

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

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

S C (F R) 449/2017

1. Jayamuni Anuradha Nilmini Vijesekara,  
"Mihinish"  
259/1/2B, Rassapana Road,  
Ihala Bomiriya,  
Kaduwela.

**PETITIONER**

-Vs-

1. Sumedha Thushanga,  
Police Constable,  
Peiliyagoda Police Station,  
Peliyagoda.
2. Indika Priyadharshana,  
Police Constable,  
Peiliyagoda Police Station,  
Peliyagoda.
3. Chanaka Rukman,  
Police Constable,  
Peiliyagoda Police Station,  
Peliyagoda.
4. Ajith Jayalal,  
Police Constable,

Peiliyagoda Police Station,  
Peliyagoda.

5. Lahiru Roshan,  
Police Constable,  
Peiliyagoda Police Station,  
Peliyagoda.
6. Senior Superintendent of Police (SSP),  
Western Province,  
Colombo 01
7. Hon. Attorney-General,  
Attorney General's Department,  
Hulftsdorp Street,  
Colombo 12.

**RESPONDENTS**

**Before:**                    **P. PADMAN SURASENA J**  
**JANAK DE SILVA J**  
**M. A. SAMAYAWARDHENA J**

Counsel:                    Lakshan Dias with Miss Maneesha Kumarasinghe for the Petitioner.  
  
Amila Palliyage with Ms. Nihara Randeniya and Ms. Sandeepani Wijesooriya and Mr. Daminde De Alwis and Ms. Ruwanthi Doralagoda for the 1<sup>st</sup> to 3<sup>rd</sup> Respondent.  
  
Sunjith Senanayake with Saranga Perera instructed by Upul Dissanayake for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

Argued on        :        02-03-2021

Decided on      :        14-07-2021

**P. Padman Surasena J**

The Petitioner is the wife of Chadik Shyaman Wickramarachchi who is alleged to have died while in Police custody. Chadik Shyaman is a father of two children, a seven-year-old son and a daughter of one month at the time of his death. The Petitioner and her husband Chadik Shyaman were living with the Petitioner's father, her mother, two of her aforesaid children at Mihinsha, 259/1/2B, Rassapana Road, Ihala Bombiriya, Kaduwela since year 2000 as their permanent residence.

Around 4.00 am on 25-02-2017 the 1<sup>st</sup> to 5<sup>th</sup> Respondents had come to their residence, arrested said Chadik Shyaman and taken him to Peliyagoda Police Station. The Petitioner who was also present at the time of the said arrest, had identified the 1<sup>st</sup> to 5<sup>th</sup> Respondents as police officers who had come from Peliyagoda Police Station. According to the Petitioner, Chadik Shyaman was clad in a blue short and a green shirt, when he left home on that day with the 1<sup>st</sup> to 5<sup>th</sup> Respondents. When inquired as to the reasons for taking him to the police station the 1<sup>st</sup> to 5<sup>th</sup> Respondents had stated that they wanted to record a statement from Chadik Shyaman.

Around 9.00 am on 25-02-2017, the Petitioner had gone to her husband's house in order to visit Peliyagoda Police Station. It was at that time she was informed that her husband had died and the body was lying at the Colombo General Hospital.

The Petitioner, her husband's father and a friend Wasanath had then gone to Sapugaskanda Police Station from where they were taken to Peliyagoda Police Station around 11.20 am on 25-02-2017. There, one high ranking police officer had explained to the Petitioner; that Chadik Shyaman was arrested in connection with a robbery of a car and jewelry in Kelaniya and Bandarawatte; that her husband had fallen sick, suffering from a wheezing attack when his statement was recorded; and that he was admitted to the hospital. The Petitioner states that this briefing is manifestly false in view of the findings in the postmortem report. The Petitioner has complained that the 1<sup>st</sup> to 5<sup>th</sup> Respondents had taken her husband into custody only to be killed when under the police custody.

