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## **The Five Students Case in Trincomalee**

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## 0. Introduction

Five students were killed near the Gandhi statue at the Trincomalee sea front on 2<sup>nd</sup> January 2006. They were beaten and shot execution style by Sri Lankan security forces after a grenade was thrown at them from a passing auto rickshaw. It was a shocking case in which the State has operated with blatant impunity; its disregard for the rule of law has been offensive and insidious. Numerous exposes and statements by human rights agencies have been released on the subject that provide overwhelming evidence of state complicity, but as usual the case has stalled. Both the recorded evidence and the testimonies we have collected from witnesses who dare not go on public record point to a high level collusion between the three arms of the security forces. This further substantiates the belief that an independent investigation and prosecution would have unravelled hidden agendas inherent in the workings of the Defence Ministry.

The public outcry when the cover-up backfired led to 12 STF officers being placed under arrest. They were effectively discharged after a flimsy inquiry citing lack of evidence; scores of initially agitated witnesses anxious to strike a blow for justice at that time slumping into terrified silence. Following international interest shown in the case during July 2006, the Police ordered a second CID investigation under an officer of ASP rank, who had been on the case earlier in the year. At the end of the year, a CID report was said to be with the Magistrate. The Human Rights Commission's own Special Rapporteur too came to some strong conclusions about the role of the STF and the SP (Operations) instructing them. Yet there has not even been the slightest hint of even a token disciplinary action.

We take a new thorough look at the case with the aid of the Magistrate's hearings that have been placed on record. These hearings contain a wealth of leads that any professional investigation should have pursued. Command responsibility in this case would be easier to pin down, but the Sri Lankan elite has shown singular resistance to admitting it as a legal basis for criminal liability. It is an elite without vision that sees itself constantly under siege. **Scores of violations executed either by subordinates or by unofficial agents over the last 25 years that would be determined as crimes against Humanity in International law, carry no criminal liability in Sri Lankan law.**

Early on, many in Trincomalee with police contacts pointed to SP (Operations) Kapila Jayasekera as having played a central role in the crime. The Magistrate's proceedings make it clear that he was on the scene, but do not record when he arrived. Police and naval personnel at the checkpoints leading to the scene have testified when and which police vehicles entered the area. But there is total silence on the arrival of Kapila Jayasekera in his conspicuous unmarked pick up. Any effective investigation should have followed this important lead and established his time of arrival.

Another lapse in the investigation concerns the green auto rickshaw from which the grenade was thrown. One of the injured students told the Magistrate that the rickshaw proceeded towards the Fort Frederick. But the personnel who were at the army checkpoint (which the auto rickshaw would have passed) were not produced before the Magistrate. We verified that the auto rickshaw did indeed go into the Fort, which is the Army HQ. Stranger still, the auto rickshaw had been regularly seen parked near the Police HQ. As the cover-up dragged on, another auto rickshaw driver, Balachandran, was providing information to the victim families on the green auto rickshaw used in the crime. Security forces assassins killed Balachandran in August 2006.

Testimony points to the active complicity of the Navy, Police and Army in this staged execution of 5 students. The evidence speaks loudly about the kind of instructions the Defence Ministry had been issuing commanders on the ground. This was an early manifestation of the profound impunity that has now been granted to terrorise and degrade the Tamil community in the East and particularly Trincomalee. In the course of 2006 it turned the East into a killing field. We believe this was an intentional prelude to enforced Sinhalisation of the area, driven by the demands of an increasingly militant and influential Sinhalese nationalist component of the state.

