

# VIJAYA KUMARATUNGA ASSASSINATION REPORT

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## Background

Vijaya Kumaratunga, leader of the SLMP and husband of present President Chandrika Bandaranaike Kumaratunga who heads the Peoples Alliance government, was assassinated on the 16th of February 1988, shortly after 12 noon. He was shot at close range by an assassin who came on a motorcycle ridden by an accomplice. The assassin did not make any attempt to identify himself.

The shooting took place during the waning months of the J.R. Jayawardene government. In this period the country was gripped by terror following the ruthless killing of politicians, service personnel and civilians by the *Janatha Vimukthi Peramuna* (JVP), a Southern insurgent movement which had as its aim, the violent overthrow of the established government.

In this climate of terror, investigations into the shooting of the SLMP leader commenced in a haphazard manner with the arrest of several persons accused of aiding and abetting the assassin. Eight months later, President Ranasinghe Premadasa assumed executive power following the retirement of President J.R. Jayawardene and Ranjan Wijeratne with as his Minister of State for Defence.

On the 14th March of the following year, the alleged assassin, Lionel Ranasinghe alias Gamini, was arrested on a chance identification by the police. There was no official evidence on record that the principal accomplice identified as one Tarzan Weerasinghe was also arrested. However, evidence led before the Commission by other members of the JVP imprisoned at the CID during the relevant time indicated that the said Tarzan had indeed been detained during early 1991.

On the 3rd October 1989, the chief suspect Gamini allegedly escaped from police custody. Cellmates of the principal accomplice Tarzan, alleged that Tarzan had been taken away from the CID at some point in early 1991. The fate of both are not known to date. Others accused of aiding and abetting these two were released due to what the police claimed to be an "administrative error", while two suspects produced in court were discharged. Investigations into the matter were then dropped.

President Premadasa and Defence Minister Ranjan Wijeratne were themselves killed by assassins widely believed to be Northern terrorists some years later.

## Mandate, Proceedings and Findings of the Commission

With the coming to power of the Peoples Alliance in 1994, President Chandrika Kumaratunga appointed a Special Presidential Commission of Inquiry to look into her husband's death. The Commission comprising of then Supreme Court Justices Sarath N. Silva (the present Attorney General), P. Ramanathan and High Court judge D. Jayawickreme was appointed on the 16th of February 1995. Its mandate was to inquire into and obtain information in respect of the circumstances relating to the assassination of Kumaratunga, the persons directly or indirectly responsible for such assassination, and to make such recommendations with reference to any of the matters inquired into.

One month after the appointment of the Commission, its mandate was extended by President Chandrika Kumaratunga to go beyond inquiring into persons responsible for the assassination. The Commission was further empowered to look into the manner in which the assassination was investigated, whether any public officer was at fault in the investigation and whether there was any interference by any person in the conduct of the investigation.

The Commission was assisted by a senior criminal lawyer, President's Counsel Ranjith Abeyseriya and by two State Counsel from the Attorney general's Department, Yasantha Kodagoda and Sarath Jayamanne.

The Commission delivered its report on the 29th of February 1996, concluding that the evidence led before them established a *prima facie* case against President Premadasa and Minister of National Security Ranjan Wijeratne as to their indirect involvement in the assassination.

The Commission said :

In the ordinary case, we would have to call for their explanation on the *prima facie* case made against them before making a decision on the matter. But this has not been possible, due to their demise.

A *prima facie* case was said to lie against President Premadasa on the ground that the former President was implicated by evidence of a motive for the assassination, and by circumstantial evidence of the suppression of the investigation. UNP Minister Ranjan Wijeratne was said to be implicated by the Commissioners on the grounds that he illegally and improperly interfered in the conduct of the investigation.

## CRITIQUE

### The Law under which the Commission operated

The Commission functioned under the Special Presidential Commissions Of Inquiry Act of 1978 (SPC Act) which was enacted during the JR Jayewardene regime and used to deprive several front rankers of the previous United Front government of their civil rights, including the present Prime Minister, Mrs Sirimavo Bandaranaike. Regardless of their protests against this law at that time, the Peoples Alliance Government was not slow to use it for its own purposes upon coming to power in 1994.