It is in this backdrop that the Petitioner has prayed inter alia for the following relief.

- a. Declare that the action of the 1<sup>st</sup> to 5<sup>th</sup> Respondents have violated her husband's fundamental rights guaranteed under Articles 11, 12 (1), 13 (1), 13 (2) and 13 (3) of the Constitution, and subsequently the Petitioner and her two children have been victimized due to such violations;*

- b. Order the Hon. Attorney General to indict the 1<sup>st</sup> to 5<sup>th</sup> Respondents in the High Court for the offence of causing torture and cruel, inhuman or degrading treatment punishable under Act No. 22 of 1994;*
- c. Order the Registrar of the Supreme Court to call for a progress report from the Chairman of the National Police Commission of Sri Lanka regarding the investigation carried out on the complaint made by the Petitioner;*
- d. Grant compensation of Rs. 50,000,000 (Rupees Fifty Million) for the Petitioner for the violation of her husband's fundamental rights guaranteed under Articles 11, 12 (1), 13 (1), 13 (2) and 13 (3) of the Constitution.*

This Court on 10-01-2019, having heard the submissions of the learned counsel for the Petitioner and the submissions of the learned counsel for the Respondents, had granted leave to proceed only in respect of the alleged violations of Articles 11 and 12(1) of the Constitution against the 1<sup>st</sup> to 5<sup>th</sup> Respondents.

It would be opportune at the outset, to turn to the position taken up by the Hon. Attorney General in this case. The Hon. Attorney General has informed Court that a disciplinary action was initiated against the 1<sup>st</sup> to 5<sup>th</sup> Respondents by the Senior Superintendent of Police Gunathileka upon the directions of the Senior Deputy Inspector General Western Province (Crimes and Traffic). Upon the conclusion of the preliminary inquiry, a charge sheet was served on the 1<sup>st</sup> to 5<sup>th</sup> Respondents in order to conduct a formal disciplinary inquiry against them.

In addition to the aforesaid formal disciplinary inquiry, an Assistant Superintendent of Police on the instructions of Superintendent of Police Kelaniya, had conducted investigations pertaining to the death of the husband of the Petitioner in police custody. Upon the conclusion of the said investigation, the police had forwarded the relevant material pertaining to the said investigation to the Hon. Attorney General who had directed to file charges against the 1<sup>st</sup> to 5<sup>th</sup> Respondents for an offence punishable under section 296 of the Penal Code and conduct a non-summary inquiry in the relevant Magistrate's Court. After the conclusion of the said non summary inquiry, the case was again referred to the Hon. Attorney General who thereafter having considered the available material had taken steps to indict the 1<sup>st</sup> to 5<sup>th</sup> Respondents under section 2(4) of the Convention Against Torture and Other Cruel Inhuman, Degrading Treatment or Punishment Act No. 22 of 1994 in the High Court of Colombo. The High Court of Colombo has reportedly fixed this case (case No. HC 155/2019) for trial.

At the time of the argument the learned counsel for the Petitioner in view of the actions taken by the state to indict the 1<sup>st</sup> to 5<sup>th</sup> Respondents, did not press for the afore-said relief prayed under (c) and (d). Indeed, I am satisfied that the Petitioner has already received relief she had expected from those two prayers. Therefore, I would not focus on the said prayers in this judgment.

