DIRECTOR OF PUBLIC PROSECUTIONS v JAGDAWOO V. & ORS

2016 SCJ 100

IN THE SUPREME COURT OF MAURITIUS

SCR No. 7793

In the matter of:

The Director of Public Prosecutions

Appellant

v.

V. Jagdawoo & Ors

Respondents

JUDGMENT

This is an appeal by the Director of Public Prosecutions against a judgment of the Magistrates of the Intermediate Court dismissing the 2 counts of an information brought against the respondents.

Respondent No. 2 having passed away, the appeal now lies only against respondents nos. 1,3 and 4.

The appeal is against the dismissal by the Court of the charge brought under count I of the information which was for an offence of "abuse of authority by public officers" in breach of Section 77 of the Criminal Code.

The respondents, who were all police officers, were charged for having, on 12 January 2006 at Line Barracks Port Louis, wilfully and unlawfully committed an arbitrary act prejudicial to the Constitution of Mauritius in that they subjected one Ramdoolar Ramlogun, who was in police

custody as a suspect in a murder case, to inhuman and degrading treatment contrary to section 7 of the Constitution. The inhuman and degrading treatment was particularised as "*physical abuse*".

It is not in dispute that on 12 January 2006 Ramlogun was arrested by the police in connection with a murder case, he was detained at the Line Barracks Detention Centre and on 14 January 2006 he passed away whilst still in police custody.

An initial question of law arose at the outset of the appeal concerning the scope of application of section 77 of the Criminal Code. The issue is whether Section 77 would apply to the prosecution of an offence in respect of the breach of the Constitution of Mauritius as alleged in the present matter.

Section 77 of the Criminal Code reads as follows:

"***77. Abuse of authority by public officer***

Subject to section 78, where a public functionary, an agent of, or person appointed by the Government, orders or commits any arbitrary act, prejudicial either to individual liberty, or to the civic rights of one or more individuals, or to the Constitution of Mauritius, and does not prove that he acted by order of his superior, in matters within the competency of the latter, he shall be condemned."

Section 7(1) of the Constitution provides that "*No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment".*

There are 3 different ways in which an offence may be committed under section 77. An offence is committed where the person commits an "*acte arbitraire"* or *"attentatoire"*, which is described in the English version of the offence as any arbitrary act prejudicial either to (i) individual liberty; or (ii) the civic rights of one or more individuals or (iii) the Constitution of Mauritius.

It was submitted on behalf of the respondents that there is an offence against an individual only under (i) and (ii) whereas an offence would lie under (iii), only where there is an attack against the Constitution itself. Counsel added that it is therefore highly questionable whether an offence would lie under (iii), where the act complained of does not constitute an

attack upon the Constitution of Mauritius but is only prejudicial to an individual right in breach of section 7 of the Constitution.

Section 77 of our Criminal Code has been borrowed from Article 114 of the French Code Penal which, prior to its amendment in France, was couched in identical terms. It is apposite to refer to the following comments made by Garçon in his **Code Pénal Annoté, livre III, Chapitre II** which explain the application of Article 114 of the French Code Pénal:

1. "*L'art 114 prévoit certains actes arbitraires commis par les fonctionnaires publics, agents ou préposés du Gouvernement. Il garantit particulièrement la liberté individuelle contre les abus de pouvoir des agents de l'autorité.*

2. *Ce texte n'incrimine pas les actes arbitraires quelconques, mais seulement ceux qui portent atteinte aux droits qu'il énumère limitativement ; en autres termes, la loi prévoit et punit trois sortes d'abus de pouvoir: 1° les actes attentatoires à la liberté individuelle; 2° ceux attentatoires aux droits civiques des citoyens; 3° enfin, ceux attentatoires à la Constitution.*
… …
4. *Les actes arbitraires et attentatoires aux droits civiques des citoyens sont, dans le sens strict de cette expression, les actes par lesquels il est porté atteinte aux droits politiques des citoyens, à leurs droits de vote et d'éligibilité. … … …*

5. *L'art. 114 punit aussi les actes arbitraires et attentatoires à la Constitution. Presque tous les auteurs considèrent que cette disposition est trop large et trop vague pour pouvoir être appliquée et la commentent à peine. … … … . Enfin, on décide généralement que l'art. 114 ne punit les actes des agents de l'autorité violant la Constitution que s'ils causent un préjudice à un particulier.*

6. *Nous pensons autrement. Le texte prévoit la violation de la Constitution d'une manière générale et n'exige point que les intérêts ou les droits d'un particulier aient été spécialement violés. Sans doute si les actes des fonctionnaires avaient eu pour but de détruire ou de renverser la Constitution, il y aurait attentat; … … …*

7. *Mais il faut, peut-être, aller beaucoup plus loin et décider que l'art. 114 est une disposition générale qui protège toutes les libertés qu'on appelle aujourd'hui, en droit constitutionnel, les droits individuels.* … … …"

The scope of application of Article 114 of the French Penal Code with regard to a breach of the Constitution is also given full consideration by Garraud in **Traité du Droit Pénal Français, Tome Troisième at para. 32**. The relevant extract which deals specifically with the 3rd limb in relation to any arbitrary act prejudicial to the Constitution, lays down the following:

"*La troisième vise les actes contraire à la constitution, c'est-à-dire les actes qui portent atteinte aux droits et aux libertés que la constitution reconnaît et garantit.*

… … . Ce texte constitue, en quelque sorte, une sanction générale des droits constitutionnels, contre les excès ou abus de pouvoir des représentants de l'Etat. Il est clair que de pareilles dispositions, par cela même qu'elles sont illimitées, sont purement comminatoires, et, tout en établissant un principe général de répression, elles ne répriment, en réalité, aucun acte précis et déterminé. " … …

The learned author goes on to state the following:

"*Qu'est-ce en effet, qu'un acte attentatoire à la constitution? Le législateur n'entend certainement pas, par les termes dont il se sert, un acte qui a pour but de détruire ou de changer la constitution, puisque les faits de cette nature rentrent dans les dispositions du titre premier, qui punit les crimes et délits contre la sûreté de l'Etat. D'ailleurs, il s'agit, dans l'article 114, de faits qui causent un préjudice à un individu. Ce texte s'applique donc aux actes qui portent atteinte aux droits et libertés que la constitution reconnaît et garantit aux citoyens comme aux étrangers*" **(Emphasis added)**

It is clear from the above that one cannot take a restrictive view of the application of section 77 of the Criminal Code to the breach of any of the constitutional rights entrenched in the Constitution for the protection of an individual person. Its application would thus extend to a breach of any of the fundamental rights guaranteed under the Constitution. A breach of section 7 of the Constitution which affords protection against torture or any other form of inhuman or degrading treatment would clearly fall within the purview of an offence under section 77 of the Criminal Code.

We shall now turn to the grounds of appeal of the appellant.

There were initially 19 grounds of appeal but grounds 17, 18 and 19 were dropped. The remaining grounds read as follows:-

1. The learned Magistrates misapprehended the evidence and drew unreasonable conclusions when they stated that because Ramlogun did not make any complaint to

any person in authority, he could not therefore have been assaulted by the four accused on the 12 January 2006.