Since the enactment of the SPC Act in 1978, respected civil rights groups including the Civil Rights Movement have called for the law to be abolished on the ground that it violates basic rules of fair trial. The law permits judges who sit on SPCs to be hand picked by the Executive President, in contrast to the normal procedure where a Supreme Court bench hearing a particular case is appointed by the Chief Justice. Allegations of bias against the judges so selected become a distinct possibility, and the fact that the members are drawn from the higher judiciary is no reassurance. In addition, the commissions can ignore established rules of evidence that bind courts of law, such as the prohibition against hearsay evidence. The rule against hearsay stipulates that out of court assertions by persons who are not called as witnesses cannot be put forward to establish the truth of those matters. This rule is based on the fact that such statements cannot be tested by cross examination, and that inaccuracy is a risk inherent in repetition.

The Act moreover does not permit an appeal from a decision of the Commission, leading the Geneva based Human Rights Committee to inform the Government as recently as 1995, that the Act should be abolished as it violated the International Covenant on Civil and Political Rights. It could be said therefore that the Vijaya Kumaratunga Commission operated under a law that was suspect.

### Proceedings of the Commission

In its preface to the report, the Commission takes obvious pains to establish its independence and impartiality. It points out that attorneys at law appearing for persons summoned to give evidence were permitted to put questions to such persons or to cross examine other witnesses. All persons who appeared to be implicated in the matter under inquiry, were specially informed by the Commission at the end of their evidence that they could add to or clarify what has been stated in evidence.

The fact remains however that the two most significant persons named by the Commission as indirectly responsible for the assassination, namely the then President Ranasinghe Premadasa and his Minister of National Security Ranjan Wijeratne did not have any opportunity to refute allegations against them through counsel appointed on their behalf. An application made by the daughter of the late President, Ms Dulanjalee Jayakody seeking permission to appoint a lawyer to represent her late father at the sittings was refused. The Commission informed her that she could however

appear before the Commission herself and instruct a lawyer to participate in the proceedings; this offer was not taken up by her.

Ms Jayakody further questioned the fairness of the manner in which witnesses were specifically questioned both by Counsel assisting the Commission and the Commissioners themselves, as regards the conduct of Premadasa and Wijeratne during the investigation into the assassination of the SLMP leader. Replying, the Commission pointed out that they had been empowered to do so by the extension of their mandate, which gave them the authority to inquire into whether there was any interference in the police investigations.<sup>2</sup>

In general, with all those who had close links with Premadasa and Wijeratne not appearing before the Commission, the impression given that a "case" against the late two UNP frontmen was being put forward with much fervor prevailed.

### Findings of the Commission

At the outset, one is struck by the "picturesque" presentation of the Commission's report. A large picture of the SLMP leader at once meets the eye as one opens the document, and the text is liberally sprinkled with fulsome tributes to Kumaratunga. At one point it refers to his body "being almost that of an Adonis of Greek mythology, tall, slim, well proportioned with a winsome smile." It is pointed out that his was a dynamic and flamboyant personality which won "the hearts and minds of the people, both as a politician and as a cinema artiste." Kumaratunga's letter to his son Vimukthi written from prison is also reproduced "in order to show his commitment to the liberation of the masses in social bondage." Meanwhile, as one letter to the editor of the *Island*, one of Sri Lanka's mainstream daily newspapers remarked, the highly emotive language of the Commission is reflected in the fact that the Commission referred to the subject of their inquiry not as Vijaya Kumaratunga or as Kumaratunga but as simply Vijaya on as many as two hundred and nineteen (219) occasions.

The reader opines :

The Commission appears to have been swayed not only by the charisma of the victim, but appears to have bonded itself with him to a degree not expected of a body comprised of sitting judges of the highest judiciary of the land.<sup>3</sup>

The report finds the late President Premadasa guilty of indirect involvement in the assassination based on the fact that Kumaratunga had become a formidable rival and opponent of Premadasa at the Presidential Elections scheduled for later that year. This is said to provide a motive for the assassination. Premadasa is also said to be implicated by circumstantial evidence of the suppression of the investigation, in view of the fact that investigation into the offense was not carried out with any measure of diligence.

