha* had died on 22.02.2105 and during the inquest proceedings conducted on the same day, the Petitioner had made the identical accusation to the Magistrate and when questioned on what material she makes such an accusation, she had replied that there are witnesses who saw the assault on her son and they will be produced.

In view of the above, it is my considered opinion that the Petitioner, by adducing credible and reliable eyewitness account as well as medical evidence, had sufficiently discharged her burden of proof on her complaint that her son's fundamental right to freedom from torture had been violated by executive and administrative actions of 1st to 6th Respondents, and thereby established her allegation against them.

The fact that *Samantha* was in possession of a significant quantity of illicit liquor (assuming the notes reflect the actual reason for the arrest) and having several prosecutions pending for similar offences, in any way would not justify the conduct of the 1st to 6th Respondents. Despite the fact that almost twenty-eight years ago to the date of arrest of *Samantha*, this Court had very forcefully stated in the Judgment of *Amal Sudath Silva vs. Kodituwakku* (1987) 2 Sri LR 119, that "*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 ... 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*". It is evident from complaints such as the instant application, that there are officers, who continue to employ "*barbarous methods of treatment*" on the suspects they happen to take charge and pay scant regard to the repeated and consistent emphasis by this Court on them to act within the Law.

The complaint of the Petitioner that the 1st to 6th Respondents have violated the fundamental right guaranteed to her son under Article 13(4) needed to be examined next.

Article 13 (4) of the Constitution reads as follows: -

"No person shall be punished with death or imprisonment except by order of a competent Court, made in accordance with procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

In ***Lama Hewage Lal (Deceased), Rani Fernando (Wife of the Deceased) & Others v Officer in Charge - Minor Offences, Police Station, Seeduwa & Others*** (2005) 1 Sri L.R. 40, this Court has held thus: -

*"A careful reading of Article 13 (4) of the Constitution clearly reveals that no person should be punished with death or imprisonment except by an order of a competent Court. Accordingly, if there is no order from such a Court no person should be punished with death and unless and otherwise such an order is made by a competent Court, any person has a right to live. Considering the contents of Article 13 (4) of the Constitution, Fernando, J. in ***Kotabadu Durage Sriyani Silva v Chanaka Iddamalgoda, Officer-in-Charge, Police Station Payagala*** (2003) 1 Sri L.R. 14, stated that, "expressed positively, that provision means that a person has a right to live, unless a Court orders otherwise".*

It is clear from the PMR that *Samantha's* death had a causal nexus to the injuries caused to him by the 1st to 6th Respondents, during the former's arrest. Despite the fact that the death of *Samantha* had occurred during the period he was detained by the Prison officers, the cause of death is attributable to the injuries suffered during the arrest. Clearly the right to life of *Samantha* had been violated by the 1st to 6th Respondents by their collective actions, and thus the claim of infringement of the fundamental right guaranteed to *Samantha* under Article 13(4) by them too is established by the Petitioner.

Therefore, I hold that the 1st to 6th Respondents have violated fundamental rights of the deceased *Liyana Archchige Samantha*, guaranteed to him under Articles 11 and 13(4) of the Constitution and is entitled to such a declaration along with compensation awarded to his next of kin.

Learned State Counsel who represented the 8th Respondent, informs this Court that an inquiry under Establishment Code (reference No. S/DIG/SP/E/60/2015) was conducted by the Police Department against the 1st to 6th Respondents. After the said inquiry, promotions of the 2nd Respondent were deferred for a period of three years and the 1st, 3rd, 4th 6th Respondents were severely warned. The 5th Respondent was discharged after the said inquiry. She further informed Court that after conclusion of the non- summary inquiry, the 8th Respondent had taken a decision to forward an indictment against the 1st, 2nd 3rd and 6th Respondents under Section 296 of the Penal Code, in addition to charges under Section 2 of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment Act No. 22 of 1994. The 4th and 5th Respondents were discharged from the said

criminal prosecution, owing to the reason there was no admissible evidence revealed against them during the non-summary inquiry.

The attack on *Samantha* took place during a time duration of little over an hour. Despite the attack commenced by two officers, the other four had joined well before the party had returned to Station with *Samantha*. The material available before this Court does not provide a reasonable basis to apportion the individual responsibility in the infringement of *Samantha's* right to freedom from torture. Having considered all the attendant circumstances, I order each of the 1st to 6th Respondents to pay a sum of Rs. 100,000.00 as compensation from their personal funds. Since the 1st to 6th Respondents have infringed the fundamental rights of *Samantha* by torturing him, whilst acting in the colour of lawful authority of making an arrest under the provisions of the Excise Ordinance, I order the State to pay Rs. 300,000.00 as compensation.

The 1st to 6th and the 7th Respondent to deposit these amounts in the Registry of this Court within a period of three months from this Judgment. This award of compensation should not be a bar for any other Court from awarding compensation to the dependents of the deceased *Samantha*.

It is evident from the petition of the Petitioner that her son's three children were left in the lurch, without the care and protection of both their parents.

In the circumstances, the registered Attorney of the Petitioner is directed to tender the birth certificates of the three children of the deceased *Samantha* forthwith to the Registry of this Court. The Registrar

of this Court thereupon will take steps to deposit Rs. 300,000.00 each, in the names of the three children in the *Sooriyawewa* branch of the National Savings Bank. The three of them are entitled to the principal sum deposited in their names, upon reaching 18 years of age.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT