

# **Dialectics of Justice:**

## **Five Sri Lankan Cases.**

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# 1.

## The Case of Amitha Priyanthi

**W**HEN YOU MEET Amitha Priyanthi, it is difficult at first to tell if you are in the presence of hope or bitterness. A woman of exceptional dignity and determination, Amitha's bearing—formal, measured, precise—betrays little of her inner life. This is by design, one senses. Amitha conveys the presence of powerful emotions precisely by withholding all emotion from view. Her assertions and explanations of things—events of the past, plans for the future—always reflect years of careful consideration. But this same feeling as she has pursued the cause of justice in the name of her late brother, and what she feels as she looks to the future, are not made available. One does not know, equally, whether to feel hope or bitterness oneself as Amitha tells her story. Only at the end, when Amitha brings events up to the present and explains the way forward, does the recognition come: Hope and bitterness are not separable in Sri Lanka. The pursuit of justice in Sri Lanka brings both, even in victory.

**THERE ARE MANY** deserters from the Sri Lankan army—a consequence of the long, senseless war in the North and East between government troops and the Liberation Tigers. And it is with an act of desertion that Amitha's story begins.

Her younger brother, Lasantha, was a soldier. He seems not to have held a strong view about the war, although he opposed it and did not wish to fight in it. Stronger were his feelings about his wife and newborn baby. In the spring of 2000, while serving in the north, near Jaffna, Lasantha was refused leave to see his family. Instead he was given a few days to travel to his village, then ordered to return to his unit. Lasantha went home but never returned.

“He was granted a short holiday,” Amitha said when we discussed these events. “He had no intent to go back.”

On June 12, 2000, the police arrested Lasantha in Payagala, the village south of Colombo where he lived. Eight days later he died in a hospital, still under remand, of injuries sustained while he was in police

custody. The cause of death was acute renal failure: Lasantha's kidneys had been irreparably damaged when the police beat him with a wooden pole.

Seven years later, Amitha was still fighting for justice in the case of her brother. There had been victories and defeats. She had gone from police station to police station, from court to court, from one session of the Sri Lankan Medical Council to the next. And there would be more to come.

In August 2003, a case she had pursued in the Supreme Court on behalf of her widowed sister-in-law ended successfully. It created a precedent regarding the rights of the next of kin to seek redress through an application to the Supreme Court based on the fundamental rights clause in the Sri Lankan constitution. The court held that the police were responsible for torturing her brother and granted compensation to the widow and child from their marriage.

Amitha also won a case in magistrate's court when a doctor testified that her brother's death was homicide—death by assault. Criminal charges—culpable homicide—were then filed against one police officer. But complications accumulated in this case. The non-summary inquiry into the homicide case took six years—until March of 2006. The case had gone to the high court, but by the summer of 2007 the Attorney General had yet to file an indictment. In the course of these delays, the officer charged absconded—disappeared, as Lasantha had done when he went on unauthorized leave.

In a district court, Amitha followed another strategy. She filed a civil claim against three police officers, the Inspector General of Police, the Attorney General and the Commissioner of Prisons. She also filed a further civil action against the Judicial Medical Officer (JMO), the Attorney General and the Administrative Secretary to the Ministry of Justice, whom she claimed were complicit in her brother's murder. A civil case such as this involves prolonged litigation; anything from 5 upto 20 years.

On July 26, 2007, Amitha had another breakthrough. This occurred when the Sri Lanka Medical Council ruled on the case of the doctor charged with examining Lasantha while he was in police custody. The council had been deliberating this case since October of 2001—nearly six years. It finally found the examining doctor guilty of eight offenses and suspended him from practice for three years.

Doctors of this kind are known as Judicial Medical Officers, and in this capacity they have quite specific responsibilities. This doctor's offenses as a J.M.O. in Lasantha's case are telling in themselves: They were mostly matters of omission. He had not asked Lasantha for his consent before examining him. He did not ask Lasantha the names of the police officers who assaulted him. He failed to give Lasantha a comprehensive examination—neglecting even to take his blood pressure. He failed to record any diagnosis nor to recommend hospital admission. In all, the doctor appears to have spent fifteen to twenty minutes with Lasantha. But we do not know, for that is by the doctor's account, and he made no record of his procedures.