### **1. The Key Facts of the Crime**

The company included about 9 students who had left Koneswara Hindu College and were either in university, engaged in some other form of higher education, or had just that day received notice of admission to university after the second sitting of the A. Levels. They were having a chat on the sea front. Several had paid their regular visit to Kali Kovil and were having snacks and soft drinks, seated on a concrete ledge at the beginning of Fort Road, facing the beach across the road, with the Gandhi statue behind them. It was the second day of New Year – a day of parties for young persons who had come home and were meeting old friends at the sea front. A Schematic Diagram with main details of the incident indicated and aerial maps of the location with the relevant places marked are sent in a separate file. An unmarked map could be found at <http://wikimapia.org/#y=8573404&x=81237266&z=16&l=0&m=a&v=2>

At 7.35 PM a green auto rickshaw which came along Dockyard Road southwards did a sharp turn to the left into Fort Road, shied a grenade at the youths and moved towards the Fort passing the army check point at the point where Konesar Road branches off to the Clock Tower from Fort Road (Pansala Checkpoint). We have verified from a witness of good standing that the auto rickshaw went through into Fort Frederick, which is the army headquarters for the District.

The locality in which the incident occurred was under the control of the Navy. One platoon manned the checkpoints at the Urban Council (UC) and at the Martyrs Monument to the Welikade massacre victims on Dockyard Road, facing Cathedral Rd.

The Gandhi statue is 500 ft. (150 m) south of the UC and the Martyrs Monument 250 ft. (75 m) south of the statue. The Navy sealed off these two checkpoints soon after the grenade blast and hardly anyone was allowed to leave.

Five of the students were injured in the grenade explosion. Of the two who were unhurt, Manoharan Ragihar and Yogarajah Hemachandran tried frantically for about 15 minutes to

persuade some of the many auto rickshaws and vehicles parked there to get the five injured youths to hospital, but to no avail. The Navy, which was in charge of the area, immediately closed the exit points. Were they simply watching and waiting for something to happen, doing absolutely nothing to help the injured?

Yoganathan Poongulalon, one of the injured survivors who had learnt of his admission to Moratuwa University that day, told the Magistrate from Hospital the day following that the injured had been pleading for help but no help came. 5 to 10 minutes after the blast he saw 4 or 5 persons coming towards him as though to help. At the same time a jeep came towards him (along Fort Road) and persons came at them shouting in Sinhalese. He could not say whether they were Army, Navy or STF. They pushed four of the injured into the back of the jeep and assaulted them with their guns and hands. Then they pushed them out from the back and shot them on the road. Poongulalon feigned death and survived with gunshot injuries. He placed the time of the shooting at 15 to 20 minutes after the bomb blast. “*Later*”, he said, “*the Jeep left.*” This places the time of the shooting around 7.55 PM as also suggested by further testimony.

Poongulalon’s testimony gives the only reference in the Magistrate’s record to the green auto rickshaw from which the grenade was thrown at the students. Although many witnessed this, no one came forward to testify. Poongulalon told the Magistrate: “*Normally vehicles pass up and down along the road. A green auto rickshaw going in the direction of the Fort came slowly towards where we were standing. Suddenly a grenade was thrown and fell near my feet. I ran about 10 metres south and fell down injured. The auto rickshaw from which the grenade was thrown went towards the Fort.*”

Very remarkably, there has been no follow up on this important piece of testimony. Officers in charge of the two checkpoints to the north and south of the incident were called upon to testify. After throwing the grenade, the auto rickshaw passed the Pansala army and police checkpoint close to the Fort, which anyone going in must pass. But no person from that point was summoned to testify. We received incontrovertible testimony that the green auto rickshaw went into Fort Frederick, the Army HQ.

A hospital visitor who communicated with Poongulalon told us that after beating them the assailants made as if to go, when a man seated in the jeep barked out an order to kill them. It was then that the shooting started. After one round of shooting, the headlights of the jeep that had come with only the parking lights on were switched on before turning the vehicle. The men noticed two boys seated on the ground ahead at the bend of Dockyard Road and Fort Road. They asked who they were, and then went up to them and shot them dead. These boys were Manoharan Ragihar and Yogarajah Hemachandran. The witness said that the assailants were wearing masks. The jeep then turned and went back along Fort Road.