2. The learned Magistrates failed to appreciate the unrebutted evidence of witness Seedeer and were plainly wrong not to act on such evidence.
3. The learned Magistrates' decision to dismiss Count 1 of the information on the ground that on "13th January 2006 Ramlogun was well, could walk properly and appeared before the District Court to Flacq without the evidence showing that he made any complaint" was simply unreasonable in the circumstances.
4. The learned Magistrates failed to appreciate the unrebutted evidence of Dr. Gujjalu to the effect that "a person who is given such a blow would not be affected on the spot".
5. The learned Magistrates misapprehended the testimony of Dr. Gujjalu and drew unreasonable conclusions when they stated that *"… Ramlogun could have received a blow even before his arrest as he started showing signs of drowsiness in the afternoon of 13 January 2006*."
6. The learned Magistrates misdirected themselves and failed, when analyzing the evidence adduced by the Prosecution, to make the distinction between direct and circumstantial evidence.
7. The learned Magistrates misdirected themselves on the nature of the evidence adduced by the Prosecution when they stated that "the evidence adduced by the Prosecution shows that during the interview and until Ramlogun was taken away by other Police officers to be detained at the Detention Centre, no violence was used on him by the four accused or any of them."
8. The learned Magistrates failed to take relevant evidence into account and shut their eyes to the obvious inasmuch as they utterly failed to address their mind to the unrebutted testimony of witness Arnasala when they referred to the trip from the MCIT Office to the Detention Centre.
9. The complete failure of the learned Magistrates to address their mind to the testimony of witness Arnasala when deciding what happened during the 38 minutes constitutes a serious mistake especially in view of their findings to the effect that during the interview and until Ramlogun was taken away to be detained, no violence was used on him by the four accused or any of them.

10. The learned Magistrates' findings to the effect that the 38 minutes trip from the MCIT Office to the Detention Centre has remained unexplained, are in the circumstances, perverse and unreasonable.
11. The learned Magistrates have erred in their appreciation of facts and were plainly wrong when they concluded that the trip from the MCIT Office to the Detention Centre took 38 minutes.
12. The learned Magistrates were wrong and acted in breach of procedural fairness when they refused the motion of the Prosecution to add the name of PC Manaroo to the list of witnesses and to conclude subsequently in their judgment that "*the mystery remains as to the 38 minutes trip from the MCIT Office to the Detention Centre*".
13. The learned Magistrates failed to address their mind and appreciate the relevance of Document "U" which was material.
14. The learned Magistrates failed to appreciate the evidence which revealed that only the four accused were permanently in company of Ramlogun for the purpose of questioning him.
15. The learned Magistrates failed to appreciate the evidence of witness Koo Wen Cheung and formed the wrong impression that Ramlogun had only a small red mark on his cheek when he was brought to the Detention Centre on 12 January 2006.
16. The learned Magistrates were wrong, in the light of all the evidence adduced by the Prosecution, to take irrelevant matters into account namely that the Court record of Flacq Court was not produced before the Court and the doctor who examined Ramlogun on 13 January 2006 was not called to give evidence.

All the grounds of appeal question essentially the appreciation of the evidence by the learned Magistrates. It was submitted by learned Counsel for the appellant that the trial Court had erred in its appreciation of the facts and made findings which amount to misdirections. He added that the learned Magistrates took irrelevant matters into account and closed their eyes to the obvious. Counsel went on to submit that for the appellate Court to determine whether the trial Court misapprehended the evidence and erred in its analysis and assessment of the evidence, it is necessary to review the whole of the evidence which was adduced at the trial. Counsel referred to the decision of the Judicial Committee in **Dosoruth v The State of Mauritius [2004 MR 230]** in support of his contention that, by virtue of section 96(1) of the District and Intermediate Courts (Criminal Jurisdiction) Act, it is necessary for the determination

of such an appeal that the appellate Court should go over the whole of the evidence which was placed before the trial Court.

It is not in dispute that there was no direct evidence to incriminate any of the three respondents and that the case for the prosecution rested solely upon circumstantial evidence. It is submitted under grounds 1, 6 and 7 as well as under grounds 13 to 16 that had the circumstantial evidence been properly considered, analysed and appreciated by the Court, it would have led to the irresistible conclusion that on 12 January 2006 Ramlogun was subjected to inhuman and degrading treatment by the respondents. Counsel went on to submit that the learned Magistrates clearly misdirected themselves as to the nature of the evidence adduced before them, failed to give due consideration to crucial aspects of the evidence and consequently drew the wrong conclusions. It was submitted, under ground 1, that the learned Magistrates failed to appreciate that in the circumstances of the case no one would have expected Ramlogun to complain to the police and that it was unreasonable for the Magistrates to conclude that because Ramlogun did not make any complaint when he appeared before the Magistrate, he could not therefore have been assaulted by the respondents.

It was further submitted under grounds 6, 7, 13, 14, 15 and 16 that the Magistrates failed to distinguish between direct and circumstantial evidence. They further misdirected themselves when they concluded that "*the evidence adduced by the prosecution shows that during the interview and until Ramlogun was taken away by other police officers to be detained at the Detention Centre, no violence was used on him by the four accused or any of them".*

It is also the contention of the appellant that the learned Magistrates drew the wrong conclusions by misapprehending and failing to appreciate the medical evidence (Grounds 3, 4 and 5), by misconstruing the testimony of witness Seedeer (Ground 2), witness Arnasala (Grounds 8 and 9) and witness Cheung (Ground 15). Learned Counsel for the appellant also laid much stress, under grounds 8 to 12, on the failure of the learned Magistrates to give due consideration to the testimony of witness Arnasala and their misapprehension of the evidence relating to the trip from the MCIT office to the detention centre immediately after Ramlogun had been interviewed by the respondents.

It is essential in order to determine the grounds of appeal raised on behalf of the appellant, to set out at this juncture all the salient features of the evidence which were placed before the trial Court.

The facts

On 12 January 2006, the Major Crime and Investigation Unit ("MCIT") headed by late SP Radhooa was enquiring into the murder of two sisters, Indira and Asha Jhurry. Sergeant Jagdawoo, the Respondent No. 1, who was in charge of the enquiry, led a team of MCIT officers to Lallmatie to enquire into the case.

At about 15.00 hours on 12 January 2006, Ramdoolar Ramlogun was arrested in connection with the case and was brought to Lallmatie police station along with one Leckraj Ramgotee. Ramlogun remained in the police van whilst a statement was being recorded from Ramgotee at Lallmatie police station. Ramgotee was released following the recording of the statement. Ramlogun was brought to the MCIT office at Line Barracks for interview at about 17.00 hours. His interrogation started at about 18.30 hours. Ramlogun was being questioned by Sergeant Jagdawoo respondent no. 1, late CPL Madarbux respondent no. 2, as well as by PC Potié and PC Levasseur, respondents nos. 3 and 4 respectively.

At about 19.00 hours PC Arnasala and PC Manaroo, who were present at the MCIT office, left the office in order to buy food. Ramlogun was left alone with the respondents for questioning. There was a break in the questioning of Ramlogun from 20.00 hours to 20.30 hours in order to allow him to have some food and refreshment. The interview ended at 21.45 hours. Ramlogun had declined to give a written statement after he had been duly cautioned by PS Jagdawoo. At 22.15 hours, Ramlogun was committed to police cell for detention. He was brought to the Line Barracks Detention Centre (detention centre) in a police van in which there were police officers Arnasala, Manaroo and Lutchmun. It took them 2 to 3 minutes to travel from the MCIT office to the detention centre. Ramlogun was handed over to PC Cheung at the detention centre at 22.53 hours.