The 1<sup>st</sup> to 5<sup>th</sup> Respondents have filed a joint affidavit and a statement of objections. The 1<sup>st</sup> to 5<sup>th</sup> Respondents have admitted that police officers attached to Peliyagoda Police Station had gone and arrested the Petitioner's husband on 25-02-2017 in respect of an incident of committing a robbery of a vehicle using a firearm with another suspect named Isuru Sandaruwan. The 1<sup>st</sup> to 5<sup>th</sup> Respondents have also stated that there was no necessity to break open any door as alleged by the Petitioner as an old person in the house opened the door to enable the arrest of the Petitioner's husband. The 1<sup>st</sup> to 5<sup>th</sup> Respondents also state that the family members of Chadik Shyaman and his wife (the Petitioner) were also there at the time of arrest who had informed that Chadik Shyaman was frequently suffering from wheeze. They further state that the family members also gave an inhaler along with some capsules and medicine to Chadik Shyaman who inhaled from the inhaler and also took one capsule just after his arrest. Although not specifically admitted that they arrested the Petitioner's husband, it can be reasonably inferred from several averments in the joint affidavit filed by the 1<sup>st</sup> to 5<sup>th</sup> Respondents that they were the members of the team of police officers responsible for the arrest and bringing Chadik Shyaman to Peliyagoda Police Station. They have not denied that they were the members of the said team. It must be borne in mind that this Court had not granted leave for the Petitioner to proceed with infringements under Article 13(1) of the Constitution. Therefore, I would not venture into consider the legality of the arrest of the Petitioner's husband.

The 1<sup>st</sup> to 5<sup>th</sup> Respondents had not taken up a position in their affidavit that they had handed over the Petitioner's husband to the police station or to any other officer after his arrest. If the 1<sup>st</sup> to 5<sup>th</sup> Respondents had handed over the Petitioner's husband to any other police officer, it is the 1<sup>st</sup> to 5<sup>th</sup> Respondents who should have known it best. Thus, in the absence of such position being taken up by the 1<sup>st</sup> to 5<sup>th</sup> Respondents, I would henceforth proceed on the basis that the Petitioner's husband continued to be in the custody of the 1<sup>st</sup> to 5<sup>th</sup> Respondents until the occurrence of the events which led to his death.

It is the position of the 1<sup>st</sup> to 5<sup>th</sup> Respondents that the Petitioner's husband is a person who was suffering from wheeze, fell ill due to that illness and was admitted to the hospital later

on. However, they have failed to produce copies of any note containing any entry made in that regard, in any of the Information Books maintained at the relevant Police Station.

Although the 1<sup>st</sup> to 5<sup>th</sup> Respondents have denied assaulting the Petitioner's husband, all what they have stated in their affidavit and the statement of objections is that; the Petitioner's husband was arrested; a statement was recorded; he fell ill; he was admitted to the hospital; and he died.

A postmortem examination of the body of the Petitioner's husband had been conducted at 10.00 am on 26-02-2017 by the Consultant Judicial Medical Officer - Colombo. The Consultant Judicial Medical Officer had observed twenty-eight external injuries on the body of the Petitioner's husband. The Petitioner has produced the aforementioned Post Mortem Report marked **P-7**. The Consultant Judicial Medical Officer had set out the said external injuries in the said Post Mortem Report in the following manner under the heading signs of recent injury.

**SIGNS OF RECENT INJURY**

1. *There is a 0.5 cm faint abrasion in the left frontal eminence area.*
2. *There is a 0.5 cm faint abrasion in the left forehead which is situated 1 cm above the lateral end of the left eyebrow.*
3. *There is a 2x1 cm abraded contusion in the left malar eminence area.*
4. *There are restrain marks with an imprint abrasion along with contusions similar to hand cuffs in both wrist areas.*
5. *There is a 4 cm obliquely oriented scratch abrasion above the manubrium sternum area.*
6. *There is a 3 cm obliquely oriented scratch abrasion in the medial end of the right clavicle.*
7. *There is a 1 cm abrasion in the posterior aspect of the right forearm situated 6 cm below the right elbow.*
8. *There is a 2x1 cm abrasion in the lateral aspect of the right elbow area.*
9. *There is a 5x4 cm purple contusion in the palmer aspect of the right hand.*
10. *There are two focal abrasions in the left anterior shin (0.5 cm each). One is placed in the upper third and the other in the mid third of the left shin.*

11. *There is a 2.5 x 1 cm abrasion in the lateral aspect of the right knee.*
12. *There is a 1 cm abraded contusion in the upper third of the right anterior shin.*
13. *There is a pre cervical vertebral haemorrhage with a 4<sup>th</sup> to 5<sup>th</sup> cervical spine fracture.*

