

Sri Lanka: The 1998 Bharathipuram Killings and Accountability for War Time Atrocities

Sunday 7 July 2024, by [FERNANDO Ruki](#) (Date first published: 17 May 2024).

Killings of civilians and other atrocities have been widespread during three decades of war, mostly in the North and East. Sri Lankan armed forces, police and the LTTE appear to be responsible for many massacres according to eye witnesses and circumstantial evidence. It's rare that Sri Lankan armed forces and police have been held accountable through domestic courts for such killings. Below are some observations and reflections on such a case based on reading the case judgement and talking to families of all the victims.

Bharathipuram is a small village in the Trincomalee district. The police checkpoint in the village, run under the Kantale police, had come under attack on the night of January 31, 1998 until early hours of February 1. There are no reports of injuries or fatalities to the police due to the attack. On the morning of February 1 eight males, including at least two teenage children, from the nearby village of Potkeni were abducted and later their bodies were found near the checkpoint. The families said the abducted were taken away by armed men in police uniform but they had covered their faces and were not identifiable. Several family members stated that police had good relations with the villagers, including some of those killed. The people killed were Ponnambalam Kanagasaby, Arumugam Segar, Amirthalingam Surendran, Amirthalingam Gajendran, Kunarathnam Sivarajah, Subramaniam Kivakaran, Nagan Pachalanathan and Murugesu Jaganan.

One young woman was abducted from her home by armed men, beaten and taken to the checkpoint where she was threatened that she would be shot dead. She was accused of being part of the LTTE. Later a senior police officer had ordered her release. She had seen one person being shot at the checkpoint who she had identified as Sivarajah, one of the eight killed. She had also seen another body nearby that she was not been able to identify. She said she was able to identify one of persons who had abducted her and beat her in court.

Nine years later, in 2007, a brother of one of the victims was also found shot dead near a railway crossing at Pathinipuram, near the family home in Potkeni. According to the father those responsible for this have not been held accountable.

Investigations and trial

After some investigations by the Kantale police and CID, 13 policemen and home guards (also called village guards) were arrested. The Attorney General (AG) had filed charges against all 13 in 2005. Indictments were based on Penal code and emergency regulations dealing with unlawful assembly, abduction to wrongfully and secretly detain and murder. In 2017, the AG withdrew the charges against six of the accused. Hence the trial was conducted in relation to seven other accused.

The names of the eight persons killed, the day they were killed and the fact that they were killed by firearms was not disputed by the defence.

Thirty six witnesses were called by the prosecution and many testified to hearing gunfire throughout

the night of January 31 and the early hours of the next day around the area of the Bharathipuram checkpoint. One witness testified that her brother and her brother-in-law were abducted from the house and taken towards the direction of checkpoint close to the house and they were later found dead. This was not challenged by the accused. Another witness had testified that six people including relatives and neighbours were abducted by gunmen during a function in her house and later found dead. Another witness had testified that her son had been abducted from a nearby house where he had gone for a function and later found dead. All of these were in the early hours of February 1.

A policeman had testified that he had seen two bodies in civilian clothing on morning of February 1 inside the checkpoint and that he had also seen the fifth accused there. But the court decided to disregard his testimony citing contradictions in his previous statements to police and the CID. Another policeman has testified that he had seen second accused bring two civilians to the checkpoint and later seen the fourth accused near those two civilians. He said another person (not any of the accused) took the two people behind the checkpoint and that he had later seen them dead. This testimony had not been challenged by the defence. Yet another policeman had testified that second, fourth and eighth accused were present at the checkpoint on that morning and identified them in court. He had also identified the fifth accused in court and testified that he had seen him bring two civilians to the checkpoint and that the two civilians were later taken behind the checkpoint by the second accused and that when he had gone behind the checkpoint, he had also seen the fourth accused in a nearby room with the two civilians on a mattress with their hands tied behind their back. He also testified that he had seen the first accused take the two civilians outside and shoot them. This witness had been cross examined by the defence but his testimony was not challenged. This witness had further testified that the eighth accused and some others had brought some more civilians to the checkpoint and that he had subsequently seen dead bodies of three other civilians. A witness from the Civil Defence Force (CDF) testified that he had seen some civilians near the checkpoint and that later he had seen their dead bodies behind the checkpoint. This testimony too was also not challenged.