Pararajasingham Kokularaj, the other injured student, did not tell the Magistrate very much, but told family friends later that he was on the ground when he saw his friend Rohan being shot by the killers. He felt cold in his stomach and passed out.

Dr. Manoharan told the Magistrate’s Court on 10<sup>th</sup> January that he heard the bomb blast when he was doing medical reference at his home in St. Mary’s Rd., 1000 ft (300m) from the Gandhi statue. He looked at the time on the family clock and it was 7.35 PM. He went over to the Martyr’s Monument checkpoint on Dockyard Road in about 10 minutes of the blast, but the navy men did not allow him to proceed further on his motorbike. He rang Ragihar on his

cell phone, whose phone was ringing, but there was no answer. He showed this to the naval officer. He was told that he could proceed on foot. He left his bike at home, returned to the Martyrs' Monument seaward (east) of the checkpoint about 250 ft from the scene of the incident. Unable to proceed further as a barrier had been placed and the road was blocked, he stood with persons in commando uniform.

He then saw a wide-bodied jeep with only parking lights on coming from the direction of Koneswaram Temple (Fort Frederick) along Fort Road. After this he heard the sound of motorcycles approaching. (He clarified to us that these came along Dockyard Road from the direction of the town.) When the shooting began subsequently, he looked at the time on his cell phone and it was 8.15 PM. (He agrees that this time may have been inaccurate and we have good reason to place the time at about 7.55 PM.) The place of the crime was in darkness. The lights had been switched off locally at a post near the Gandhi statue. There were also no lights at the Dockyard Rd. checkpoint. Manoharan saw only the parking lights of the killer vehicle and the flashes from the guns from about 3 to 3 ½ feet above the ground, from two distinct locations, lasting 1 to 1 ½ minutes. He also heard screams for mercy from the victims. The parking lights of the killer vehicle were switched off after the shooting. While Dr. Manoharan insisted that he be allowed to go to the scene of the shooting the security men prevented him. The violence so close to them did not seem to perturb them at all and they went on talking and joking among themselves as though it was simply their duty to hold the ring.

Dr. Manoharan also added later that he had seen SP (Operations) Kapila Jayasekere's ash coloured pick up (without police markings) parked near the Valluvar Monument at the top of Customs Road across the western edge of the Gandhi statue triangle on Dockyard Rd. This was before the shooting began. (There was light in Customs Road that is closed to civilians because of the prison and rubbish is often heaped near the top.) Jayasekere's presence at the scene was confirmed to the Magistrate by two police witnesses, who were vague about the time he arrived and avoid giving the precise context. Manoharan also said that he saw Kapila Jayasekere's vehicle with masked men at the rear of the pick up going towards the hospital after the shooting (he did not speak of Kapila's vehicle in his testimony to the Magistrate).

Dr. Manoharan told the Magistrate that the persons in commando uniform (possibly naval personnel) asked him to wait when he wanted to leave on hearing from a man in uniform, who contacted a colleague on his communication device or cell phone, that 5 civilians had been killed. About 20 to 25 minutes after the shooting he saw a truck like vehicle with masked men in commando uniform accompanying it take off from near the scene of the murder and pass him on the way to the Hospital. The vehicle lights were switched on after passing the checkpoint. This was, he clarified later, after Kapila Jayasekere's vehicle had gone the same way, also after the dead and injured had been transported to hospital.

A further clear indication that there was a significant time gap between the bomb blast and the gun fire came from Ponnuthurai Yogarajah, the father of Hemachandran. He gave the time at which he heard the bomb blast from his home in Customs Rd. at 7.35 to 7.45. He then went out and waited a considerable time for his son. Not seeing him he went to the Old Police Station near the Gandhi statue. He added that someone there told him that he could not go towards the beach and he turned back home. He added that there were no police or army personnel where he was. On his way home he heard about 15 gunshots and he later went to the Hospital. He placed the time interval between the bomb blast and the gunshots at about 15 minutes.