PC Cheung explained that Ramlogun was searched by PC Soumarie. A pair of glasses were secured from him before he was taken to cell. On being informed by PC Soumarie that there were marks on the face of Ramlogun, P.C Cheung noticed a small circle-shaped and red

colour mark at the temple region on the left side of Ramlogun's face. He questioned Ramlogun as to the presence of the mark. He answered "*non correct ça*", by which PC Cheung understood that everything was all right with him. Ramlogun did not make any complaint. PC Cheung added that there was no need in such circumstances to strip search Ramlogun in order to ascertain whether he had any marks or injuries on his body. Ramlogun walked on his own to the first floor where he was placed in cell no. 9.

PC Soumarie did not depose as a witness as he passed away before the trial.

PC Cheung described the conditions in which detainees are kept at the detention centre. There are sentry officers who are placed at three different posts in order to keep permanent watch over detainees at all times. The sentry officers would also walk up and down the corridor in order to keep an eye over the detainees whilst they are in the cells. There is an hourly cell visit during the day and there is a visit at an interval of every 30 minutes at night. No one is given access to the cell. The detainees are released from 7.30 hours to 8.30 hours in the morning and from 15.30 hours to 16.30 hours in the afternoon to allow them to take their meals in the corridor. During these two hours the detainees may take a shower and they have the opportunity to meet each other, but always in the presence of the sentry officers.

PC Rookmin took over charge as station orderly from PC Cheung as from 23.15 hours on 12 January 2006 until 7.30 hours on 13 January 2006 when he was replaced as station orderly by CPL Noormamode. He however continued on sentry duty until 15.30 hours. Regular checks were carried out every 30 minutes by PC Rookmin throughout the night of 12 January 2006. He did not notice anything unusual in cell no. 9 and Ramlogun did not make any complaint to him.

PC Rookmin added that Ramlogun was removed from cell on 13 January 2006 at 7.30 hours in order to have breakfast in the corridor. He was taken back to cell at 8.30 hours. At 9.30 hours Police officers Auckloo and Manaroo took Ramlogun to Flacq Court. At about 13.00 hours on the same day Ramlogun was brought back from Court to the detention centre by

PC Auckloo and PC Manaroo and was again placed in cell. Apart from a scratch mark on his left cheek, PC Rookmin did not notice any injury. Ramlogun was walking without any difficulty and did not appear to suffer from any injury. He added that Ramlogun had that scratch mark

before he left for Court. When PC Rookmin was confronted with photos marked **H11**, **H12** and **H18,** his answer was that he did not see any of the bruises or marks which appear on Ramlogun in these photographs.

PC Jogeedoo also performed sentry at the detention centre on the night of 12 January 2006 from 23.00 hours until 7.30 hours on the following day. He was working on the same shift as PC Rookmin. He checked the cell of Ramlogun at regular intervals every half an hour. Ramlogun was sleeping and PC Jogeedoo could not see his face as Ramlogun was facing the wall. He was relieved by PC Dookhoo in the morning of 13 January 2006.

When PC Jogeedoo resumed duty at 15.00 hours on 13 January 2006, he found Ramlogun sleeping on a mattress on the floor of cell no. 4 where Ramlogun had been transferred. PC Jogeedoo opened the cell at 15.30 hours and asked Ramlogun to come out for his meal. He was still lying on his mattress. He opened his eyes and shook his head. PC Jogeedoo left the door of the cell open. But Ramlogun continued sleeping and did not have his meal. At about 20.00 hours PC Jogeedoo asked PC Khodaboccus, the station orderly to check on Ramlogun. PC Khodaboccus bent down and spoke to Ramlogun whilst he was still lying on the mattress on the floor. He asked Ramlogun whether he was feeling sick and whether he wanted to go to hospital. Ramlogun indicated that he wanted to have medical treatment as he was not feeling well. PC Khodaboccus did the needful for MCIT officers to take Ramlogun to hospital. Ramlogun was so weak that he could not stand properly on his feet. He could not move out of the cell on his own. He had to be helped by MCIT officers PC Potié, respondent No. 4 and PC Auckloo, as well as by officers Potiegadoo and Khodaboccus in order to be taken to hospital. PC Jogeedoo noticed that his face was swollen and he had a small scratch mark on his left cheekbone.

PC Jogeedoo saw Ramlogun again at about 23 00 hours when the MCIT officers brought him back from hospital to the detention centre. Ramlogun could not stand on his own. He was very weak and had to be carried into his cell with the help of the MCIT officers. Ramlogun was so weak that he could not sign the entries in the diary book. PC Jogeedoo maintained that throughout the whole of the period that he was on duty both on 12 January 2006 and on 13 January 2006, no other persons had access to Ramlogun. When he was shown some photographs which were taken during the post-mortem examination of Ramlogun, he stated that he had not noticed any of the injuries which appear in these photographs.

PC Khodaboccus was also on duty at the detention centre when Ramlogun was brought in by police officers Arnasala and Manaroo at 22.53 hours, on 12 January 2006. He did not notice anything significant as he ended his shift at 23.30 hours. He resumed duty at 15.00 hours on 13 January 2006 and checked the cell of Ramlogun. Ramlogun was lying on a mattress and when PC Khodaboccus asked him "*Mr Ramlogun correct la*" (whether he was all right) he made no reply but simply raised his hand. At about 20.30 hours, he was informed by a police officer that Ramlogun was unwell. When he went to see Ramlogun, the latter informed him that he wanted to be medically treated. He contacted the CCID and later MCIT officers, PC Potié, PC Auckloo and PC Mariemootoo took Ramlogun to Hospital. Ramlogun was so weak that he had to be helped by them in order to move from his cell to the police car. He was still weak and sleepy when he was brought back to the detention centre by the MCIT officers at about 23.00 hours. PC Khodaboccus left at about 23.30 hours.

Police officer Dookhoo was on duty in company of PC Rookmin on 13 January 2006. At 7.30 hours he opened the cell door of Ramlogun who was in cell no. 9. Ramlogun walked out of his cell and went downstairs on his own in order to have breakfast. The officer admitted having previously stated in his statement that Ramlogun was a "*bit disturbed*". He explained in Court that by "disturbed" he meant that Ramlogun was not in his normal state. He was worried and looked troubled because he had been arrested in connection with the case. He was taken to Court and came back in the afternoon. He was then placed in cell no. 4 on the ground floor. He saw a red scratch mark on the left cheek of Ramlogun. .He saw that mark on his face when Ramlogun was leaving for Court. He left duty at 15.30 hours on 13 January 2006 resumed at 7.30 hours on the following morning, on 14 January 2006. When he opened the cell door, he found that Ramlogun was still sleeping. He tried to wake him up but he did not get up and remained in his cell. At about 8.30 hours, the station orderly, CPL Noormamode went to see Ramlogun in his cell. As he appeared to be sick he called the MCIT officers who arrived at around 10.00 hours. Ramlogun was taken to hospital at about 10.10 hours. He had to be carried in a blanket by the police officers. According to PC Dookhoo, Ramlogun had not been subjected to any form of violence whilst he was on duty. He did not notice any injuries on him except for the mark on his left cheek.