One of the doctor's offenses involved what he did, not what he failed to do. He examined Lasantha in the presence of the police officers in the station where he had been tortured.

THE FACTS OF LASANTHA'S CASE, and of Amitha's long search for justice, are matters of record now. And Amitha, as she pursues the cases still pending, will add more to these facts and records. What do we see when we look closely at them? What do the records tell us about the matter of justice in Sri Lanka?

There is, first, the question of time. And related to this is the question of care and carelessness as they exist side by side in Sri Lanka.

Lasantha was dead within eight days of his arrest in the spring of 2000. Whether or not a court would have found him guilty of an offense we will never know, because he never got that far. Guilty or not, he was deprived of justice. And we now know that the examining physician spent all of fifteen to twenty minutes (and quite possibly less) examining the patient. As the medical council concluded, a proper examination would very likely have saved Lasantha's life.

These facts stand against the seven years it has (so far) taken Amitha to bring justice to the case of her brother.

The medical council's ruling in the summer of 2007 is the most recent to be issued in Lasantha's case. When we read it, we cannot but be struck at the meticulous care taken in the council's deliberations over a period of

several years, during which all efforts were made to provide the examining physician an opportunity to defend his conduct.

All Sri Lankans are due the amount of time that is required, however much, in the delivery of justice. All Sri Lankans deserve the attention to procedure the medical council brought to the case of the J.M.O. who examined Lasantha. But when this time and attention are placed next to the swiftness of Lasantha's torture and death and the carelessness with which the doctor handled his case, a paradox emerges: When time and attention to procedure are given to some and withheld from others, they stand as a perversion.

We must also recognize in the records the presence of what many civil society activists concerned with the judicial system term "the network." The network consists of judges, lawyers, police, and doctors who work in concert—not for the proper administration of justice, but for the benefit of one another. A judge will collude with the attorney who is supposed to represent a defendant. Or he will collude with the police. Or the lawyer for the defendant will collude with the police. Or (as in this case) a doctor will collude with the police in his official capacity as a J.M.O.

Note the doctor's evident attitude in Lasantha's case. The examination was cursory by any reasonable measure. The physician examined Lasantha in the presence of the police. He failed to recommend hospitalization because (as his counsel testified) he assumed the police would continue to hold him. These attitudes, these assumptions, this kind of conduct—all are prevalent in the Sri Lankan system. It is how the network functions. The presence of the network is the reason many of Amitha's friends and acquaintances advised her not to embark on her search for justice in the first place.

But here we come to a question that is everywhere evident in the record even if it is nowhere stated. This concerns the power of the powerless. We must not overstate the present position. Abuses—police abuses, medical abuses, and judicial abuses—are thought by many to be increasing in Sri Lanka, not declining. Amitha is in many respects something other than typical. Many cases such as hers do not end in justice. But Amitha brought sufficient courage and determination—a certain hardness, we can say—to her search for justice. And she proved that the powerless can assume power over their lives and circumstances.

There is another way to put this: If Sri Lanka is to cure itself of its ills, Amitha represents the future, while the guilty in the death of her brother represent the past. Or still another way: In Amitha, a person of complex emotions but someone who is also in control of them, we find a certain kind of hope. It is the possibility of hope without bitterness.



## 2.

# The Case of Anthony Fernando.

**T**HE PICTURE of Anthony Michael Fernando most commonly circulated shows a young, smiling man looking slightly down into the camera. So perhaps, one surmises, he is tall. He wears a sport shirt, open at the neck, and his hair is neatly trimmed. In the background are what appear to be Gothic windows: He is standing, perhaps, in front of a church facility, or a community center.

One searches this small snapshot in vain for some suggestion of the extraordinary fate that befell Tony Fernando, as he is known, when he entered the space of the Sri Lankan justice system. But there is none. So, in the end, it is the ordinariness of this man that bears interpretation. In Tony Fernando we find the tragic ordinariness of extraordinary injustice in Sri Lanka—its reach into everyday lives.