The Commission findings against the former President are however challenged by a complete absence of any real evidence linking Premadasa to the alleged assassins. Commentators have pointed out that at the time that the assassination occurred, Premadasa had not

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been nominated as the UNP Presidential candidate. Strong contenders for the post included UNP front rankers Lalith Athulathmudali and Gamini Dissanayake. President J.R. Jayewardene had himself not ruled out a third term. In this context, it has been contended that an intention of Premadasa to assassinate Kumaratunga can be described as being unrealistically premature.

Moreover, even if Kumaratunga had contested the forthcoming elections, there is much to be said for the argument that he would have served to make inroads into the vote bank of the SLFP candidate Mrs. Sirimavo Bandaranaike, rather than cut into the established UNP votes, a role which Ossie Abeygunesekera (who succeeded to the SLMP candidature upon assassination of Kumaratunga) played to perfection at the actual elections. These factors have not been taken into account by the Commission in coming to their conclusion.

In a masterly assessment of the findings against the late President which was given wide publicity in some Sri Lankan newspapers, former Supreme Court Justice A.C. Alles said :

It is difficult to resist the conclusion that the Commission has been swayed by the charisma of the victim, the brutal killing which took place in the presence of those near and dear to him, the loss to the country of a dynamic political leader with a great future, and the shoddy investigation by the police supported by politicians at the highest level, to come to the unwarranted finding that the UNP with Premadasa at its head were indirectly involved in the assassination.<sup>4</sup>

He warned of the dangers of this sort of reasoning:

In essence, it means that since Premadasa succeeded in being elected as President, he must have had a hand in the liquidation of a political rival..... this is a concept completely alien to established principles of criminal law.

..... In the absence of a motive which is the strongest item of evidence against the former President, what is the prima facie case that he was indirectly involved in the assassination ? There is no evidence that prior to the assassination that Premadasa knew the assassins, had any contact with them or entered into a conspiracy with them to liquidate Kumaratunga.<sup>5</sup>

Coming to the second count that Premadasa suppressed the investigation, here too there is an absence of any real evidence to support this finding. The Commission comes to this finding based on the fact that soon after Premadasa assumed office, the two highest officers of the Criminal Investigations Department (CID) Frank de Silva<sup>6</sup> and Bennet Perera,<sup>7</sup> described as exceptionally good officers were transferred and replaced by Chandra Jayawardana and Amarasena Rajapakse. These men, described as Premadasa's handpicked men are severely criticized by the Commission for allowing the suspects to disappear, and for failing to conduct a proper investigation.

The question however, is whether any effective investigation was conducted even before the assumption of President Premadasa to office? According to the Commission report, investigations appear to have been conducted in a lackluster manner from the start itself. If

one takes the argument of the Commission to its logical conclusion therefore, President J.R. Jayawardene who was actually holding the reins of executive power at the time of the assassination could be equally accused of "being implicated by circumstantial evidence of the suppression of the investigation into the murder."

Meanwhile, UNP National Security Minister Ranjan Wijeratne is said to be implicated by the Commissioners on the ground that he illegally and improperly interfered in the conduct of the investigation. Wijeratne had apparently visited prime suspect Lionel Ranasinghe soon after arrest. The Commission condemns this action on the part of Wijeratne.

The Commissioners say :

We cannot comprehend any reason that could possibly have prompted a Cabinet Minister to take this unusual step of interrogating a dangerous criminal. The law does not provide for such interrogation. On the other hand, such action may have jeopardized a trial of the suspect.<sup>8</sup>

The Minister had then ordered that the investigation should be transferred from the Criminal Detection Bureau (CDB) to the CID. The bonafides of the Minister in ordering this change is questioned by the Commission. "This put the entire investigation out of gear" they add, passing severe strictures on Chandra Jayawardana who on succession to the post of Director CID, assumed control of the investigation. The Commission attributes responsibility for the subsequent escape of the prime suspect Lionel and the prime accomplice Tarzan to him.

The Commission proceeds on the reasoning that senior officers of the CID would not have perpetrated such illegal acts without the knowledge and support of the State Minister. Certain hearsay statements by witnesses are also taken to support the case against Wijeratne.

