

SUBASINGHE
v.
POLICE CONSTABLE SANDUN AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, CJ.,
WADUGODAPITIYA, J. AND
BANDARANAYAKE, J.
S.C. (SPECIAL) NO. 235/96
AUGUST 25, AND NOVEMBER 30, 1998

Fundamental rights – Degrading treatment – Articles 11, 13 (1) and 13 (2) of the Constitution.

On 26.11.1996 the petitioner made a complaint to the 3rd respondent (OIC, Dankotuwa Police) regarding a commercial transaction. On the evening of that day, the 1st respondent police constable met the petitioner at the Dankotuwa Public Market and threatened to teach him a "good lesson". The next day, the 1st respondent and another police officer (the 2nd respondent) arrested the petitioner at the Dankotuwa Public Market and took him to the police station. Thereafter the 1st respondent assaulted the petitioner with hands, kicked him and also beat him with a belt. The petitioner was then handcuffed, taken to the Dankotuwa junction in a private bus and paraded there and brought back to the police station, where he was confined in a cell. The 1st respondent again assaulted the petitioner. A Deputy Minister visited the police station immediately and obtained the release of the petitioner. The 1st respondent's defence was that he arrested the petitioner for riding a motor cycle without a helmet, a driving licence and insurance and for obstructing the 1st respondent in the performance of his official duties. Medical evidence disclosed injuries on the petitioner caused by a blunt weapon.

Held:

The 1st respondent had violated the fundamental rights of the petitioner guaranteed by Articles 11, 13 (1), and 13 (2) of the Constitution.

Per Bandaranayake, J.

"the fact that the petitioner was taken handcuffed in a private vehicle to the Dankotuwa town and "exhibited" in the manner spoken to by the petitioner in my view, is an affront to the petitioner's dignity as a human being and amounts to "degrading treatment" within the meaning of Article 11".

APPLICATION for relief for infringement of fundamental rights.

Nimal Weerakody for the petitioner.

L. C. M. Swarnadhipathy for 1st to 3rd respondents.

S. Rajaratnam SC for 4th and 5th respondents.

Cur. adv. vult.

December 16, 1998.

SHIRANI A. BANDARANAYAKE, J.

The petitioner submitted that on 26.11.1996 he went to Dankotuwa Police Station to meet the OIC of the Police Station. He had asked the 1st respondent (Police Constable Sandun), who was seated at the Inquiry Desk, whether the OIC was present, to which the 1st respondent had replied in the negative. Thereafter the petitioner had inquired from the 1st respondent whether another officer was present. While answering in the negative to this question, he had asked the petitioner for the reason for inquiring about important officers without informing him his problem. The petitioner had left the police station at that stage as his need was to meet the 3rd respondent (the OIC). The next morning the petitioner had met the 3rd respondent and had made a complaint regarding a commercial transaction. On the same day around 9.30 am when the petitioner was near the Dankotuwa Public Market, the 1st respondent, who was not in his uniform, came up to the petitioner and told him that he will come in his uniform to teach the petitioner "a good lesson".

On 27.11.1996 around 5.30 pm, when the petitioner was talking to a friend near Dankotuwa Public Market, the 1st respondent and the 2nd respondent came and held the petitioner by his shirt collar and took him to the Dankotuwa Police Station. The 3rd respondent was present at the Police Station but he had ignored the petitioner. Thereafter the 1st respondent had beaten the petitioner with hands and legs and with the 1st respondent's belt in a brutal manner for about 15 minutes. The 2nd respondent was looking on. The petitioner's friends and relatives had heard about the incident and had gathered

outside the Police Station and they were watching the assault. The 1st respondent had tried to pour alcohol down his throat but the petitioner had refused vehemently. Thereafter the 1st respondent had put handcuffs on the petitioner and pulled him outside. The 1st respondent brought the petitioner to the Dankotuwa junction in a private bus (P6). The petitioner submits that at the Dankotuwa junction, he was made to walk with the handcuffs across the Dankotuwa junction and was later put into another vehicle and was taken away (P7, P8, P9, P10 and P11). He was then taken to the Dankotuwa District Hospital and was brought back to the Dankotuwa Police Station. The petitioner was put in the cell and beaten again with hands and legs by the 1st respondent. His head was knocked very hard on the wall (P3 and P12). The petitioner noticed that his gold chain which was worth about Rs. 20,000 was missing. He was released on 27.11.1996 and entered the Negombo Base Hospital. The petitioner alleges that his fundamental rights guaranteed under Article 11, 13 (1) and 13 (2) were violated by the actions of the respondents.

The Court granted leave to proceed in respect of the alleged infringement of Articles 11,13 (1) and 13 (2).