TONY FERNANDO'S STORY extends back many years now, for justice delayed is a considerable part of it. In 1997 he was employed as the Christian Emphasis Secretary of the Young Men's Christian Association in central Colombo. One day he fell and suffered injuries—a regrettable but common enough experience. Little that happened afterward was common, however—at least not by any reasonable standard. Tony Fernando fell at the Y.M.C.A., one might say, and did not stop falling until he landed in exile in Canada, where he now lives.

After his injury at the Y.M.C.A., Fernando filed a claim for workman's compensation. When the matter came before the Deputy Commissioner for Workmen's Compensation, an amount of offered which Fernando found unacceptable and his claim for compensation for a work-related injury was thereafter dismissed.

Legal motions followed—Fernando filed four of them. The first two alleged that the deputy commissioner's ruling violated his constitutional rights.

Time passed. In November of 2002 the Supreme Court considered the two motions jointly and dismissed them. Two months later Fernando filed a third motion relating to a legal point: He alleged that the consolidation of the first two claims and their joint dismissal effectively denied him a fair trial. This motion was dismissed almost immediately. Fernando's fourth and most fateful motion followed in February of 2003. In it Fernando objected that the chief justice, Sarath Silva, and the two other judges who considered his third motion had no right to do so: They were the same judges who had dismissed the first two motions. This point would later receive the support of numerous legal experts, including the U. N.'s Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy.

But it is at this point that the substance of the case, one way or the other, is lost—or changes fundamentally in nature. From this point forward the question ceases to be Fernando's compensation claim and becomes the nature of justice (or injustice, more properly) in Sri Lanka. "I am not going into the merits of the case," Cumaraswamy would say later. "The question here is whether it is proper for the chief justice, after having been made a party to a case, to sit on the panel and adjudicate on the matter."

We mentioned that the fourth motion was fateful, and indeed it was. With it, a fall while on duty at the Y. M. C. A. became, perversely enough, an international *cause célèbre*.

Fernando filed his final motion on February 5<sup>th</sup>. The following day the motion was heard, and during the proceedings Chief Justice Silva, a man of wide and controversial repute, considered that Fernando spoke too loudly in addressing the court. Silva issued a summary judgment: Fernando was sentenced to a year's "rigorous imprisonment"—that is, hard labour—for contempt of court. He began serving his sentence that day.

Tony Fernando faced abuse almost as soon as he entered prison. He developed an asthma condition that went untreated. He was forced to sleep on the floor with his legs chained, which worsened his medical condition. On being transferred from a prison hospital back to his cell, he was repeatedly assaulted, which resulted in spinal injuries. In less than a week he was unable to get out of bed.

A month after his incarceration, Fernando filed a case alleging violation of his fundamental rights according to the Sri Lankan constitution.

He also appealed Silva's contempt ruling. The rights case, at writing, is still pending; the appeal on the contempt charge was dismissed in July of 2003, four months after it was filed.

Tony Fernando was released from prison eight-months into his sentence, in October 2003. While in prison custody, he filed three legal complaints: one with the U. N. Human Rights Committee regarding the contempt charges and the torture that followed; one (noted above) with the Supreme Court alleging torture while he was imprisoned, and one a criminal case against two prison guards allegedly responsible for his torture. At the time of writing the fundamental rights case before the Supreme Court is still pending and the criminal charges against the two prison guards has not been pursued by the state and the United Nations Human Rights Committee has made its decision, holding that Sri Lanka as the state party has violated Tony Fernando's human rights by illegal detention, despite of the court decision to imprison him and requesting the government to pay compensation for the violations of his rights. The government has refused to pay the compensation on the basis that since the imprisonment was a result of a judgment of a domestic court it is not in a position to take any action on the matter.

Events unfolded swiftly at this point. In December of 2003 he received anonymous death threats by telephone, during which time he was told to withdraw all three cases. A month later the U. N. Human Rights Committee appealed to the Sri Lankan government for Fernando's protection. (None was forthcoming.) A month later there was an attempt on Fernando's life, when an unidentified man attacked him on a Colombo street and covered his mouth with a handkerchief containing a substance that proved nearly lethal.

On 30<sup>th</sup> August 2004, Tony Fernando appealed for asylum in Hong Kong. He left Sri Lanka on the 16<sup>th</sup> June 2004, and seven months later settled in Surrey, Canada where he now resides. His wife and children joined him in Surrey on the 16<sup>th</sup> December 2004. He still awaits two judgments.