**The following injuries were seen after reflection of the skin. They are not isolated injuries but described as groups for easy reference. Therefore, the numbering of them does not accurately reflect the exact number of injuries.**

14. *There are diffuse and extensive deep muscle contusions in the entire posterior aspect of the left forearm. There are overlapping tram line contusions within the diffuse contusion. There is a 2x1 cm focal abrasion on the skin in the upper third of the posterior aspect of the left forearm.*
15. *There are diffuse and extensive deep muscle contusions extending from the top of the left shoulder to the left elbow diffusely distributed in the postero-lateral aspect. There are overlapping tram line contusions within the diffuse contusion.*
16. *There are diffuse and extensive deep muscle contusions extending from the tip of the right shoulder towards the posterior middle third of the right upper arm.*
17. *There are contusions of the dorsal aspect of the right hand.*
18. *There are contusions of the dorsal aspect of the left hand.*
19. *There are contusions of the palmar aspect of the right hand.*
20. *There are contusions of the palmar aspect of the right.*
21. *There are diffuse and extensive deep muscle contusions extending from the lateral aspect of the left hip which extends downwards in an area of 25x30 cm which also extend anteriorly and posteriorly. There are overlapping tram line contusions within the diffuse contusions. The left inguinal area and just below it is spared.*
22. *There are diffuse and extensive deep muscle contusions extending from the lateral aspect of the right upper thigh which extends downwards in an area of 30x35 cm which extends anteriorly and posteriorly. There are overlapping tram line contusions within the diffuse contusion.*
23. *There are contusions of the right calf area.*
24. *There are contusions of the left calf area.*

- 25. There are diffuse and extensive deep muscle contusions in the entire back of the torso sparing the recessed areas of the back of the chest horizontally along the mid line and lumbar area. There are overlapping multiple tram line contusions within the diffuse contusions. The left inguinal area is overlapping multiple tram line contusions within the diffuse contusions. The left inguinal area and just below it is spared. The exact length of the tram line contusions cannot be measured due to their overlap. The width of tram line contusions measure about 4.5 cm (with central pallor of 1.5 cm and marginal contusions of 1.5 cm each=4.5 cm).*
- 26. There are diffuse and extensive deep muscle contusions in the entire gluteal regions. They extend up to the lower third of the back of both thigh areas.*
- 27. There is a faint 4.5x10 cm somewhat horizontally oriented soft tissue contusion in the exterior abdomen just below the level of the umbilicus.*
- 28. There are contusions of the sole of both feet.*

The Consultant Judicial Medical Officer has described these injuries as signs of recent injuries and identified the injury pattern as one commonly seen in torture. According to the Post Mortem Report, the cause of death is Hypovolemia due to multiple diffuse and extensive muscle and soft tissue contusions caused by blunt force trauma on the body.

Further, the Consultant Judicial Medical Officer had observed sand on the head, head hair, neck and torso of the body of the Petitioner's husband. This supports the averment in the petition in which the Petitioner has stated that she identified her husband's body; the body was without a shirt on it; and she had observed sand on her husband's body. It must be remembered that the 1<sup>st</sup> to 5<sup>th</sup> Respondents have stated that there was no necessity to break open any door as an old person in the house opened the door to facilitate the arrest of the Petitioner's husband. The 1<sup>st</sup> to 5<sup>th</sup> Respondents do not take up any position even to suggest any instance of any resistance by the Petitioner's husband or any attempt to escape from custody or any struggle with any other during the period in their custody since his arrest at about 4.00 am in the morning of 25-02-2017. Indeed, the Petitioner's husband had been in the custody of the 1<sup>st</sup> to 5<sup>th</sup> Respondents only for few hours as the Post Mortem Report indicates that the death had occurred at 9.06 am on 25-02-2017. The said time duration could be estimated to be approximately 05 hours. As per the 1<sup>st</sup> to 5<sup>th</sup> Respondents' position, the said five hours would include the time during which the Petitioner's husband fell ill due to 'wheezing attack'. The position of the Petitioner in this regard is also compatible with this

finding as she has stated in her petition that it was around 9.00 am on 25-02-2017 that she was informed that her husband had died and the body was lying at Colombo General Hospital.