The 1st respondent in his affidavit has averred that he and the 2nd respondent were on duty at the Dankotuwa junction. Around 4.50 pm on 27.11.1996, he had signalled the petitioner who was riding a motor cycle without a helmet to stop. The petitioner had proceeded towards the market without heeding to his signal to stop. The 1st respondent, with the 2nd respondent, had gone towards the market and waited in front of the market for the petitioner to return. When the petitioner returned, he had stopped the petitioner and asked him to produce his driving licence and the insurance policy. As the petitioner failed to produce them the 1st respondent had questioned him to find out his name and address to serve him with a fine sheet for riding a motor cycle without a helmet, driving licence and insurance. At that moment, the petitioner had dragged the 1st respondent to him from his belt and threatened to transfer him by informing the Deputy Minister Milroy Fernando if he issued him a fine sheet. The 1st respondent therefore had arrested him for obstructing a police officer in the discharge of his public functions and riding a motor cycle without a

helmet, driving licence and insurance. The 1st respondent states that he had to use minimum force to arrest the petitioner as the petitioner resisted the arrest. The 1st respondent averred that due to the petitioner's action his belt was damaged.

The 1st respondent had immediately brought the petitioner to the police station and after making the necessary entries in the relevant books he had left the police station at 5.20 pm with the petitioner to go to the hospital. He had brought the petitioner back to the police station at 6.10 pm and had handed him over to the reserve and left the police station at 6.20 pm for duty at the Dankotuwa junction (1R3a, 1R3b and 1R3c). The 1st respondent had further averred that Mr. Milroy Fernando, had come to the police station immediately to meet the OIC of the police station to secure the release of the petitioner on bail.

The petitioner was admitted to the Base Hospital, Negombo, on 27.11.1996 at 10.40 pm The Admission Form gives the following details:

assaulted by police

chest pain

headache

vomiting – blood

. . . .

no injury marks

swelling of the face

The Medico-Legal Examination Form indicates that the petitioner was examined on 27.11.1996 at 10.40 pm and that he had a non-grievous contusion that would have been caused by a blunt weapon.

The petitioner has produced 12 affidavits; the affirmants aver that they have seen the petitioner being taken by 2 police officers and the police officers assaulting him (P1 – P12). Two of the affirmants have seen the 1st respondent assaulting the petitioner with his hands, feet and the belt (P1 and P3). The driver of the bus which belongs to the Don Bosco church avers in his affidavit that he brought the petitioner who was in handcuffs to the Dankotuwa Town at the request of the police (P6). There are several affidavits wherein the affirmants aver that they saw the petitioner in handcuffs around 6.20 pm at the Dankotuwa Town on 27.11.1996 (P7, P8, P9, P10 and P11).

The fact that the petitioner was taken handcuffed in a private vehicle to the Dankotuwa town and "exhibited" in the manner spoken to by the petitioner in my view, is an affront to the petitioner's dignity as a human being and amounts to "degrading treatment" within the meaning of Article 11.

The respondents' case is that the petitioner was arrested by the 1st and 2nd respondents for riding a motor cycle without a helmet, driving license and insurance and for obstructing a public officer while discharging his public duties. He was arrested around 4.50 pm on 27.11.1996 and was released on bail around 7.35 pm the same day. The position of the petitioner is that, while he was talking to a friend of his, seated on a motor cycle parked near the Dankotuwa market, the 1st and 2nd respondents brought him to the police station. The petitioner has made a statement to the Dankotuwa Police Station on 27.11.1996 at 7.10 pm to this effect (1R3).

A friend of the petitioner has filed an affidavit, which shows that the 2 police officers arrested the petitioner while he was talking to the petitioner near the Dankotuwa market (P1). On the other hand, other than the respondents' own notes (1R3b), there is no evidence to show that the petitioner was taken into custody for riding a motor cycle without a helmet, driving licence and insurance and for obstructing a public officer while discharging his duties. The respondents' submission is that the petitioner had obstructed them while they were performing their duty but this has been denied by the petitioner

in his statement made to the police on 27.11.1996 (1R3). The notes 1R3b constitute no more than self-serving evidence on which no reliance could be placed.

On a consideration of the totality of the material placed before us, I reject the version of the 1st respondent and I hold that the 1st respondent has violated the fundamental rights of the petitioner guaranteed by Articles 11, 13 (1) and 13 (2) of the Constitution.

I direct the State to pay Rs. 10,000 to the petitioner as compensation and Rs. 5,000 as costs. The 1st respondent is directed to pay Rs. 5,000 personally to the petitioner as compensation. In all, the petitioner will be entitled to a sum of Rs. 20,000 as compensation and costs. This amount must be paid within three (3) months from today.

The Registrar of the Supreme Court is directed to send a copy of this judgment to the Inspector-General of Police.

G. P. S. DE SILVA, CJ. – I agree.

WADUGODAPITIYA, J. – I agree.

Relief granted.