THERE IS a striking pettiness in the Tony Fernando case. Why did the Supreme Court act to turn such a minor matter into a case with international implications in the first place? A pettiness and a lack of all reasonable proportion. Sri Lanka, unlike India and numerous other jurisdictions, has no law covering contempt of court procedures. Judges can

rule as they see fit and sentence defendants accordingly. It was in this circumstance that Tony Fernando received a year's hard labour (and then all the mistreatment that went with it) for the alleged offense of raising his voice in court. Again, the question is, "Why?"

Some fundamental features of Sri Lanka's critically dysfunctional judicial system are evident in the Fernando case. To understand them is to answer the above-noted questions. To understand them is also to recognize the fundamental problem of hierarchical consciousness in Sri Lanka and how it is manifest through a judicial system that is nominally based on modern procedure.

The most prominent of these characteristics is an obsession with form within the system. One finds among attorneys and judges alike in Sri Lanka an almost pathological preoccupation with rules and procedure. Form, in this sense, is ordinarily essential for the delivery and administration of equal justice. In the Sri Lankan case, form as we mean it here performs a different function. Its purpose is to mask what amounts to a near anarchy of injustice in Sri Lankan courts. So long as form is observed, practically anything goes.

Tony Fernando's true offense was to insist that law and procedure be applied as they were originally intended. This amounted to an attack on another of the core features of the Sri Lankan system: its impulse to preserve the prerogatives of arbitrary power. So we arrive at the essential contradiction exposed in the Fernando case—that is, behind the curtain of rules that the judiciary so carefully maintains, there are no rules.

The question of arbitrary power is related to another involving distance. Distance between ruler and ruled is, in essence, a feature of pre-modern political systems. It is by way of distance that arbitrary power is maintained. And it was another of Tony Fernando's offenses that he denied the judiciary's right to a distance it considered customary.

What is finally brought to light in the Fernando case is the problem of impunity and the judiciary's underlying desire to preserve it. The true tragedy of Tony Fernando's journey through the courts—even before it has ended—is that there is nothing out of the ordinary in it.

### 3.

## The Case of Lalith Rajapakse.

**I**T IS COMMON, when making one's way among the many victims of official abuse and human rights violations in Sri Lanka, to find people who have been waiting for three, four, or five years for their cases to be decided. Injustice may arrive swiftly—without notice, within a few seconds, out of nowhere. Then the years go by as the victim seeks redress. It becomes, in the end, another form of victimization, another form of injustice, not unrelated to the matter of official impunity. One is made a victim of abuse, and then one is made a victim again in the course of seeking to rectify the wrong.

LALITH RAJAPAKE WAS nineteen on the night of April 18, 2002. He is, at this writing, twenty-four, physically impaired and psychologically traumatized and still awaiting justice in the events that ensued.

On the night in question, several police officers arrived at the door of a friend's house, wherein Lalith was sleeping. For no reason evident to him at the time he was awakened, arrested, and taken to the police station in Kandana, a town about 20 kilometers north of Colombo. The torture that was to become central to his case began immediately: Lalith was beaten even in the jeep into which he was bundled outside his friend's house.

The U. N. Human Rights Committee later detailed Lalith's treatment at the police station: "He was forced to lie on a bench and beaten with a pole; held under water for prolonged periods; beaten on the soles of his feet with blunt instruments; and books were placed on his head which were then hit with blunt instruments."

These kinds of torture are familiar to those who study police practices in Sri Lanka. The last is intended to inflict internal injuries without leaving external marks. In Lalith's case, his grandfather eventually came to the police station and found him, slumped and lifeless, in a cell. He lay unconscious in a hospital for fifteen days afterward and was unable to speak coherently for nearly a month. He remained in treatment for another month;

thereafter, the psychological stress prevented him from work. For two years Lalith lived in hiding, and he and his family survived on charity.

Three charges were filed against Lalith, and the torture was intended to extract a confession validating them. But none held up. There were two allegations of theft, which collapsed nearly a year and a half after they were filed, when it turned out the supposed victims of robbery had never claimed Lalith had stolen anything from them. The third charge was for allegedly obstructing the police in the discharge of their duties. It was not quite three years before a magistrate court acquitted Lalith of this charge.