PC Seesurn was also on duty at the detention centre from 7.00 hours to 15.15 hours on 13 January 2006. He found Ramlogun to be walking normally when he went for tea. He appeared to be normal both before he left for Court and after returning from Court. He

did not observe any mark of violence on Ramlogun's face and he appeared to be in good health.

Witness PS Ramdoyal was the head of the Special Supporting Unit (SSU) team who was responsible for escorting Ramlogun to Flacq Court. Ramlogun was handed over to him by MCIT officers outside their office in line Barracks at 9.40 hours on 13 January 2006. In company of other SSU officers, they proceeded to Flacq Court in a SSU vehicle. They reached Flacq Court at 11.00 hours. They waited for 15 minutes until the case was called and Ramlogun put up an appearance before the Magistrate. After the case they returned to Line Barracks in the same vehicle and Ramlogun was handed over to an MCIT officer who had followed them to Flacq in a different vehicle.

From the time that he took charge of Ramlogun, PS Ramdoyal did not notice any mark of violence on him. Nothing happened to him on the way to and from Flacq District Court. When the case was called, Ramlogun did not make any complaint or statement to the Magistrate. He was able to walk on his own without any help and looked visibly fine.

Witness CPL Noormamode was the station orderly at the detention centre from 7.15 hours to 15.30 hours on 13 January 2006. At 9.30 hours MCIT officers Auckloo and Manaroo came to take Ramlogun to Flacq Court and he was searched before he left for Flacq. Ramlogun made no complaint and did not give any indication that he could be suffering. He was given his spectacles. He could walk on his own, unaided, as he left the detention centre in company of the MCIT officers. Witness Noormamode did not see him again on 13 January 2006 as he was not present when Ramlogun came back from Court.

Witness Noormamode resumed duty as station orderly in the morning of 14 January 2006. He found out that Ramlogun was still sleeping when food was being served at 7.30 hours. He tried to wake him up but he continued sleeping. He immediately informed the MCIT officers who conveyed Ramlogun to hospital.

Witness PC Nepaul and CPL Manuel were on the last shift duty at the detention centre from 23.00 hours on 13 January 2006 until 7.00 hours on 14 January 2006. Ramlogun was in cell no. 4 after he had returned from hospital. He was sleeping on a mattress placed on the floor. Witness Nepaul had the keys of the cell and he stated that nobody had access to

Ramlogun during his shift. He did not provide any medication to Ramlogun. Both witnesses Nepaul and Manuel stated that they received no complaint from Ramlogun on that night.

Witness Manoovaloo was part of the MCIT team led by PS Jagdawoo, respondent No. 1, who proceeded to Lallmatie on 12 January 2006 to investigate into the murder case. The team also consisted of WPC Provence, PC Mariemootoo and PC Auckloo. The MCIT officers, after having gathered information during the day, proceeded to the place of Leckraj Ramgotee in order to carry out a search. During the search Ramgotee produced a set of knives and indicated 2 spots where some materials had been burnt. Ramlogun was at that time standing on a balcony on the first floor of the house. Respondent No. 1 went to speak to him. Both Ramgotee and Ramlogun were then brought to Lallmatie Police Station. Ramlogun was kept in the police van. Ramgotee was released after he had given a statement. Respondent no. 1 decided that Ramlogun should be brought to the MCIT office in Line Barracks for questioning. Ramlogun appeared calm and normal and they reached the MCIT office at about 17.00 hours. PC Manoovaloo was in the company of Ramlogun in the vehicle which brought them from Lallmatie to the MCIT office in Port Louis. At no moment was any verbal pressure, force or violence exerted upon him.

Ramlogun was brought to the front office and he was in the company of respondents no. 1 and 3. Witness Manoovaloo left for refreshments and when he returned he found out that Ramlogun was being interviewed by the respondents and Maudarbux. Since he was not involved in the interview he went to attend to his work in an adjoining office. The two rooms were separated by a “plywood” partitioning which did not reach up to the ceiling. Whilst he was in the office, he could hear the voices when Ramlogun was being interrogated. There was no shouting or threat nor any sound of any violence being exerted on Ramlogun during the course of his interview by respondents and Madarbux. He saw Ramlogun at around 20.00 hours. He was having bread and refreshments. His interview started anew after the break. At about 22.30 hours, respondent no. 1 gave instructions that Ramlogun should be detained at the detention centre. Manoovaloo saw Ramlogun leaving for the detention centre. He did not bear any sign of ill-treatment and he did not limp or moan.

Witness Manoovaloo stayed at the MCIT office. Neither witness Manoovaloo nor any of the MCIT officers who interviewed him formed part of the team of officers who conveyed Ramlogun to the detention centre.

On 12 January 2006, PC Mariemootoo formed part of the MCIT team which proceeded to Lallmatie to investigate into the murder case. They carried out a search at the place of Ramgotee in the course of which some exhibits were secured. They then proceeded to the place of Ramlogun. Respondent no. 1 informed Ramlogun that there were reasonable grounds to suspect him. Ramlogun was first brought to Lallmatie police station and then to the MCIT office. PC Mariemootoo stated at no moment was any force or violence exerted upon Ramlogun. PC Mariemootoo attended to his work in another room and he remained at the MCIT office until 23.15 hours. Ramlogun was being interviewed by the then 4 accused parties in an adjacent room and the two rooms were separated by a 'plywood' partitioning which did not go up to the ceiling. Witness Mariemootoo added there was no physical or verbal pressure which was exerted upon Ramlogun. He did not see Ramlogun leaving for the detention centre.

Witness Manoovaloo resumed duty at 8.00 hours on 13 January 2006. Ramlogun was to be taken to Flacq Court. PC Manoovaloo drove the van which took him from the detention centre to the MCIT office. He was brought into the vehicle by PC Manaroo and PC Auckloo. He could walk normally and got into the vehicle without any difficulty. PC Manoovaloo did not notice any injury nor any sign of violence on him. When he was brought from the detention centre to the MCIT office which was found on the first floor, he could walk up the stairs without any difficulty.

PC Manoovaloo accompanied by PC Manaroo and PC Auckloo followed Ramlogun and the SSU escort to Flacq Court in another vehicle. They followed Ramlogun into the Court room after he had alighted from the SSU vehicle. He could get down the van and could walk up the steps into Flacq Court without any difficulty. PC Manoovaloo did not notice any visible sign of injury or violence on Ramlogun who could walk freely and climb the stairs on his own, unaided. Ramlogun looked quite normal. PC Manoovaloo did not see any person exercising any form of verbal or physical pressure upon Ramlogun. Ramlogun was provisionally charged with murder. He did not make any complaint to the Magistrate or at any other stage. Ramlogun was brought back to the detention centre by the SSU escort team in the SSU vehicle. PC Manoovaloo was driving the vehicle which followed them to the detention centre. None of the respondents went to Flacq Court on 13 January 2006. According to Manoovaloo, the MCIT office is about 250-300 metres from the detention centre.

When witness Mariemootoo resumed duty at about 20.30 hours on 13 January 2006, he was informed that Ramlogun was sick and needed medical attention. He proceeded to the detention centre in company of PC Auckloo, PC Potié (respondent no. 3) and PC Ramcharan. Ramlogun was brought to the vehicle in a weak and drowsy condition. They had to help him to get into the vehicle. He was conveyed to Dr Jeetoo Hospital where he was examined at the Casualty by Dr Esoof. Witness Mariemootoo did not see anybody exercising any form of violence whatsoever on the person of Ramlogun.