The question is whether these grounds alone could be taken as reason to find Wijeratne guilty of indirect involvement in the murder of the SLMP leader, particularly in view of the well known fact of Wijeratne's hardline approach to matters of national security Lionel was not the only captured JVP that Wijeratne visited, others falling into this category included Wijeweera and Gamanayake.<sup>9</sup> The "disappearances" of these two was an open secret. What evidence is there to show that Lionel and Gamini were not disposed of in a similar manner? Methods of the State when dealing with captured JVPs at that time were only too brutally efficient. In those days when terror stalked the land, any talk of proper trial procedures to be followed in these cases would have been dismissed out of hand. That was the reality, however deplorable it may seem from a human rights standpoint.

In coming to their conclusion, has the Commission fairly considered the argument that Kumaratunga met his death at the hands of the JVP and none other than the JVP ? Evidence led before the Commission indicated that the alleged assassin Lionel had admitted in his statement that he had been contracted to kill Kumaratunga by the

JVP. The Commission has rejected this evidence on the basis that police officer Chandra Jayawardana who took down the statement was an unreliable witness. The Commission also concludes that the JVP had no motive to kill Kumaratunga at that time because the JVP had gone underground, and was not engaged in open politics! It prefers to bypass concrete evidence of JVP death threats against Kumaratunga both verbally and in their leaflets. But the fact remains that the SLMP leader was perceived as a traitor to the JVP cause due to his supporting the 1987 Indo Lanka Accord, in addition to the obvious threat that Kumaratunga posed to the movement by being a hero figure for the youth. Former Supreme Court Justice A.C. Alles has commented tellingly that to hold the JVP responsible for the assassination "is an observation with which probably many people will agree."<sup>10</sup>

## Conclusion

Certain other developments that occurred during the time of the Commission sittings also give rise to much concern. While the Commission was hearing evidence and investigating the assassination of the late SLMP leader, President Chandrika Kumaratunga in a preemption of the decision of the Commission, laid the responsibility for the assassination of her husband on President Ranasinghe Premadasa, in an interview to the *Times Of India*. Several senior lawyers, seeing this as a clear contempt of the Commission urged the Commissioners to respond adversely. The Commission did not so respond.

This display of executive arrogance was repeated at the end of the sittings of the Commission when President Kumaratunga told local and foreign media that the Commission had found that Premadasa and Wijeratne had been *directly* involved in the assassination.<sup>11</sup> Here again, though the statement involved a clear distortion of the findings of the Commission as there had been only a *prima facie* case of indirect involvement found, there was no correction made by the Commissioners. Complaints were also made by opposition politicians that the release of the report by the Government some time after it was handed over to the president, was deliberately timed to coincide with local government elections just around the corner.

What even the most fervent admirer of the Commission will have to concede is that its report was used in a blatantly politicized manner to launch a particularly virulent campaign of character assassination against Premadasa and Wijeratne.

The question does remain as to how controversial political murders can be fairly and thoroughly investigated in situations where there

is an alleged cover up by the Government in power. The answer in part lies in the recommendations of the Vijaya Kumaratunga Commission itself which suggests that a special centralized unit be sent up within the Police Department to handle investigations relating to politically motivated offences. The Commission also recommends that a permanent quasi judicial Commission be appointed to look into complaints of inaction or abuse by the police. With regard to the instant case, it points out that the Information Book extracts together with proceedings of the Commission be forwarded to the Attorney General's Department for consideration of the institution of criminal proceedings against those implicated.

Almost one and a half years have elapsed since the Vijaya Kumaratunga Commission report was published, but there seems to be a kind of executive amnesia about its recommendations. This is in abrupt contrast to the manner in which the findings of this Commission against Premadasa and Wijeratne were used for overtly political purposes. As time passes, the recommendations that to many constitute the most favorable part of the Vijaya Kumaratunga Commission report, appear destined to lie in some bureaucrat's desk with no real hope of implementation.

## Note

1. Report of the Presidential Commission of Inquiry into the Assassination of Mr. Vijaya Kumaratunga (Former Leader of the *Sri Lanka Mahajana Pakshaya*).
2. *The Island*, May 10, 1995.
3. *The Island*, April 21, 1997.
4. *The Island*, March 12, 1997.
5. *Ibid*.
6. DIG (CID).
7. Director (CID).
8. See n. 1 at 40.
9. C.A. Chandraprema, *The Island*, March 2, 1997.
10. See n 4.
11. *The Island*, February 1, 1997.

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