Witnesses for the defence and dock statements from the accused

The defence called two witnesses. One of them, Chief Inspector Silva's testimony, along with the report of the government analyst, indicated that firearms issued to the accused were not involved in the shooting and the prosecution accepted this. The court noted that the testimony of the other defence witness, Assistant Superintendent of Police (ASP) Narampanawa, didn't in anyway challenge the evidence presented by the prosecution.

None of the seven accused gave testimony on oath but six of the accused made dock statements. There was no dock statement from the first accused who has been absconding from court. The second accused had not denied he had brought two civilians from nearby village to the checkpoint. The fourth accused had denied knowing about the incident but court had noted that he was a senior police officer in whose presence eight civilians had been killed and he had some responsibility. The fifth accused had made a dock statement but not denied statements by witnesses that he had brought civilians to the checkpoint. The eighth accused had denied he was present in vicinity of the checkpoint but the court found that he had not challenged testimony against him during the trial by witnesses except by saying it was due to personal animosity.

Judgement

The Government Analyst's report indicated that the weapon that was used for the murder was T-56 type weapon bearing number 1513631. It was confirmed during the trial that this weapon was issued to the Bharathipuram checkpoint. However there was no indication to whom it was issued to.

The court noted that there was no evidence this weapon was used by any of the accused in the case.

On the first charge, being part of unlawful assembly to commit murder, court had decided that the first, second, fourth, fifth and eighth accused were guilty of unlawful assembly with intent to murder. The policemen found guilty were Kohonakorallage Chandrarathna Bandara, Konara Mudiyansele Nihal Premasiri Konara, Rajapaksa Muditansele Ranaraja Bandara, Yagama Liyanage Somarathna and Rateralalage Senarath Bandara Medawela.

The second cluster of charges were relating to the murder and the third cluster of charges were based on common intention as per article 32 of the penal code. The court had decided to acquit all the accused as there was no adequate evidence. The fourth cluster of charges was about abductions. The court noted that although prosecution had shown beyond reasonable doubt that the second, fourth and eighth accused had brought civilians to the checkpoint, there was no evidence they had abducted the civilians from their homes. The court also noted that many relatives of those dead had given testimonies about them being abducted but none had been able to identify any of abductors. Thus, court had acquitted all the accused from these charges. A woman had identified the sixth accused in open court as being part of a group that abducted her but court noted that she had failed to identify him during an identification parade immediately after the incident and acquitted the sixth accused as prosecution has not been able to show his guilt beyond reasonable doubt. The third accused was acquitted as there had been no evidence against him.

Reflections

According to the families, compensation of Rs. 50,000 per person was paid.

This is one of the many incidents of the military and police taking revenge on civilians after being targeted by the LTTE during the war. The approach of trying to label civilians killed as LTTE also happened in this case including an ASP acknowledging he had done this in a report to court without any basis. The families were threatened to sign documents saying the dead were LTTT members, which they had resisted.

The case followed a familiar pattern in which the military and police officers accused of killing and causing enforced disappearances of Tamils were transferred to areas outside North and East that were predominantly Sinhalese. This made it difficult for Tamil victims' families to travel, obtain legal representation and to follow the case as the court language is often Sinhalese. In this case, the Tamil families of victims were keen to see the judgement but it was in Sinhalese.

In examining the charges of murder, court accepted that the prosecution had proven beyond reasonable doubt that the first accused had shot two of the eight people who had been killed; he was also acquitted of this charge. The court had determined the weapon used for the murder was issued to the Bharathipuram checkpoint but there is no reference to the person in charge of the checkpoint in the judgement. However, the court noted that the fourth accused was a senior officer who had not inquired into the purpose of bringing civilians to the checkpoint, not taken steps to ensure their security and kept silent until they were dead and that this indicated his intention was to have them killed.

Some of the most significant testimonies that led to the conviction of five police officers and home guards came from policemen and a home guard.

The conviction is only in relation to 1 of 37 charges, those convicted are relatively junior officers and 26 years is a long time for families to wait for justice. But this rare judgement of holding policemen responsible for killing of Tamil civilians provides cautious hope that justice might be possible in

some similar cases too.

Ruki Fernando

[Click here](#) to subscribe to ESSF newsletters in English and or French.

P.S.

Groundviews

<https://groundviews.org/2024/05/17/the-1998-bharathipuram-killings-and-accountability-for-war-time-atrocities/>