Yogarajah testified on 16<sup>th</sup> January, 6 days after Manoharan, and by then the intimidation of witnesses had become blatant. In fact at the location he described, he had come very close to his son. We learnt independently that Yogarajah had been forced to kneel down by the Navy and was later beaten by masked men who arrived, either STF or Navy, and made to lie on the ground. He actually heard his son's pleas just before the last two were shot and he was the first parent to seek his son in the Hospital.

Another indication of the time of the shooting concerns another of the victims Lohithathan Rohan, the eldest son of Lohanayaki and her husband Rajendran Lohithathan, who was expecting admission for civil engineering. Rohan's mother who testified on the 16<sup>th</sup> January did not understandably mention his cell phone, which continued to ring when dialled for some time. The cell phones of all the victims had been removed except Ragihar's. His phone was small in size and it turned up later in the back of his underpants. His gold chain and other possessions had been robbed.

Concerned to find out what was happening, Hemachandran's family called Rohan's cell phone (no. 0776539192). Twice the call was cut off. The third time a stranger's voice spoke in Sinhalese and asked for their names and addresses and said mockingly that Rohan was with them. The conversation lasted about 3 minutes. The family remembers that the clock indicated 7.52 PM while this conversation was going on.

In sum we may place the bomb blast at about 7.35 PM, and the time of the executions (gunshots) at about 7.55 PM and the gap between the two events at around 20 minutes. There is as we shall see, while there is fairly good agreement between the civilian and security forces witnesses on the time of the gunshots, the main gap arises in the time interval between the blast and the gunshots. While the civilian witnesses place this at 15 to 20 minutes, the security forces try to narrow this down to 5 minutes or less.

## **2. Twists in Official Evidence**

In their attempt to direct the evidence, the security forces experienced one severe drawback. In the initial briefing of the Magistrate, they suppressed any mention of gunshots. The Acting OIC Inspector Zawahir of the Harbour Police, who was about the last to testify, told the Magistrate that he was about to go to see ASP-1, when at 7.50, 7.51 PM he heard of a bomb blast near the beach on the Motorola receiving set in his vehicle. He conveniently did not hear the blast and knew absolutely nothing about the gunshots. He proceeded to the area 15 minutes later along Post Office Rd., turned right into Dockyard Rd. at the UC roundabout and saw people detained on the left side of the road.

He went to the Gandhi statue and saw persons in commando dress on the alert. He did not know who they were then and did not ask. He saw some injured persons on the ground groaning. He did not know who was dead and who was injured, he treated them all as injured and gave priority to dispatching them to hospital, he said. He sent two injured to hospital in his vehicle about 8.15 PM. Just then another jeep came from Police HQ (he did not say who or by which route it came, however, the UC is the shortest route). He sent three injured (sic) to hospital in that vehicle with some others in jungle (commando) dress helping. When his jeep returned he sent the last two in it.

Zawahir 'found' an unexploded bomb under one of the motorcycles (of the students). He sent word to the bomb disposal team of the Army at the Fort to come and await the Magistrate

before defusing the bomb. He sent an officer to inform the Magistrate. He also informed ASP-1 Serasinghe responsible for the area. He then met the ASP and SP Kapila Jayasekera “*who came there*”. This was he said about 8.35 to 8.40 PM. (The arrival of ASP-1 is corroborated in the evidence of the police sergeant at UC Junction, but no security witness says when or how Kapila Jayasekera arrived. Manoharan’s testimony says that he was there before the gunshots, and apparently directing the operations.)

Magistrate Ramakamalan made his entry at 9.15 PM: “*The OIC Harbour Police informed me that as the result of a bomb blast in his area some have died and others were injured... Was met (at the scene) by SP Jayasekera, ASP Serasinghe and Inspector Zawahir.*” The Magistrate left the site at 9.45 PM after instructing Zawahir to secure objects to be produced as evidence. He went to the Hospital at 8.45 the following (3<sup>rd</sup> January) morning to identify the bodies and order post mortems.

