

# Justice for the Dead

## *The Magisterial Inquiry into the Murder of Richard de Zoysa*

Many killings, thousands in number and politically-motivated, have occurred in Sri Lanka during the past few years. In a vast majority of the cases, both the killers and the killed remained, and continue to remain, 'unidentified'. Even when the identities of victims are established, the law, in spite of its long arm, often failed to reach the perpetrators of the crime. An illustrative case in point is the death of Richard de Zoysa, the consummate media personality.

Some facts about Richard de Zoysa's tragic death are now well known. In the early hours of February 18, 1990, he was abducted from his home near Colombo by a group of armed men. As later reports indicated, he was shot in the head and thrown into the sea. His body was washed ashore the next morning near Moratuwa, about 16 kilometres South of Colombo. The sealed coffin of de Zoysa bore testimony to the shared fate of many such bodies recovered: badly mutilated under circumstances known only to the killers.

Who killed Richard de Zoysa? It remains a question the answer to which has not yet been judicially established. Although a magisterial inquiry into this killing was instituted, and some suspects were named by de Zoysa's mother, the case was closed when in July 1990, the Attorney General declined to proceed with it.

Public concern about Richard de Zoysa's death as well as the thwarted judicial inquiry grew nationally and internationally. International concern has meanwhile been expressed in a number of reports prepared by some eminent human rights bodies. In March and June 1990, the U.S. human rights group Asia Watch issued two statements, calling on the government to "institute an independent investigation into the murder of Richard de Zoysa." The International Commission of Jurists, based in Geneva, too took an active interest in this death. It sent a special representative, Mr. Anthony Heaton-Armstrong to Sri Lanka to observe the magisterial inquiry. The ICJ representative attended the court hearing in July 1990. He also met senior law officials to express the ICJ's concern about the way the judicial proceedings were being conducted. Mr. Heaton-Armstrong subsequently submitted a report to the ICJ.

As the ICJ report notes, what immediately followed the abduction and killing of Richard de Zoysa was 'unusual' in that his body was recovered in an identifiable state. The recovery of the body was in fact followed by a post-mortem, a facility which not many bodies had previously been granted. In brief, Richard de Zoysa was not one who 'disappeared' without a trace. The Report observes:

Since the upsurge of JVP violence there have been between 8,000 (the official figure estimated by the International Committee of the Red Cross) and 30,000 (the unofficial figure) 'disappearances' in Sri

Lanka. It is officially conceded that the security forces have been directly or indirectly responsible for some of these 'disappearances' although it is not possible to quantify them precisely.

Almost inevitably, the disappearances are absolute - i.e. the 'disappeared' person is lost forever. Bodies are rarely identifiable as the killers take steps either to secrete them or to make identification impossible e.g. by burning them or by removing them to a location where identification is unlikely due to their remoteness from those who might be able to perform the identification.

Until very recently, before Richard de Zoysa's abduction and killing, the security forces were entitled to dispose of bodies in their custody without recourse to a post-mortem or inquest.

The ICJ report has raised a number of questions concerning the incomplete judicial inquiry into de Zoysa's death. Among them are the nature of the police investigations, the role of the Attorney-General and the role of the court.

The Report specifically comments on the refusal by law authorities to follow-up the identification, made by de Zoysa's mother, of the suspected killers.

Excerpts from *The Review*, journal of the ICJ, no 45/ 1990:

About three and a half months [after the killing], Mr. de Zoysa's mother, Dr. Manorani Saravanamuttu, who had been present at the abduction, claimed to have identified one of the abductors as Senior Superintendent of Police Ronnie Gunasinghe when watching a television news broadcast in which he appeared. The police authorities declined to arrest Mr. Gunasinghe. Public concern about the killing had, meanwhile, been growing nationally and internationally.

Both Dr. Saravanamuttu and the lawyer she had instructed to represent her interests at the inquiry received death threats over the telephone and in writing.

During his meetings with the Attorney-General and the Inspector General of Police, Mr. Heaton-Armstrong also observed that no credence had been officially attached to Dr. Saravanamuttu's identification of Ronnie Gunasinghe as one of those present at her son's abduction - hence the failure to suspend him from duty pending further investigation or, at least, to transfer him to an area where he was less likely to be able to influence



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potential witnesses and to jeopardize a successful and effective investigation.

The ICJ observer is of the view that an identification parade should have been held immediately after it became known to the police that Dr. Saravanamuttu had claimed to have identified Gunasinghe. A properly conducted parade, with a 'line-up' comprising a number of individuals with similar appearances to that of Gunasinghe might have proved to be extremely helpful. The observer suggests that it is still not too late to hold a parade.

The observer states that under section 393 (5) of the Code of Criminal Procedure it is the duty of the Superintendent of Police to report to the Attorney-General on any offenses such as abduction and murder which occur within his division. This was not done in this case.