The examination and treatment at the hospital lasted for about 1 1/2 hours. Ramlogun was then brought back to the detention centre in the same vehicle driven by PC Mariemootoo who stated that Ramlogun was not subjected to any physical violence from the time he was taken to hospital until his return to the detention centre.

Witness PC Arnasala was on duty at the MCIT from 7.00 hours to 23.30 hours on 12 January 2006. He first saw Ramlogun when he was brought into the MCIT office at about 17.00 hours. When Ramlogun was being interrogated by the respondents, he could overhear the interrogation from an adjoining room which was separated only by a plywood partitioning. Everything appeared normal as he did not hear anything suspicious, like for example, any sound of screaming or the sound of a person being subjected to violence. At about 19.00 hours he went out to buy food in company of PC Manaroo and came back at about 21.00 hours. He remained in the rear office where he had his food. At about 22.00 hours he went outside to the toilet and remained in the yard until he saw PC Manaroo coming down the stairs with Ramlogun at about 22.40 hours.

Ramlogun went to the toilet for about 5 minutes. He appeared to be normal as he walked freely to the toilet. After he came out from the toilet he was taken to the detention centre in a van driven by PC Lutchmun. He accompanied PC Manaroo and Ramlogun in the van during the trip to the detention centre which lasted for about 2 to 3 minutes. Ramlogun was brought to the detention centre at 22.53 hours where Ramlogun was searched upon his arrival. PC Arnasala noticed a little red mark on his cheek which looked like a mosquito bite. There were no other injuries on his face or body and there was no bleeding at or near his ear.

On 13 January 2006 he received the provisional charge which was to be lodged at Flacq District Court against Ramlogun. It was signed by SP Lollbeeharry. He went to Flacq Court in a

car which followed the SSU vehicle which was taking Ramlogun to Court. PC Arnasala was not present in Court when the case was called. On 13 January 2006, he did not see any other marks or sign of injury Ramlogun's face.

At 9.45 hours on 14 January 2006 he went to the detention centre in company of other police officers in order to take Ramlogun to hospital. Ramlogun was lying unconscious on the floor of his cell. His face was swollen. PC Arnasala added that Ramlogun was a completely different person from the one he had seen on the previous day. His condition had severely deteriorated. He was very weak and was not able to speak. Since he could not walk he had to be placed in a blanket in order to be taken to hospital.

Following X-Ray examination, Ramlogun was immediately admitted. He passed away on the same day. According to PC Arnasala, no one used any violence on Ramlogun on any of the three days that he was in police custody from 12 to 14 January 2006.

On 12 January 2006, Seedeer was being detained at the detention centre in connection with a driving case. Ramlogun was brought in and placed in a cell opposite to Seedeer's cell. During the morning tea break on 13 January 2006, Seedeer tried to speak to Ramlogun. At first, Ramlogun remained mute, but later Ramlogun told Seedeer that he felt pain. He showed his left cheek and stated that he had been beaten by police officers. Seedeer noticed that his face was swollen.

In the afternoon of 13 January 2006, after Ramlogun returned from Court, he lay on his mattress in his cell. Seedeer informed the police officers that Ramlogun was not well. Some CID officers came into his cell and kicked him as they asked him to get up. They finally placed him in a blanket in order to take him to hospital. Ramlogun returned to his cell some 30 minutes later. He walked into his cell and slept on the mattress.

Ramlogun did not get up on the following morning i.e on 14 January 2006. Some CID officers came at the request of the inspector in charge and took him again to hospital. He later learnt that Ramlogun had passed away.

Seedeer stated that he did not see Ramlogun being subjected to any violence whilst he was in his cell. He added that the officers at the detention centre treated him well. Seedeer

also stated that he saw Ramlogun walking normally on 13 January 2006 and he did not appear to have any injuries on his face.

Dr Bholah examined Ramlogun at Dr Jeetoo hospital on 14 January 2006. Ramlogun was inert, had no response to pain and had a neurological problem. He found him to be in a state of coma. His face appeared flushed and puffy. He was of the view that the cause of the coma was an intracerebral problem. He organized for an urgent scan which would in the circumstances help to determine the cause of the coma. Dr Bholah explained that an intra-cranial lesion means that the brain could have suffered from bleeding, thrombosis, trauma or an infection. Dr Bholah later learnt that Ramlogun had passed away. He was referred for a post-mortem examination.

Following the request of Dr Bholah for a scan, Dr Ori immediately took Ramlogun to City Clinic where a CT scan was done. The condition of Ramlogun deteriorated significantly when he was taken out of the CT scan. Despite all efforts to resuscitate him, he passed away at about 13.30 hours. Dr Ori added that Ramlogun's feet were covered with dirt. He did not pay attention to injuries which could have been sustained by Ramlogun since he was mainly concerned with the major abnormality which was affecting Ramlogun and the appropriate medical treatment which was urgently required at that particular moment in order to save Ramlogun.

A postmortem examination was carried out by Dr Gungadin on 14 January 2006 in presence of Dr Gujjalu whose services had been retained by the relatives of Ramlogun.

Dr Gujjalu produced his report and photographs of the injuries which he took during the post-mortem examination. He gave a description of the injuries to both soles which consisted of deep bruising. Ramlogun was also injured at the left side of his face and lower temple. More importantly, he had a large intra-cerebral haemorrhage of the right side of the brain and a haemorrhagic contusion of the right temporal brain. Dr Gujjalu was of the view that Ramlogun must have received a severe blow on the left side of the face and head which resulted in a shaking movement of the head with shearing and tearing of the right brain. There was a slow bleeding on the right which finally led to a compression of the brain and which caused his death.

He added that the injuries to the brain with early necrosis and brain compression must have been sustained by Ramlogun between 24-48 hours prior to his death.

He explained in court that there were haemorrhage, more particularly on the right side of the brain. They were due to traumatic injuries sustained to the left side of head and face leading to haemorrhage to the right side of the brain following a shaking movement of the head from left to right and a twisting movement of the brain within the skull. The shaking movement of the head caused the brain within the skull to hit the right side of the cranium thus damaging the right side of the brain with bleeding and compression. According to him, the thrusting movement of the brain led to the rotation of the brain within the skull damaging other parts of the brain.

Dr Gujjalu also explained why according to him the fatal blow must have been inflicted some 24 to 48 hours prior to death. In such circumstances, there is slow bleeding which leads to the compression of the brain. Everything depends on the amount of blood collected in the brain as a result of the bleeding. In case of slow bleeding it takes 24 – 48 hours. Someone who receives such a blow would not be immediately affected. It is after a certain amount of blood accumulated in the skull and starts causing compression of the brain that the condition of the person would deteriorate and the signs of deterioration of health would become apparent.

The statements to the police given by the respondents were also produced by the prosecution. All the respondents denied having inflicted any form of violence or pressure on Ramlogun.

The appellant challenged the judgment for the reasons which are embodied in the various grounds of appeal.

The thrust of the appellant's arguments is that the learned Magistrates should have, on the basis of the circumstantial evidence, drawn the irresistible conclusion that the respondents subjected Ramlogun to inhuman and degrading treatment whilst they were questioning him at the MCIT office from 17.00 hours to about 22.15 hours on 12 January 2006. The Prosecution relied on circumstantial evidence, which it submitted, had not been properly considered, analysed and appreciated by the trial Court. It is the prosecution's case that the offence had

been committed whilst Ramlogun was being interviewed by the respondents at the MCIT office on 12 January 2006.