Zawahir in securing productions did not find any empty cartridges. He found such only two days later, well after it was broadcast over the international media that the students had died of gunshot injuries. He told the Court on the 18<sup>th</sup> that he only knew after the JMO’s report on the 3<sup>rd</sup> that the youths had died of gunshot injuries, he had no way of finding out, he said. Contrast this with what other witnesses had to say:

**Dr. Manoharan:** “*[Upon going to the Hospital] I saw my son [Ragihar] on a stretcher. His eyes were wide open and blood was coming out of an ear. There was a gaping hole of 2 to 2 ½ inches at the back of his head.*”

**Subashini Chitravel:** Identified her elder sister Suhirtha Thangathurai (54)’s youngest son Sivananda (20), a first year civil engineering student at Moratuwa University. She said, “*I saw a big wound above his right ear and a small hole under his left ear. I have worked 15 years as acting magistrate. From this experience I can definitely say that these were gun shot injuries.*”

Inspector Zawahir, an experienced police officer in a conflict area saw nothing, heard nothing and asked nothing. He was only following directions from Kapila Jayasekera. The one thing he did not fail to find was the unexploded hand grenade apparently planted with the intention of incriminating the victims. The whole purpose of the Police direction of the case seems to have been to expunge gunshots, bullets and bullet wounds, and make them disappear from the records.

### **3. Making Bullet Injuries Disappear**

When Dr. Manoharan went to the Hospital in search of his son at 9.00 PM, he saw armed men with black masks all over the Hospital -- from the entrance to the car park and then in the corridors. This had nothing to do with protecting the dead or injured from the Tigers. The area was far too Tiger-proof for that. They first prevented him from getting into the hospital. A male nurse who is the son of Salam, known to him, helped him to gain entrance. He saw his son’s body in the mortuary and felt faint. He went out. During this time he was accosted outside the mortuary by a group of three police officers in uniform and 6 or 7 masked men with guns. They told him that the body would be released to him if he signed a declaration that his son had belonged to the LTTE.

There was already talk around the hospital of the security forces insisting that the students had died of bomb blast injuries. Anxious that the State would cover up the crime, Manoharan went back into the mortuary and used his camera phone to take three photographs showing his son's injuries.

Anxiety about the post mortems was also created by the presence of a Doctor Jagath who was heard making pronouncements that the 5 student victims died of bomb blast injuries. That same night some members of the public, including Subashini Chitravel, got involved in a heated exchange with the hospital authorities. Matters were calmed by an assurance from the Medical Superintendent, Dr. (Mrs.) Gunalan, that she would be present during the post mortem examinations.

Dr. Manoharan was at the Hospital, along with many relatives of the victims, before 8.00 AM the next morning to identify his son before the Magistrate and have the post mortem examination done. Dr. Jagath was also there with some files. Manoharan heard him telling some interns and hospital staff in Sinhalese that the deaths were caused by bomb blast injuries, although the truth was widely known at that time. The Judicial Medical Officer Dr. Gamini Gunatunge also turned up. Gunatunge was a young doctor of 33 years from Gomarankadawela, also in Trincomalee District. He had been doing the JMO's duties in Trincomalee from September 2003 and was well regarded in the Hospital. The post mortems began at 10.15 AM with Shanmugarajah Sajendran. Next was Ragihar's at 10.45 AM. Dr. Manoharan was going in as a parent with a right to be present. But Doctor Jagath told him, albeit politely, to stay outside. Manoharan thought it high handed, but decided against making a scene, since Mrs. Gunalan was present. Dr. Gunatunge followed with the post mortem of Lohitharajah Rohan that same morning.

