IN THE SUPREME COURT OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

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

S C (F R) Application No. 660/ 2012

Christopher Mariyadas Nevis,

29 / 2,

St. Sebastian Street,

Paasaioor,

Jaffna.

PETITIONER

Mariyadas Nevis Delrokson,

Son of the Petitioner

DECEASED VICTIM

- Vs -

1. Superintendent,
   Vavuniya Prison,
   Vavuniya.

2. Superintendent,
   Anuradhapura Prison,
   Anuradhapura.

3. Superintendent,
   Mahara Prison,
   Mahara.

4. Commissioner General of
   Prisons,
   Prisons Head Quarters,
   Colombo 08.

5. Director,
   Criminal Investigations
   Department,
   Colombo 01.

6. Director,
   Ragama Teaching
   Hospital,
   Ragama.

7. Director,
   Special Task Force,
   Colombo 01.

8. Hon. Attorney General,
   Attorney General's
   Department,
   Colombo 12.

RESPONDENTS

Before: Murdu N B Fernando PC J

P. Padman Surasena J

E. A. G. R. Amarasekara J

Counsel:

J C Weliamuna PC with Thilini Vidanagamage and Pulasthi Hewamanna for the Petitioner.

Madhawa Tennakoon SSC for the Attorney General.

Argued on : 2019 - 01 - 31

Decided on : 2019 - 05 - 23

JUDGMENT

P Padman Surasena J

The facts pertaining to this case could be summarized as follows. The Petitioner's son Mariyadas Nevis Delrokson was arrested by the CID in

Vavuniya on 17th October 2009. He was 36 years of age and an unmarried person.[1]

Thereafter, the Petitioner's son was indicted before the Vavuniya High Court on three separate indictments, copies of which have been produced, marked **P4 A**, **P4 B** and **P4 C**.[2] He was kept in remand custody in Vavuniya Prison.

On or about 2012-06-26, the inmates of Vavuniya prison in which the Petitioner's son was also kept, had commenced a protest campaign and a hunger strike, protesting against the transfer of the prisoner by the name of *Nadaraja Saravanapavan* to Boossa detention camp. The protesting inmates had demanded that the said transferred prisoner be brought back to Vavuniya prison.[3]

The reasons given by the Petitioner in his affidavit[4] for the said protest campaign and the hunger strike are as follows.

i. 'The Boossa detention camp is known to be notorious for the infliction of extreme physical and mental torture on prisoners and

[1] Paragraph 5 of the affidavit of the Petitioner.
[2] Paragraph 7 of the affidavit of the Petitioner.
[3] Paragraph 8 of the affidavit of the Petitioner.
[4] Paragraph 8 of the affidavit of the Petitioner.

that it will adversely affect the prisoner and his fundamental right to a fair trial.'

ii. 'The prisoners also consider that the said Boossa camp is an illegal detention camp.'

Perusal of the material adduced before this Court in this case, clearly shows that the Petitioner has not proved by any yardstick, the veracity of the above two assertions. The Petitioner has not even explained as to how he was able to ascertain the above information and the basis upon which he gives them as the reasons behind the protest campaign and the hunger strike launched by the inmates of Vavuniya prison.

It is to be borne in mind that the Petitioner was not amongst the inmates of Vavuniya prison at that time. In the absence of any indication by the Petitioner regarding the source of the above information, this Court has to conclude that the above assertions by the Petitioner are either based purely on hearsay material or mere speculations by him. This Court cannot treat such material as evidence and hence cannot act upon the Petitioner's above assertions.

Although, the Petitioner in the prayers of his petition has prayed for a declaration by this Court that his fundamental rights guaranteed under

Articles 11, 12 and 13 of the Constitution have been violated, this Court when this application was supported on 03-10-2014, having heard the submissions of the learned counsel for the Petitioner and the submissions of the learned Deputy Solicitor General who appeared for the Respondents, had decided to grant leave to proceed only under Article 11 of the Constitution. Thus, the task of this Court at this moment must be restricted only to a probe to ascertain whether the Respondents have infringed the fundamental rights of the petitioner (or his deceased son) guaranteed under Article 11 of the Constitution. With that in mind, it would be opportune at this moment to turn to the position taken up by the Respondents regarding the incident relevant to this case, which occurred in Vavuniya prison.