The prosecution's case was based solely on circumstantial evidence since there was no direct evidence of any physical abuse or any degrading or inhuman treatment which was meted out to Ramlogun by any of the respondents.

In contrast to direct evidence, circumstantial evidence is evidence of "*relevant facts*" from which the existence or non-existence of facts in issue may be inferred. Circumstantial evidence "*works by cumulatively, in geometrical progression, eliminating other possibilities*" **(DPP v Kilbourne [1973] AC 729 at p. 758)**. However, although the weight to be attached to circumstantial evidence is not in any way less than that attached to direct evidence, "*It must always be narrowly examined ….. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference*" **(Teper v Queen [1952] AC 480 at p. 489)**.

Futhermore, it is highlighted in the Australian case of **Hillier [2007] 233 ALR 634 (22 March 2007)** that there is an imperative need to avoid a piecemeal consideration of the evidence in a circumstantial case. "*It is of critical importance to recognise, however, that in considering a circumstantial case, all of the circumstances established by the evidence are to be considered and weighed"* **[para. 46]**. "*All the circumstances of the case must be weighed in judging whether there is evidence upon which a jury may reasonably be satisfied beyond reasonable doubt of the commission of the crime charged*." **[para. 48].**

There is therefore an imperative need to have a holistic picture of the case based on circumstantial evidence before turning to the individual grounds of appeal which deal with various aspects of the evidence in isolation from, and independently of, each other.

The prosecution's case which was based wholly on circumstantial evidence focused essentially on a combination of the following circumstances –

1) Ramlogun was in company of the 3 respondents and late Madarbux when he was being interviewed by them following his arrest on 12 January 2006 until about

22.15 hours before he was taken from MCIT office to the Line Barracks detention centre. That was the occasion during which he must have been subjected to physical abuse by the respondents which caused him to sustain injuries eventually leading to his death on 14 January 2006.

2) The medical evidence of Dr Gujjalu which was to the effect that the injuries to the brain must have been sustained by Ramlogun between 24 to 48 hours prior to his death which occured at about 13.35 hours on 14 January 2006.

One of the striking features which emerge from a comprehensive review of the whole of the evidence is that the prosecution's case by far fails to meet the *Teper's* threshold which would justify a conclusive finding of guilt based on circumstantial evidence. There are indeed other co-existing circumstances which carry such overwhelming force which would weaken or even destroy any inference of guilt against the respondents:

1. Ramlogun had been in the company of the respondents only from 17.00 hours to about 22.15 hours on 12 January 2006.
2. Prior to that, on 12 January 2006 he had been in the company of other police officers which included Manoovaloo, Mariemootoo and Auckloo following his arrest at 15.00 hours until he was brought to MCIT office at 17.00 hours.
3. Subsequent to the interview by the respondents on 12 January 2006 which ended at about 22.15 hours, he was never again in the company of the respondents until he passed away on 14 January 2006.
4. The evidence led by the prosecution itself, which formed an integral part of the prosecution's case, tend to confirm that Ramlogun was not subjected to any physical abuse or degrading treatment during the period of his interrogation by the respondents.
5. Prosecution witnesses Manoovaloo, Mariemootoo and Arnasala who were working in an adjoining room separated by a "Plywood" partitioning, never heard any shouting or threats or any sound which would indicate that Ramlogun might have been subjected to any physical abuse during that crucial period.
6. Both prosecution witnesses Arnasala and Manoovaloo saw Ramlogun immediately following his interview by the respondents on 12.01.2006. Ramlogun appeared normal. He could walk without any difficulty down the stairs and went to the toilet. He did not bear any injury. It was when he was brought to the detention centre that

PC Arnasala noticed a small red mark on his cheek which looked like a mosquito bite.

7. There is indeed no evidence from any of the prosecution's witnesses of any injury nor of any mark of violence appearing on Ramlogun subsequent to his interview by the respondents. All the police officers on duty at the detention centre as well as the officers who escorted Ramlogun to and from Flacq Court on 13 January 2006 did not notice any injury. He was all the time able to walk normally on his own and looked visibly fine to all those who kept watch over him or escorted him. He could walk unaided in order to proceed to Flacq Court or to have his meals at the detention centre on 13 January 2006.
8. Ramlogun never made any complaint about any ill-treatment to any police officer or to the Magistrate when he appeared before Flacq Court on 13 January 2006.
9. Ramlogun first complained of ill-health at about 20.30 hours on 13 January 2006.

There had in fact been more than 20 other police officers who were involved at one stage or another with Ramlogun from the time he had left the MCIT office on 12 January 2006 following his interview by the respondents until he passed away on 14 January 2006. He was first taken to the detention centre in a police vehicle by police officers Arnasala, Manaroo and Lutchmun. At the detention centre he had been under the custody and control of the police officers working on the various shifts on 12, 13 and 14 January 2006 and which included *inter alia* police officers Cheung, Rookmin, Jogeedoo, Dookhoo, Khodaboccus, Soumarie, Seesurn, Noormamode, Manoovaloo and Mauriemootoo. On 13 January 2006, he was escorted by MCIT officers Auckloo and Manaroo as well as by PS Ramdoyal and a team of SSU officers from Line Barracks to Flacq Court before returning to Line Barracks, Port Louis. Ramlogun was alone with PS Ramdoyal and the 5 or 6 other SSU officers in the SSU van which brought him to Flacq District Court and brought him back to Line Barracks on 13 January 2006.

The learned Magistrates surveyed meticulously the whole of the sequence of events from the time of Ramlogun's arrest until he was taken ill in the afternoon of 13 January 2006 and subsequently passed away at about 13.30 hours on 14 January 2006. After having reviewed the evidence it is abundantly plain that the combination of circumstances upon which the prosecution was relying could not raise more than a suspicion as regards the respondents and would not raise any sufficiently strong or reliable inference of guilt in respect of the offence with which the respondents were charged. The respondents were only involved with Ramlogun

for the limited period of the interview on 12 January 2006. The circumstantial evidence led by the prosecution itself would destroy any inference of guilt inasmuch as there were many other officers who dealt with Ramlogun, or with whom Ramlogun was left in custody, following his interview by the respondents until he passed away 2 days later. According to all prosecution witnesses, Ramlogun appeared to be in a normal state following his encounter with the respondents. In other words the circumstantial evidence emanating from the prosecution's witnesses not only fell dramatically short of establishing that the respondents perpetrated any physical abuse upon Ramlogun at the material time but on the contrary appears to disculpate the respondents. The evidence of the prosecution's witnesses is indeed totally inconsistent with any guilt on the part of the respondents. None of the prosecution's witnesses noticed any injury or mark of violence nor was there any complaint which would be consistent with the inflicting of any physical abuse during the interview by the respondents which took place between 17.00 hours and 22.15 hours on 12 January 2006.

All these irreconciliable and contradictory features of the prosecution's case, emanating from its own witnesses, do not present a combination of circumstances from which the trial court could draw any reasonable inference that Ramlogun was subjected to physical abuse by the respondents when he was interviewed by them in the MCIT office between 17.00 hours and 22.15 hours on 12 January 2006. The learned Magistrates carried out an elaborate analysis of the whole of the evidence, taking into account all the relevant facts. We see no reason to interfere with their findings which are amply borne out by the evidence. For all the above reasons, the complaints of the appellant under Grounds 6,7,13,14,15 and 16 which question the appreciation of the circumstantial evidence by the learned Magistrates would fail.