At 12.00 AM the JMO received instructions for the post mortems of Thangathurai Sivananda and Yogarajah Hemachandran and completed the work by 2.00 PM. When Gunatunge testified in court on 17<sup>th</sup> January, it was the first time he had done so. He made no mention of being assisted by Dr. Jagath. He duly certified the deaths as being due to bullet injuries.

A parent of one of the dead boys visited the two injured, Pararajasingham Kokularaj (20), an automobile engineering student at the Open University in Colombo, and Poongulalon, in the ICU during early February 2006. Poongulalon told the parent that Dr Jagath had called and advised them shortly after admission that they would be treated well if they made a declaration that they belonged to the LTTE, and if not they may not receive proper treatment. He added that some nurses who heard this advised the students to testify to the magistrate, who subsequently took down their statements.

From the 2<sup>nd</sup> night, it had become widely known that the boys died of bullet wounds, and by late morning 3<sup>rd</sup>, it was medically certified for three of the dead and for the two remaining by 2.00 PM. The international media (e.g. BBC) quoting the SLMM reported the fact the same day. Yet the Army Commander for Trincomalee Major General Tissa Jayawardena claimed that very day (3<sup>rd</sup>) that LTTE cadres riding four cycles met with an accident exploding bombs they were carrying to attack a security forces checkpoint 100 metres away, killing six of them. Another live grenade, he said, was found on the road by their bodies.

Was Military Intelligence as poor as Inspector Zawahir's intelligence? The SLMM had in fact seen the bodies the same night (2<sup>nd</sup>) and said that they died of bullet injuries. General Jayawardena also claimed that his troops had subsequently conducted a search operation in

the area. Like Zawahir and his men, they too apparently failed to find any empty bullet shells. Dr. Manoharan, who was determined to fight for justice from the very outset, took photographs of the execution site the same night and again the following morning, which clearly showed bullet casings. What was the need for General Jayawardena, like the Navy, to compromise himself in the cause of SP Kapila Jayasekera? Moreover, the green auto rickshaw from which the bomb was thrown went directly into Fort Frederick where he was ensconced. These are decisive links pointing to the arrogance of the Security Forces.

#### **4. The Cover up on Time and the Bullets**

It was remarkable how bullets and gunshots on which the Police and Army had up until then maintained absolute silence suddenly became popular with witnesses from the security forces when they began testifying on the 16<sup>th</sup> of January. The bullets and bullet wounds were no longer deniable and featured in the post mortem reports and all testimonies of the civilian witnesses.

Dr. Manoharan was the first to testify on 10<sup>th</sup> January and was forthright. Describing what he saw of his son, he said, *“As far as I am concerned, I say that my son died of gun shot injuries. Where the others are concerned, I would say that they very likely died of similar causes. I would also say that it is the Government forces who are responsible for the deaths of all. A bomb went off at the scene of the incident at 7.35 PM. The gun shots I heard and the flashes I saw with my own eyes were at 8.15 PM. All this time the area was ringed and controlled by the security forces. Therefore no one else could have done the deed.”*

Subashini Chitravel (51), Acting Magistrate, testified the same day, and was more guarded: *“I say that my sister’s son was cruelly killed. He had no enemies. He was killed by those who had guns. The security of the region has been entrusted to the government security forces. They must give an answer. In this connection a fair verdict must be given, and those guilty must be punished.”*

The same evening Dr. Manoharan’s house was stoned, there were knocks on his door and he began receiving threatening calls of a crudely racist nature. Subashini Chitravel became largely silent. Despite her involvement in human rights work during the harrowing mid-1980s, she must have sensed this time that the stakes were far too high for her to handle if she was to live in Trincomalee. She actually discouraged others from getting involved. The remaining parents who did not have the same social clout as Manoharan and Subashini became very subdued in their testimony to the Magistrate. None of the hundreds of witnesses present at the beach came forward, though many were initially fired by enthusiasm to see justice done. A retired police officer who witnessed the crime at close quarters and promised to expose the outrage also became silent once the intimidation began. A senior education officer who saw the action at close proximity and gave many details to some of the families is believed to have left the country. The victims’ families themselves became thoroughly isolated.