Lalith took action on his own part. In May of 2002, just out of the hospital, he filed a case in the Sri Lankan Supreme Court charging that his fundamental rights, as guaranteed under the constitution, had been violated. His grandfather was a party to the case. A few months later the Attorney General, in apparent response to pressure from the U. N. Human Rights Committee, ordered an inquiry into the events that had led Lalith and his family into the courts. This led to a case in the High Court.

But the delays and irregularities have been many. Chief among them has been the pressure applied to force Lalith to withdraw from the legal process.

Threats against Lalith and his family have been more or less constant. And there are other details—bizarre, petty details that reflect certain routines the police often follow. A month after Lalith filed his fundamental rights case, a local fish trader (and a longtime acquaintance of Lalith's grandfather) was asked by the Kandana police to poison the fish the grandfather next bought. The fishmonger was also asked to let the police know where the grandfather liked to drink, so that his liquor, too, might be poisoned.

A few months later came threats to Lalith's life. These arrived by way of anonymous figures claiming to speak for the Kandana police—a claim the police denied. All the while, the police officers alleged to have tortured Lalith were permitted to continue serving in their customary posts. It was not until December of 2004 that Sub Inspector S.I. Peiris in Kandana and two other officers were barred from service and transferred. Sub Inspector Peiris was also indicted under the Torture Act of Sri Lanka.

LALITH'S EFFORTS pursue justice have been more successful than those of many other Sri Lankans. And it is because of this partial success that his case affords us a particular window into the judicial system, its workings, and the limits of international authority.

In May of 2005, the U. N. Human Rights Committee accepted Lalith's appeal, overruling the objections of the Sri Lankan government as to the admissibility of the case on the grounds that his human rights were violated. A little more than a year later, the committee ruled in Laith's favour: "The delay in the disposal of the Supreme Court case and the criminal case amounted to an unreasonably prolonged delay," the committee noted in its decision.

This represented a significant victory for Lalith, for his family, and for those human- and legal-rights organizations that have supported Lalith since he first filed his cases. But at this writing, in September of 2007, neither the Supreme Court case nor the criminal case against Sub Inspector Peiris has been settled.

Justice delayed, as the age-old principle holds, is justice denied. Yet for many Sri Lankans, justice delayed is all there is in the best of outcomes: It is a rare case that is accepted at the U. N. or by any other international organization devoted to upholding the rule of law. Most of the time, the universe of the law ends at the national borders.

Lalith's cases thus underscore a very uncomfortable truth in the struggle for justice in Sri Lanka: Even when cases of abuse and human-rights violations are taken up at the international level, the impunity with which the Sri Lankan authorities have long acted can still prevail.

In September of 2006, with Lalith's cases still pending (along with many others), Chief Justice Sarath Silva sought to elevate this impunity to the level of legal principle. Once again, the thought appeared to be that anything was permissible so long as it had the appearance of proper procedure.

Chief Justice Silva's ruling came in the case of a man charged with conspiracy to overthrow the government—a case connected with the war between the government and the Liberation Tigers. The defendant, having been sentenced to ten years of "R. I.," or rigorous imprisonment—that is,

hard labour—successfully appealed to the U. N.’s Human Rights Committee. The committee ruled in the defendant’s favour—a ruling Sri Lanka is legally committed to respecting. Silva, in an especially tortured instance of contorted legal reasoning, responded by invoking “the sovereignty of the People” to assert that Sri Lanka was, in fact, not bound to respect the U.N.’s rulings, despite being a signatory to the relevant covenants!

Among human-rights and legal-rights advocates and activists, the 2006 decision is considered a landmark in the all but complete corrosion of Sri Lankan justice.

## 4.

# The Case of Palitha Tissa Kumara.

**E**XCESS IS A COMMON feature of the Sri Lankan justice system. In one form or another one finds it in almost all the research one may conduct into the workings of the police, the lawyers, the judges, and the doctors. There is violence, there is abuse of a defendant's rights, there are threats and intimidation, there is false testimony, there are excessive sentences, there are unwarranted delays. Every so often we find a case that reminds us of the pathology underlying these forms of excess. At its root, the problem of injustice in Sri Lanka is a psychological problem. If we look at this carefully, there are suggestions that the contempt authority displays for ordinary citizens, are a form of self-contempt.