We find no merit in ground 1 either. There was no misapprehension of evidence by the Magistrates since Ramlogun never made any complaint including to the District Magistrate on 13 January 2006. Besides, this was merely one of the many factors which was legitimately considered by the Magistrates in the course of their analysis of the whole of the evidence. But their ultimate conclusion to discard any inference of guilt was only reached following an examination of all the crucial aspects of the evidence led by the prosecution. Ground 1 accordingly fails.

The complaint under ground 2 is that the Magistrates erred in failing to act upon the evidence of witness Seedeer. Seedeer was a detainee at the detention centre to whom

Ramlogun allegedly stated that he had been beaten by police officers. The learned Magistrates cannot be faulted for having omitted to act upon his evidence which amounted to hearsay and which in any event did not incriminate any of the respondents. There is accordingly no merit in Ground 2.

Grounds 3, 4 and 5 were argued together. Learned Counsel for the appellant referred essentially to the evidence of Dr Gujjalu which was to the effect that the nature of the internal injuries sustained by Ramlogun was such that signs of deterioration of his health may well start to appear 24 to 48 hours later. It was argued that the learned Magistrates failed to take into account that the deterioration in Ramlogun's condition started late on 13 January 2006. According to Dr Gujjalu, Ramlogun could have received a blow 24 to 48 hours before he would start showing any signs of illness as described by witnesses Seedeer, Khodaboccus and Jogeedoo. It was therefore submitted that the learned Magistrates failed to carry out a proper analysis of Dr Gujjalu's evidence and that on the basis of Dr Gujjalu's evidence, they ought to have concluded that Ramlogun sustained the injuries on 12 January 2006 whilst he was in the custody of the respondents.

The learned Magistrates considered fully the whole of the medical evidence including the version of Dr Gujjalu. According to Dr Gujjalu, Ramlogun could have received a blow 24 to 48 hours before he would start to show any signs of illness. Since the first signs of illness started to appear in the afternoon of 13 January 2006, it was therefore legitimate for the Magistrates to express the view that Ramlogun could have received a blow even before his arrest which was effected at about 15.00 hours on 12 January 2006. An analysis of the sequence of events plainly indicate that the learned Magistrates could not on the basis of the opinion expressed by Dr Gujjalu conclusively infer that Ramlogun had sustained blows inflicted by the respondents between 17.00 hours and 22.15 hours on 12 January 2006. This remains at best one of the possibilities in view of the wide span of 24 to 48 hours mentioned by Dr Gujjalu. No safe inference can be drawn as to the guilt of the respondents on the basis of Dr Gujjalu's opinion in view of the numerous alternative possibilities which cannot be eliminated with regard to the precise time at which Ramlogun could have suffered the injuries. During that time range of 24 to 48 hours, Ramlogun was moving from one place to another and was at different times in the custody or under the control of several other officers.

Furthermore, the medical evidence of another prosecution witness, Dr Bholah is not on all fours with the opinion expressed by Dr Gujjalu. Dr Bholah had the added advantage of examining Ramlogun when he was brought to Jeetoo hospital at about 10.20 hours on 14 January 2006. Dr Bholah found him to be "*comatose".* He was of the view that the cause of the coma was an intra-cerebral problem. There was a large haemorrhage in the right temporal region. He could not say whether the trauma was recent or not. He added however that as a result of such an intra-cerebral haemorrhage Ramlogun would not be in a lucid state. This goes against the opinion expressed by Dr Gujjalu that Ramlogun could have received a blow 24 to 48 hours before the manifestation of any sign of illness. Most of the witnesses who saw Ramlogun after his encounter with the respondents on 12 January 2006 in fact found him to be in a perfectly normal state. Witnesses Arnasala and Manoovaloo who saw him immediately after his interview by the respondents confirmed that Ramlogun indeed appeared normal and was moving on his own quite independently and normally. PC Cheung saw Ramlogun at 22.53 hours on 12 January 2006 when he arrived at the detention centre. PC Cheung stated that Ramlogun appeared normal and walked on his own into the centre and up the steps to cell no. 9. PC Khodaboccus also stated that Ramlogun was physically fit on 12. January 2006. This is again confirmed by PC Seesurn who saw Ramlogun at breakfast time on 13 January 2006. To him "*he appeared physically fit and was normal".* PC Dookhoo who went to open the cell in the morning of 13 January 2006 found that "*Ramlogun was up and ready to come out when I opened cell at nine, up and ready, fit and well. He walked out and went downstairs*". PS Ramdoyal, who was in charge of the SSU escort team stated that on his return from Flacq District Court on 13 January 2006, "*Mr Ramlogun was in the same health state as he was in the morning I left the detention centre."*

There is an additional disturbing feature which weakens the prosecution's medical evidence in support of its case against the respondents. The post mortem report (**Doc. AA)** and the evidence of Dr Gujjalu mention various external injuries, more particularly to Ramlogun's soles and the left side of his face and lower temple. These are amply depicted in photos H12 and H13. Yet none of these injuries have been noticed by any of the prosecution's witnesses who saw Ramlogun as from 12 January 2006. They noticed only the small red mark on the cheek which looked like a mosquito bite. Dr Gujjalu explicitly pointed out that the injuries to the soles were such that it would be difficult for Ramlogun to walk. Yet practically all the prosecution's witnesses who saw Ramlogun after he left the MCIT office following his interview by the respondents on the evening of 12 January 2006 confirmed that he was walking normally

and without any difficulty. It was only at about 20.00 hours on 13 January 2006 that Ramlogun felt sick and was taken to hospital. He was examined at the casualty by Dr Essoof. The medical examination of Ramlogun at such a critical point in time was of vital importance as it would have provided independent medical evidence concerning the state of health of Ramlogun and, in particular, any injuries sustained by him. Yet there is no reason to explain why such crucial medical evidence was never available and the doctor who examined Ramlogun on 13 January 2006 was never called to give evidence. This is also the case for Dr Gungadin, the police medical officer who carried out the post mortem examination in presence of Dr Gujjalu. He was never called to give evidence.

For all the above reasons we consider that the Magistrates' appreciation of the medical evidence and findings do not suffer from any misdirection or defect. Since there is no merit in any of the arguments put forward by the appellant, Grounds 3, 4 and 5 accordingly fail.

Grounds 8,9,10,11 and 12 were argued together. All the grounds are in relation to the trip which brought Ramlogun from the MCIT office to the detention centre following his interview by the respondents on 12 January 2006.

It was submitted that the Magistrates misconstrued the evidence of witness Arnasala and erred in reaching the conclusion that:

(1) the trip from the MCIT office to the detention centre took 38 minutes;
(2) the trip which took 38 minutes has remained unexplained.

It was also argued that the learned Magistrates were wrong to have refused the motion of the prosecution to add the name of PC Manaroo to the list of witnesses as his testimony was important in order to explain what had taken place at that juncture.

Any criticism of the learned Magistrates' findings and appreciation of the evidence with regard to the trip which brought Ramlogun from the MCIT office to the detention centre is devoid of any merit.