According to the affidavit[5] filed by the 4th Respondent (Commissioner General of Prisons) following positions have been revealed.

1) The prisoner *Nadaraja Sarawanapavan* was transferred to Boossa detention camp on the 26th June 2012 consequent to an order made

[5] Affidavit dated 30th March 2015.

by the High Court of Vavuniya on 25th June 2012.[6] (A copy of this order produced marked **R 2** has confirmed this position).

2) On or about 26th June 2012, several inmates of Vavuniya prison including the Petitioner's son (Delrokson) commenced engaging in a hunger strike demanding the said transferred suspect be brought back to the Vavuniya prison.

3) Certain inmates in pursuance of the said demand and in the process of their protest campaign,

   i. had vandalized the visitors area of the Prison[7] and

   ii. had taken three prison guards namely S K G Chandrasiri, N M Rohitha and S B Rathnayaka hostage and continue to hold the said prison guards and a number of other prisoners in their captivity within the Vavuniya prison premises.[8]

4) All attempts to negotiate with the hostage takers and persuade them to release the hostages who were in their custody and all attempts to regain official control of the prison premises and restore order within the prison premises had failed. [9]

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[6] Paragraph 12 of the affidavit of the 4th Respondent.
[7] Paragraph 24(a) of the affidavit of the 4th Respondent.
[8] Paragraph 24(d) of the affidavit of the 4th Respondent.
[9] Paragraph 24(f) of the affidavit of the 4th Respondent.

5) Consequently, as the tension in the Vavunia Prison had increased, the prison authorities were compelled to seek the assistance of the Special Task Force to conduct a rescue operation on the 29th June 2012. [10]

6) Owing to the stiff resistance by the hostage takers, the officers engaged in the rescue operation were compelled to use force to rescue the prison guards and other inmates held hostage in the captivity of the rioters as well as to regain official control and restore law and order within the Prison. [11]

7) Subsequent to the rescue operation, Vavunia Prison was closed and all the inmates were transferred to Anuradhapura and Mahara prisons as the authorities thought it fit to take steps to split up the prisoners/remandees with a view of preventing any possible re-grouping of the hostage takers.[12]

8) The persons requiring medical attention were taken to the hospital and the Petitioner's son was warded in the Ragama hospital. [13]

[10] Paragraph 24(f) of the affidavit of the 4th Respondent.
[11] Paragraph 24(h) of the affidavit of the 4th Respondent.
[12] Paragraph 24(i) of the affidavit of the 4th Respondent.
[13] Paragraph 24(j) of the affidavit of the 4th Respondent.

It is the position of the 4th Respondent that any injury sustained by the Petitioner's son may have been caused during the exchanges that had taken place during the rescue operation. [14]

The prison authorities had subsequently (on 4th July 2012) conducted an inquiry into the relevant incident. The 4th Respondent has produced a copy of the report of the said inquiry marked **R1**, along with his first affidavit dated 23rd June 2014.

Learned Presidents Counsel for the Petitioner in the course of his submissions made clear to this Court that he is not challenging the existence of a necessity to conduct a rescue operation by the Respondents inside the prison to free the three prison guards taken hostage by the rioting inmates. His complaint was limited to the allegation that the authorities had used excessive force during this incident and that resulted in serious injuries being caused to the Petitioner's son who later succumbed to the said injuries.

The Petitioner has alleged that the said use of excessive force was done deliberately to punish or torture the Petitioner's son whom the Petitioner

[14] Paragraph 25 of the affidavit of the 4th Respondent.

states has been identified as one of the masterminds behind the protest and hunger strike launched by the inmates of Vavuniya prison. It is on that basis that the learned President's Counsel appearing for the Petitioner sought to argue that the Respondents had infringed the Petitioner's (or his son's) fundamental rights guaranteed under Article 11 of the Constitution.

The Consultant Judicial Medical Officer of District General Hospital Gampaha has conducted a post mortem examination of the body of the Petitioner's son Mariyadas Nevis Delrokson at the mortuary of Teaching Hospital Ragama. Both the learned President's Counsel for the Petitioner and the learned Senior State Counsel who appeared for the Respondents, relied on the findings contained in the said post mortem report. Thus, this Court would now briefly refer to some of the relevant features contained in the said post mortem report.