THE CASE OF Palitha Tissa Kumara is such a case. There is no other way to explain some of its grosser excesses but by way of a psychological analysis.

Some of the facts in Palitha's case will by now be familiar in our brief readings of other cases. The case begins on February 3<sup>rd</sup>, 2004.

Palitha was a craftsman from Matugama in the district of Kalutara. He was skilled in the arts of painting and stone carving. On the morning of February 3<sup>rd</sup>, six police officers arrived at his home and asked him to come to the station in Welipenna, a nearby town to paint the police emblem on the stationhouse in preparation for Sri Lanka's celebration of its day of independence. Palitha agreed. Any aspect of Palitha's encounter with the local police end at this point in his story.

Before the officers and Palitha reached the jeep in which they were to drive to the station, one officer turned and, out of nowhere, pistol-whipped Palitha to the point of causing an open wound on his chin. The police thereupon threw Palitha to the ground and assaulted him further before piling him into their vehicle.

On the way to the station the police stopped to arrest another man, known as Galathaga Don Shantha Kumar. Don Shanta would soon become a prominent figure in Palitha's case. He, too, was tortured; he, too, was accused of plotting robberies.

At the police station, an all too predictable round of torture began. According to Palitha's account, the police officer who had pistol-whipped Palitha beat him with a cricket pole on his neck, arms, head, spine, and knees. He then began demanding—again, out of nowhere—that Palitha surrender the bombs and weapons in his possession—bombs and weapons he had planned to use in the armed robberies he had been plotting. Don Shantha was there. The police officer made it known that the same would be coming to him.

The torture continued for approximately two hours, according to Palitha's later testimony, during which time Palitha repeatedly denied any knowledge of bombs, weapons, or robbery plots. The abuse stopped only when about eight other officers intervened, one of them taking the wicket from the violent officer's hands.

The assaulting officer then brought another detainee into the room. His name was Thummaya Hakuru Sarath, and he suffered from tuberculosis. The officer then issued what must stand as one of the most grotesque orders in the long, often-grotesque history of police abuse in Sri Lanka. Sarath was to expectorate into Palitha's mouth so as to infect him. More than a year later, when the matter was in dispute, Sarath gave a statement confirming that he had been forced to act in a manner deliberately intended to contaminate Lalith. It also emerged the Sarath, too, had been beaten—a victim himself.

Unable to stand, in and out of consciousness, Palitha remained in a jail cell for several days, during which more torture ensued. He was finally taken to hospital—or, rather, hospitals, for there were two, both of which refused to admit him (one refusing twice) despite injuries that were by this time evident.

Back at the jail cell, the assaulting officer produced a grenade. Palitha was forced to leave his thumbprint in wax, whereupon the print was transferred to the grenade. The officer had already forced Palitha to sign a confession of guilt without reading it to him.

It is now the 6<sup>th</sup> of February, three days after Palitha was taken from his home. He is taken back to one of the hospitals that had refused him admission. There “a man wearing a pair of shorts,” according to court documents, signed some papers. Palitha was then returned to the police station and later that day made a brief pass through a magistrate court before being admitted at a third hospital—a prison hospital in the town of Kalutara.

Palitha remained in prison until his release on bail on July 28, 2004, after four months and twenty five days in jail. But during that time, he had filed two cases. One was a fundamental rights case alleging that the police had violated his rights as guaranteed in the constitution. The other, filed by the Attorney General in High Court, charged Kaluwanhandi Garwin Premalal Silva, a sub-Inspector and Palitha’s principal assailant while in police custody, with causing torture by beating him with a pole and forcing a T.B. Patient to spit into his mouth.

Predictably enough, the threats against Palitha and his family began almost immediately. In mid-June he was offered five hundred thousand rupees, about five thousand American dollars, to withdraw his cases. In two separate incidents, he and his family received messages via third parties that his wife and child would be killed if he did not cooperate by dropping his complaints.