(1) Firstly, because the prosecution itself had failed to come up with any clear and precise version as to the time taken for the trip. There was an entry in the diary book

of the MCIT produced by witness Rengasamy which indicated that Ramlogun was committed to police cell at 22.15 hours on 12 January 2006 and another entry in the diary book of the detention centre confirmed by PC Cheung which indicated that Ramlogun reached the detention centre at 22.53 hours.

(2) Witness Arnasala before mentioning that "*It was about 10.40 hrs*" that they left the MCIT office, stated that "*I do not recollect exact time*".

(3) Witness Arnasala further stated that it took them 2 to 3 minutes to reach the detention centre.

(4) It was also part of the prosecution's case that according to the enquiring officer ASP Ramasawmy "they *took 38 minutes to reach the detention centre from MCIT"*

(5) Another enquiring officer, witness Rengasamy explained that according to the entry made by PC Manaroo, it took them 38 minutes to reach the detention centre.

The evidence further showed that both the detention centre and the MCIT office are found within the Line Barracks compound at a distance of about 250 metres from each other. In view of the evidence led by the prosecution, the learned Magistrates were fully justified in making the following observations:

> "*It is true that the trip from the MCIT Office to the Detention Centre took 38 minutes when it should have taken only a few minutes. There has been no attempt to explain this delay."*
>
> *"The mystery remains as to the 38 minutes trip from the MCIT Office to the Detention Centre".*

The complaint that the learned Magistrates failed to address their mind to crucial aspects of witness Arnasala's testimony is also unjustified. The learned Magistrates in fact carried out an extensive assessment of his evidence which quite significantly failed to support the prosecution's case against the respondents in several material respects. Whilst Ramlogun was being interviewed by the respondents at the MCIT office, PC Arnasala was in an adjoining room which was only separated by a "plywood" partition and from where he could easily overhear what was taking place during the interview. He did not hear any sound of beating or any shouts or screams emanating from Ramlogun. He saw Ramlogun immediately after his interview by the respondents. Except for the small red mark which he described as a mosquito bite, he did not notice any injury on Ramlogun's face or body. He added that Ramlogun appeared to be normal and could walk freely without any difficulty.

To use his own words when he saw him immediately after his interview by the respondents "*Ramlogun looked normal just as when I saw him upon his arrival at 5. p.m",* which would be prior to Ramlogun's encounter with the respondents. It was only when he saw him 2 days later on 14 January 2006 that his condition had completely deteriorated and he could not walk or talk. According to him "*He was a completely different person from the one I saw on the eve*". PC Arnasala's evidence did not in any way support the prosecution's case against the respondents and there is absolutely no merit in the argument that the Magistrates wrongly construed PC Arnasala's evidence.

It was also submitted by learned Counsel for the appellant that it was unreasonable and unfair for the Court to refuse the motion of the prosecution to add the name of PC Manaroo to its list of witnesses. According to Counsel, this would have helped to enlighten the Court as to what took place during the 38 minutes which followed the interview of Ramlogun by the respondents. Counsel referred to Section 61 of the Criminal Procedure Act, Section 168 of the Courts Act and to the case of **The State v Parvatkar [1997 SCJ 90]** in support of his argument that the Court was wrong to have disallowed the motion. It was also submitted that PC Manaroo's evidence would have assisted the Court in determining the truth and the Court should have in the interest of justice, exercised its discretion in favour of the prosecution.

The Court in **State v Parvatkar (*Supra*),** pointed out that although an information may be amended in the absence of any "*mala fides"* at any stage of the trial, this can only be done provided that there is no "*likelihood of prejudice being caused to the accused party"* and "*so long as accused's right to a fair trial is not affected".*

In the present matter the information was lodged on 5 September 2006. An amendment was made by the prosecution on 12 June 2008 to add the name of 8 new witnesses. However, it was only on 29 August 2009, after all the prosecution's witnesses had been examined and cross-examined by the defence that the prosecution moved to amend its information in order to add PC Manaroo as its witness. The prosecution was aware from the outset of the tenor of the evidence of PC Manaroo and its significance to its case which was based essentially on circumstantial evidence. There is no reason to explain why his name was omitted from the list of witnesses for such a long time. The hearing of the long list of prosecution's witnesses which had spanned over more than 2 years had raised complex factual issues which had already been

fully canvassed both by way of examination and cross-examination on the assumption that PC Manaroo would not be called as a witness. There is no reason to justify why the motion came at such a late stage and in circumstances which would inevitably affect the fairness of the trial and be prejudicial to the accused parties in the conduct of their defence. We consider therefore that the learned Magistrates were fully justified in rejecting the motion of the prosecution to add the name of PC Manaroo at such a late stage.

We find no merit in any of the issues which has been raised by the appellant under Grounds 8 to 12 which must accordingly fail.

All the grounds of appeal having failed, the appeal is dismissed.

We feel bound however to raise some matters of grave concern which the crude facts of this case have brought to light in connection with the treatment of persons detained by the police. Ramlogun was in good health and condition prior to his arrest and detention by the police. Although the evidence fell short of establishing, in accordance with the legal standards of proof, the infliction of any inhuman and degrading treatment by the particular police officers who were charged with an offence under section 77 of the Criminal Code, it is beyond dispute that Ramlogun was subjected to physical abuse and was killed whilst in police custody. Those responsible remain unpunished.

The right to life and protection from torture and any form of inhuman or degrading treatment are fundamental constitutional rights guaranteed under section 4 and section 7 of our Constitution respectively. The peremptory nature both of the right to life and of the right to freedom from torture and other cruel, inhuman or degrading treatment is further highlighted by the fact that these rights cannot be derogated from. In international human rights law, there can be no derogation to the protection of these rights even in the gravest of crisis situations as are laid down in Article 4(2) of the International Covenant on Civil and Political Rights, Article 27(2) of the American Convention on Human Rights and Articles 3 and 15(2) of the European Convention on Human Rights.

The treatment of detainees who are placed in a vulnerable position is a matter of even greater concern when it comes to protection of these human rights. The detainee is virtually cut off from the outside world and is placed in a situation of weakness and vulnerability being left to a considerable extent to the mercy of police or prison officials.

The State has positive obligations to afford security and protection of the law and human rights to all categories of its citizens. The State has a duty to secure and not to violate the right to life and the right to protection from torture and inhuman treatment. The more so, in respect of its more vulnerable citizens.

We say so because the infliction of torture or inhuman treatment and the killing of a person in such circumstances cannot be treated with levity. Constitutional rights and criminal law provisions would remain purely theoretical and illusory unless there is in place an effective law enforcement machinery endowed with the appropriate legal and investigative mechanism for the prevention, investigation and punishment of any such violation of human rights.

When the State kills one of its citizens in police custody, it constitutes an intolerable violation of the human rights of the individual. But when the State kills with impunity, it rocks the very foundation upon which a democratic state rests i.e the Rule of Law.

A. Caunhye
Judge

R. Teelock
Judge

16 March 2016

Judgment delivered by Hon. A. Caunhye, Judge

For Appellant : **Chief State Attorney**
Mr R. Ahmine, Senior Assistant Director of Public Prosecution together with Mr P. Bissoon, State Counsel

For Respondent No. 3: **Mrs Attorney A. Jeewa**
Mr G. Glover, SC

For Respondents nos 1 & 4:**Mrs Attorney A. Jeewa**

Mr S. Golamaully, of Counsel