

Amal Sudath Silva v Kodituwakku (1987) 2 SLR 119

Petitioner's complaint was that after his arrest on a charge of theft he was kept in police custody for five nights; that during this period he was beaten with batons, hung to a beam by his hands tied to a rope and his penis being crushed as a result of being put into a drawer and closed. He also complained that when he asked for water he was given water mixed with chilli powder, which he was forced to drink.

ATUKORALE J (SHARVANANDA CJ and DE ALWIS J agreeing)

(His Lordship was satisfied on the medical reports that Petitioner had been subjected to torture while in police custody, and continued):

"...Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torturous, cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restrictions or limitations whatsoever. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. The police force, being an organ of the State, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances. Just as much as this right is enthralled by every member of the police force, so is he prohibited from denying the same to others, irrespective of their standing, their beliefs or antecedents. It is therefore the duty of this court to protect and defend this right jealously to its fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental and that the executive by its action does not reduce it to a mere illusion. This court cannot, in the discharge of its constitutional duty, countenance any attempt by any police officer however high or low, to conceal or distort the truth induced, perhaps, by a false sense of police solidarity. The facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can only be described as barbaric, savage and inhuman. Their most revolting to one's sense of human decency and dignity, particularly at the present time when every endeavour is being made to promote and protect human rights. 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 within the confines of the very premises in which he is held in custody. 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 maybe 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...¹

Source: Goonesekere, R. K. (2003). Fundamental Rights and the Constitution II - A Case Book. Colombo: Law and Society Trust.

¹ Cf. Collin-Thorne J in *Senthilnayagam v Seneviratne* (1981) 2 SLR 187 " the Courts have been jealous of personal liberty and care is not to be exercised less vigilantly because the subject whose liberty is in question may not be particularly meritorious." See also *Ekanayake v Herath Banda* SC (FR) 25/91, SCM 18.12.91. *Dissanayake v Superintendent Mahara Prison* (1991) 2 SLR 247, *Jayasinghe v Samarawickrama* SC (FR) 157/91, SCM 12.1.94