THE COURT PROCEEDINGS in Palitha’s cases are excessive in their own right. The Supreme Court heard Palitha’s fundamental rights case during several sessions in the course of 2005. The man in the shorts at the hospital, who had routinely signed police papers, turned out to be an assistant judicial medical officer, or A.J.M.O. His report on Palitha listed thirty-two separate injuries on all parts of the body, from scalp to feet. Among them were lacerations, multiple contusions, tinnitus in one ear, and a fractured anklebone. All but the fractures were judged “non-grievous.” Yes, the doctor noted in his report, these injuries could have been sustained as the victim claimed they were.

The police presented an entirely different story. Palitha had been armed with a grenade when they arrived at his house, and it had been necessary to subdue him. The injuries sustained reflected the use of the minimum force required under the circumstances. There had been no torture; there had been no incident involving Sarath, the man with TB.

Palitha won a modest victory in his fundamental rights case. On February 17<sup>th</sup>, 2006, the Supreme Court ruled that, given the danger Palitha presented when he was arrested—meaning the grenade and the threat he would set it off—the violence at the time of his arrest was justified. The appearance in magistrate’s court, although required by law within twenty-four hours of arrest, was lawful. However, the court accepted Palitha’s account of torture at the police station and ruled that his constitutional rights had been violated. The judgment—excessive in its paucity, one might say—called for restitution in the amount of five thousand rupees from the police officer who assaulted Palitha—about fifty dollars—and twenty-five thousand rupees from the government as damages and compensation for costs.

Those supporting Palitha’s case, despite its disproportionate award and the partial findings in the police officer’s favor, counted the Supreme Court ruling an advance. But an unusual thing occurred some months later. On October of 2006 the High Court found in the police officer’s favour. Sub-Inspector Silva was acquitted of all charges of torture—the judge ruling, in effect, that violence to the extent evident in Palitha’s medical report was not excessive. The High Court judgment is, at this writing, on appeal.

WE CAN BUT SPECULATE, at this writing, as to Sub-Inspector Silva’s motivations in his handling of Palitha’s case. It may have been that a crime had been committed and he was desperate to find a perpetrator to demonstrate his efficiency. Such often occurs. But it is not clear in this case. What is clearer are aspects of the case that require no further evidence.

There is a pathology of disturbance in Palitha’s case. The excess of violence—against three detainees, not only Palitha—is to be seen in numerous other instances. It is, indeed, not the worst case on record in this respect. The attempt to pass on a potentially lethal disease is another question. It indicates a depth of contempt that requires professional, clinical consideration.

The problem of injustice in Sri Lanka is, of course, a legal matter. There are also clear questions of a political and sociological nature. A case such as Palitha Tissa Kumara’s, however, urges the prominent inclusion a psychological perspective. The problems associated with a dysfunctional police apparatus and a similarly impaired judicial system cannot be solved

without reference to questions such as contempt and self-contempt, the self and the “other” in Sri Lanka, and the consciousness of hierarchy that infuses every human relationship with a dimension of “above” and “below.” It is such complexities of consciousness that lead police officers to act as Sub-Inspector Silva did—and judges to defend him as they did in two separate courts.



## 5.

# The Case of Angaline Roshana.

“THE LAWS of the country are too weak.” This observation was not made by one of Sri Lanka’s uncounted victims of police abuse or official torture. Nor did a lawyer defending a victim in court articulate the thought. The remark belongs to a police officer who was, at the very moment he made it, in the act of torturing an ordinary citizen. Weak laws were the reason Angaline Roshana, who was twenty-five at the time, had to be assaulted in police custody and deprived of her legal rights. This was a police inspector’s reasoning on December 4, 2000, when Angaline was in police custody in the suburban town of Narahenpita, in the hub of central Colombo (zone 8). The law had to be broken to keep the law.

As it happened, in Angaline’s case the law did not prove to be too weak. She eventually won a fundamental rights case in the Supreme Court and, much later, a High Court judgment against the officers charged with assaulting her. Her story, then, ends with justice being served. But it is a rare story, an exception in Sri Lanka that regrettably proves the rule.

ANGALINE WAS at home on the evening of December 3, 2000, when at around 7:30pm, a group of men in civilian clothes arrived in a private vehicle and forced her to accompany them to the police station. No reason was given. When Angaline’s family protested, questioning the identity of the men, one of them (a man who later turned out to be the Officer in Charge (OIC) of the Narahenpita Police Station) threatened to break their teeth, and forced Angaline into the vehicle before speeding away.