Mr. Heaton-Armstrong also expressed concern about the alleged collusion between the police investigating the case and the lawyers representing Gunasinghe and Ranchagoda, another police officer.

The ICJ observer concluded that "viewed as a whole, the police investigations into Richard de Zoysa's killing seem to have proceeded on the unshakable assumption that Senior Superintendent of Police Gunasinghe cannot have been involved."

The ICJ observer was also of the opinion that the Attorney-General, like the police, reacted unnecessarily defensively and proceeded on the unshakable assumption that Gunasinghe is innocent.

The Attorney-General could, and arguably should, have taken a stronger stance over the question of an identification parade. His decision regarding the leading of evidence before the magistrate has the appearance of a determination to prevent the court taking the initiative over the decision whether or not to arrest or charge Gunasinghe. In the opinion of the ICJ observer this unusual case called for a public examination of Dr. Saravanamuttu's evidence in court followed by a judicial, not an executive decision. In the event the role of the magistrate has been undermined.

Mr. Heaton-Armstrong concluded that this is not a 'fleeting glance' case. Dr. Saravanamuttu has made what appears on the face of it to have been a valid identification. There are, without doubt, a number of factors which could be argued to weaken the strength of her identification but, short of disbelieving her, it seems that her evidence - all of it - must be taken at face value. This has not been a case which cried out for an immediate arrest but there is, at this stage, no alternative but for Superintendent of Police Gunasinghe to be arrested and brought before a court for committal proceedings on a charge of unlawful abduction and murder. The ICJ observer has no

reason to believe that the court proceedings were not conducted fairly, judiciously and in an atmosphere of ostensible independence. The magistrate was clearly very concerned about the case and had a detailed knowledge of the material placed before her.

Counsel for Gunasinghe and Ranchagoda, both of whom could properly be described as suspects, seem to have been given 'free rein' during both hearings the observer attended. They were therefore at risk of being able to pick up information of interest to their clients which might prejudice a fair and just trial. Little care appears to have been taken to ensure that they did not become privy to information which should not have been revealed to them at this stage.

The observer considered it most unfortunate that Dr. Saravanamuttu's claims had not been given a judicial and public airing, and that the magistrate had been deprived of the opportunity to make a decision about the strength of the evidence which would have enabled her to decide whether or not to order Gunasinghe's arrest and charging.

The State has conceded that the security forces have been responsible for unlawful abductions and, possibly, killings. Where these occur there are almost insuperable difficulties in identifying the culprits and prosecuting them to conviction and sentence. There is a widespread belief that the security forces have an extensive involvement in this area and that insufficient action is taken to identify those responsible by those whose duty it is to do so. If the State is not seen to take a firm stance against this type of activity private citizens will inevitably take the law in their own hands and attack the servants of the State. There appears to be a strong case for the setting up, by the President, of an independent judicial inquiry into the circumstances of the killing of Richard de Zoysa and the police investigation which followed under the Presidential Commissions Act. Such an inquiry would at least establish some useful lessons for the avoidance of similar killings in future and might point the way towards more effective police investigations into them. If it achieved nothing else, an independent inquiry of this sort would serve to 'clear the air' and reassure the concerned public that all possible steps were being taken by the State to identify those responsible.

The Chairman of such an inquiry has extensive powers to conduct investigations, subpoena witnesses, order the police to bring specified documents to the hearing, question the police about possible obstruction of the inquiry, sanction lack of cooperation and make authoritative recommendations in his report. His powers are considerably more extensive than those of the magistrate under the Code of Criminal Procedure, which merely permits the magistrate to take action in an individual case - not to make wide ranging recommendations of general application.



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Furthermore, the magistrate has no power to sanction a failure to cooperate by the police and must reply on what the police choose to place before him/her. The Chairman of a Commission of Inquiry can reach much further behind the scenes and is not generally subject to having his decisions overturned by the Court of Appeal.

The observer concluded that as far as he is aware, there is no facility for the provision of a special team of investigators in a case where a serious accusation is made against a police officer and takes the view that this would be a useful and of particular importance in a case such as that of the abduction of Richard de Zoysa.

On 30 August 1990, the Attorney General announced in Court that he would not be proceeding with a prosecution against Mr. Gunasinghe.

The ICP's plea for a Presidential Commission of Inquiry did not go unheeded, at least partially. In February 1991, the opposition parties in Parliament moved a resolution calling for a commission "to inquire into the abduction and killing of Richard de Zoysa." The motion was defeated by 120 votes to 71. While the entire opposition backed the motion, the ruling UNP voted against it.

Mr. K. N. Choksy, the chief legal spokesman of the UNP in Parliament, stated during the debate: "The dictates of principle and the requirements of the due adherence to the rule of law and the recognition of the role of the courts under the Constitution of Sri Lanka are basic matters in a situation such as the present. They all call for this house to decline and turn down this motion. These basic factors have clearly not been considered by the signatories to this motion, and demonstrated that this motion is ill-conceived."