Following facts revealed from the said post mortem report would be relevant and useful for the evaluation of the arguments advanced before this Court by both parties in this case.

i. Petitioner's son has died on 2012-08-08.

ii. It was the Petitioner (Christopher Mariyadas Thevis) who had identified the body.

iii. The opinion of the Consultant Judicial Medical Officer regarding the cause of death of Petitioner's son is (i) septicaemia, (ii) prolonged unconsciousness, (iii) head injury.[15]

Comments made by the Consultant Judicial Medical Officer regarding the cause of death of Petitioner's son set out in the last page of the said report would be crucial to the final decision by this Court in this case.

The said comments are as follows;

I. Deceased was admitted to the Teaching Hospital Ragama on 30th June 2012 in an unconscious state. According to the Bed Head Ticket (BHT No. 67462/12), deceased had a tramline contusion on the forehead and a wound on the left knee. X-rays taken at the hospital revealed a fracture in distal part of left ulna. CT scans revealed cerebral oedema and fracture in zygomatic bone of right side of the face. MRI scans showed features of shearing injuries in brain.

[15] Clause 20 of the post mortem report.

II. *Autopsy revealed evidence of diffuse axonal injuries and evidence of septicaemia. These findings are consistent with both ante mortem clinical state and investigations findings.*

III. *Diffuse axonal injury of the brain is used to describe a condition characterized by immediate prolong coma (greater than 6 hours) occurring after head trauma, not associated with intracranial haemorrhage or mass lesion. This is produced by a sudden acceleration - deceleration motion of the head (assault, violent shaking of head or fall) which causes stretching and/ or shearing of nerve fibers. In diffuse axonal injury, the patient becomes unconscious and survives for a long period in vegetative state and death supervenes due to complications of the unconscious state. Fracture zygomatic bone in right side of the face as indicated in CT scan and BHT finding of tramline contusion on the forehead confirm that the deceased had sustained head injury caused by blunt forces resulting diffuse axonal injury before admit to the hospital.*

IV. *Autopsy revealed that the both healed and healing abrasions (injuries 1, 4, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19). Considering the*

external appearance, all these injuries are recent injuries and could have been sustained during hospital stay in unconscious state.

V. *In summary, the deceased was admitted to the Colombo North Teaching Hospital, Ragama on 30th June 2012 in an unconscious state and died on 08th August 2012 following septicaemia developed as a complication of prolong unconsciousness due to diffuse axonal injury caused by blunt force trauma to the head.*

This Court observes that the post mortem examination has revealed the existence of 19 external injuries (injuries Nos. 1-19) and two internal injuries (injuries Nos. 20-21) on the body of the deceased. The Consultant Judicial Medical Officer was of the considered opinion that the both healed and healing abrasions found on the body of the Petitioner's son (injuries 1, 4, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19) could have been sustained during the hospital stay in unconscious state.[16] This means that the Petitioner's son could not have sustained the above set of injuries before his admission to the hospital. One has to bear in mind that the Petitioner's son was admitted to the hospital in an unconscious state.

[16] Last page of the post mortem report. (clause 20.4)

In the above circumstances, this Court has to conclude that the Petitioner's son could not have sustained the said set of injuries during the rescue operation conducted in the Vavunia prison.

The external injuries left out from the above list would be the external injuries numbered 2, 3, 6, 7, and 15 only. The said injuries have been described in the post mortem report in the following manner.

Injury No. 02 - *a healing wound with a red surface, measuring 3x3 cm, situated on the outer aspect of left leg 15 cm above the heel.*

Injury No. 03 - *a healing wound with a red surface, measuring 3x1 cm, situated on the left shin 25 cm above the heel.*

Injury No. 06 - *a triangular slightly curved healing wound with a pigmented surface over the distal part and reddish surface over the proximal part, measuring 4x1 cm, situated on the front and inner aspect of left thigh 53 cm above the heel.*

Injury No. 07 - *a healed tramline contusion measuring 7x2 cm with a pale center surrounded by a dark pigmented area situated obliquely on the left calf 33 cm above the heel.*

Injury No. 15 - *a healed tramline contusion measuring 14x2 cm with a pale center surrounded by dark pigmented area situated in the back of the left elbow and forearm.*

A notable feature of the above set of injuries is that all of those injuries were found on the heel and the forearm of the deceased.