The police station was not their immediate destination. Instead, Angaline was taken to the home of an affluent local woman for whom she had previously worked as a washerwoman. The woman had complained to the police that some jewelry had been stolen and had accused Angaline of the crime. Among the missing items was a watch, which the woman said was worth half a million rupees—about five thousand American dollars.

The woman accusing Angaline was a lawyer and appeared to be familiar with the police officers—perhaps by way of her legal work. While the woman, her family, and the police officers drank and socialized, Angaline was forced to search for the watch over a period of four to five hours.

Having denied any knowledge of the theft, and having failed to find the missing property, Angaline was then taken to the police station shortly after midnight. There she was detained overnight, severely tortured, and forced to sign a confession. Throughout the course of her detention, the police officers frequently threatened to hang her up and beat her; these threats were usually made when the Angaline's former employer visited the police station.

Mr. Sanjeewa, a lawyer from the Human Rights Institute, and Dr. Nali Swaris visited Angeline while in detention, and demanded that Angaline's legal rights be observed and that she be produced before the court without further delay. OIC Shelton Saley supposedly laughed sarcastically, and remarked; "*the laws of the country are too weak. We are breaking the law to strengthen it.*"

The act of taking a person into custody, without showing any police identification or wearing the police uniform, amounts to kidnapping. Moreover, Roshana was not informed about the reasons for her kidnapping or arrest. Furthermore, she was tortured to obtain a confession, and she is still being illegally detained.

Only on the following day, December 5<sup>th</sup>, did Angaline appear in the magistrate court. On the magistrate's orders, the Judicial Medical Officer (JMO) conducted an official medical examination of Angaline's injuries. The JMO's formal report identified seven contusions; the left shoulder, left upper arm (front and back), right shoulder, left and right buttocks, and upper left thigh. The report also indicates that Angaline's injuries were two-four days old, and caused with a blunt object consistent with the assault. His report is dated 7<sup>th</sup> December 2000.

At the trial Roshana herself, and several other persons gave evidence. The police officer also gave evidence, accepting the arrest but denying that any torture had taken place. The trial was protracted and lasted for a period

of almost six years. The High Court judge held that the charges were proved beyond reasonable doubt.

Having received legal assistance from the Asian Human Rights Commission from the time of her arrest onward, Angaline took her case to two courts. The Supreme Court ruled in June of 2002 that Saley, the OIC accused of her torture had violated Angaline's fundamental rights by way of torture and illegal detention; compensation of 100,000 rupees was awarded.

In apparent retaliation, the police subsequently charged Angaline with theft in the magistrate's court—a case that was dismissed for lack of any evidence. In July of 2007, the court found OIC Saley and police Constable, Stanley Tissera, guilty of committing a gross human rights violation against Angaline. It is believed to be only the third such conviction under the UN Convention against Torture (CAT) Act of 1994, to which Sri Lanka is a state party. The act calls for a mandatory sentence of seven years' "rigorous imprisonment," or hard labour. Both officers were so sentenced; an additional year was added for each officer in lieu of fines in the amount of ten thousand rupees.

ANGALINE ROSHANA and those who supported her can count her long ordeal a victory. What is the truth at the core of this outcome?

Angaline triumphed, in effect, by subverting what must be recognized as the existing order. She did this by upholding the law, not by breaking it. So does her case lead us to the paradox at the heart of the Sri Lankan legal system—a paradox perfectly captured in the police inspector's remark to Angalin's family friend while she was in detention.

The paradox is very simply this: Those charged with enforcing the law in Sri Lanka are the very people who least respect it. Those who are supposed to uphold the law are the very people who often, and dangerously, break it. At the core of their reasoning is a distinction between law and order that is not valid.

The convictions Angaline won under the CAT Act are to be welcomed. But given the established record of the nation's police and courts, three convictions under these laws over the period of thirteen years is simply not enough. The police inspector was wrong: Sri Lanka's laws require

strengthening, certainly, but as Angeline demonstrated, they are sufficient to deliver justice. It is their enforcement that is critically weak.