The next question is as to how the Petitioner's husband who was in the custody of the 1<sup>st</sup> to 5<sup>th</sup> Respondents could have sustained these injuries. All what the Petitioner knew about this and in fact has stated in the petition is the fact of the arrest of her husband; him being taken to Peliyagoda Police Station; his death while in police custody; and thereafter seeing his body in the hospital.

One would not need more evidence than the above list of external injuries on the body of the Petitioner's husband along with the opinion of the consultant Judicial Medical Officer to conclude that somebody had used blunt force trauma on the Petitioner's husband. The 1<sup>st</sup> to 5<sup>th</sup> Respondents were obliged in law to keep the Petitioner's husband in their safe custody as long as they kept him in their custody as a suspect pending further investigations. The 1<sup>st</sup> to 5<sup>th</sup> Respondents have not explained as to how the Petitioner's husband who was in their custody had sustained not one or two but twenty-eight injuries listed above. Thus, in the absence of any explanation by the 1<sup>st</sup> to 5<sup>th</sup> Respondents, the only irresistible conclusion is that the 1<sup>st</sup> to 5<sup>th</sup> Respondents had used blunt force trauma on the Petitioner's husband while in their custody after his arrest and that had brought him a considerable number of injuries on his body. There is no other inference possible in the above circumstances. As regards the death, it is clear from the findings of the Post Mortem Examination, that the Petitioner's husband's death was not due to a wheezing attack. Nor have the 1<sup>st</sup> to 5<sup>th</sup> Respondents established that he was admitted to the hospital on that sickness. The Post Mortem Report is clear that the cause of death is due to extensive muscle and soft tissue contusions caused by blunt force trauma.

In the case of Sriyani Silva Vs. Iddamalgoda, Officer-in-Charge, Police Station Paiyagala and others,<sup>1</sup> His Lordship Justice Mark Fernando, held that Article 13(4) impliedly recognized the right to life at least in the sense of mere existence, as distinct from the quality of life which can only be deprived of, by a court order and that Article 11 (read with Article 13(4)), recognizes a right not to deprive a citizen of his life whether by way of punishment or otherwise. His Lordship went on to hold that the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect the said rights effectively.

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<sup>1</sup> 2003 (2) SLR 63.

Moreover, Justice Mark Fernando in that case, also held that the lawful heirs and/or dependents are entitled to institute proceedings under Article 126(2) read with Article 17 in respect of the infringement of the afore-said fundamental rights.

In these circumstances and for the foregoing reasons, I hold that the 1<sup>st</sup> to 5<sup>th</sup> Respondents have infringed the fundamental rights of the Petitioner's husband Chadik Shyaman Wickramarachchi guaranteed under Article 11 and 12(1) of the Constitution.

I award a sum of Rs 1,000,000, as compensation, of which a sum of Rs 750,000 shall be paid by the State and Rs 50,000 each by the 1<sup>st</sup> to 5<sup>th</sup> Respondents personally. The amount of money ordered as compensation must be paid within four months from the date of the pronouncement of this judgment.

Out of the sum of Rs. 1,000,000/= (one Million) awarded as compensation, a sum of Rs. 500,000/= shall be invested in the names of the two children in equal shares in a state bank. The Petitioner is entitled to the balance Rs. 500,000/= The Registrar must ensure the distribution/investment of compensation ordered.

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA J**

I agree,

**JUDGE OF THE SUPREME COURT**

**M. A. SAMAYAWARDHENA J**

I agree,

**JUDGE OF THE SUPREME COURT**