The Consultant Judicial Medical Officer, upon dissection of the skin and subcutaneous tissues has found two internal injuries. It would be useful at this stage to consider the nature of the said two internal injuries found on the body of the deceased. They have been described in the post mortem report as follows.

Injury No. 20 - *A resolving intramuscular contusion measuring 5x4 cm situated in the left buttock.*

Injury No. 21 - *A healing fracture was found in distal part of left ulna.*

However, according to the post mortem report, the fracture of zygomatic bone in right side of the face as indicated in CT scan and BHT finding of tramline contusion on the forehead has confirmed that the deceased had sustained head injury caused by blunt forces. This had caused diffuse axonal injury before the deceased was admitted to the hospital. Thus, it is

clear that the above injury is the only serious injury the Petitioner's son had sustained in the course of the rescue operation.

This Court observes that the Magistrate along with Mr. Anton Pulithanyagam Attorney-at-Law had taken steps with the help of a ladder to climb down into the area where the rioting inmates had been continuing with their protest campaign. They had then urged the rioting inmates to release the three prison guards held hostage by them. According to the inquiry report (**R 1**), the rioting inmates at that time had shown the three prison guards held in their captivity to the Hon. Magistrate and Mr. Anton Pulithanyagam Attorney-at-Law who had climbed down to that area.

Respondents have admitted that the officers of the Special Task Force had gone into the prison to rescue the three prison guards and the other inmates kept as hostages. The Petitioner does not allege that the officers involved in the rescue operation were either armed or had used firearms. Indeed the Petitioner does not allege that there was any shooting inside. The post mortem report also does not reveal any gunshot injuries.

Perusal of the material adduced before this Court shows clearly that the rioters were not prepared for a peaceful settlement of any grievance they may have had. On the other hand, as has been mentioned before, Petitioner has not convinced this Court that any of those inmates has had any substantial grievance for their questionable behaviour, which had sparked off the whole incident.

The Petitioner has not denied the fact that the rioters within the prison premises had continued to hold three prison guards hostage in their captivity. Thus, this Court cannot reject the position taken up by the Respondents that it has become necessary for them to launch a rescue operation.

In view of the observations made by the Consultant Judicial Medical Officer, and in the light of the circumstances that prevailed in the prison at that point of time, there is no justification for this Court to hold that the Respondents have used more force than necessary at this instance to curb the then prevailing situation.

Learned President's Counsel for the Petitioner also complained that the chaining of the leg of the Petitioner's son to the hospital bed amounts to a

degrading treatment, which violates the fundamental rights, guaranteed under Article 11 of the Constitution.

According to section 252 B (1)(c) of the Prisons Ordinance, a light chain with single wrist cuff may be used in order to secure any prisoner who may at any time be an inmate at a civil hospital.

In terms of the Department of Prisons standing order 732 produced marked **4R A** it is lawful for a prisoner to be chained to a bed when the prisoner is warded in a civil hospital. In this instance, the Petitioner's son was in an unconscious state in the hospital. As this is something authorized by the law and as the Respondents had not done this deliberately to humiliate the Petitioner's son, this Court does not see any merit in the above argument advanced by the learned President's Counsel for the Petitioner.

Considering all the above material in its totality, this Court is of the view that the Respondents in the given situation had not acted outside the law and hence had not violated, the fundamental rights guaranteed to the Petitioner's son under Article 11 of the constitution.

In these circumstances, and for the foregoing reasons, this Court decides that the Petitioner is not entitled to a declaration by this Court to the effect that his fundamental rights under Article 11 of the Constitution have been infringed by the Respondents. Hence this Court decides to refuse this application.

This Application should therefore stand dismissed without costs.

JUDGE OF THE SUPREME COURT

Murdu Fernando PC J

I agree,

JUDGE OF THE SUPREME COURT