The security forces began testifying on 16<sup>th</sup> January, all of them but Zawahir now claimed that they heard gunshots, but soon after the bomb blast. They made no attempt to explain where the shots came from or how the youths were killed under the very noses of the security forces that completely dominated the area. They left the death of the students a complete mystery. Zawahir could not do otherwise; he had compromised himself so abjectly from the start to

protect his superiors. His position was, 'did not hear, did not see, did not ask.' The testimony of these government officers before the law was full-scale perjury.

Their problem was that they had first proclaimed that the deaths were due to bomb blast injuries. This story had been blown. The Press (e.g. Iqbal Athas and D.B.S. Jeyaraj) had already pointed the finger at the STF unit commanded by Inspector Saratchandra (Vas) Perera for the killing. Their presence too had to be explained and matched with the arrival of local police officials on the scene. The danger was that more civilian witnesses might come forward and trash their claims. Hence they also resorted to concerted intimidation and threats to potential witnesses to leave Trincomalee. They succeeded to a large extent leaving Manoharan thoroughly isolated, bearing the brunt of the threats calculated to break his family down.

## 5. Contradictions and Cover Up

The security forces' testimony tried to bring the bomb blast close to the time of the gunshots and to fit this with the times of arrival of the STF and other senior officials. Thus the STF unit ended up claiming it took an absurdly long time to cover the ½ mile to the Gandhi statue, thus ensuring that they were not present at the time of the crime. (According to SI Bulanawewa it took them 15 to 20 minutes to set off, 15-20 minutes to travel the 2500 ft from the Clock Tower to the UC by vehicle and the final 500 ft on foot. The actual movement could not have taken 5 minutes.)

The first to testify were Reserve **Police Sergeant Don Upali Gunawardene** of the Harbour Police and **Ratnapala Soorasinghe**, naval platoon commander in charge of the area, both on 16<sup>th</sup> January. They were both at the UC checkpoint. Sergeant Gunawardene claimed he heard the bomb blast at about 7.50 PM followed by someone shouting for a vehicle, but he could not see any vehicle there to be sent. He immediately (within 5 minutes) informed the Police Information Centre using his communication set that the explosion was from the beach side. He was later, he said, redirecting vehicles coming from town along Dockyard Rd. into Post Office Rd.

Sgt. Gunawardene first saw Inspector Zawahir's police vehicle come past his checkpoint along Post Office Rd., followed by ASP-1's vehicle '*a long while later*'. Importantly, he asserted that no other vehicle passed that way while he was on duty. He said nothing about the Defender jeep in which the STF arrived, which the STF claimed was stopped at the UC checkpoint and parked there. According to Gunawardene's testimony, he did not attempt to go to the site. He could only see along Dockyard Rd. but not the statue, for it was he said dark there. He said he heard gunshots 4 to 5 minutes after the blast, but being the first witness from the State to testify, was nervous about committing himself. Being the season of goodwill to all men, he also heard Chinese crackers about the same time, he said hazily.

The next to testify on the same day was naval platoon or area commander, whom we will refer to as Lieutenant **Ratnapala Soorasinghe (44)**. He was also at UC Junction when he heard the blast between 7.30 and 7.45 PM and gunshots 2 to 3 minutes later. Soorasinghe was in charge of the UC checkpoint, Dockyard Rd. checkpoint (near the Martyrs Monument, facing Cathedral St.), the area behind the Police Quarters and the area adjoining the path along the beach. He informed the local Navy HQ administration section. He was preoccupied with redirecting traffic. He claimed that the scene of the incident was dark. He also claimed that he did not attempt to communicate with others in the platoon under him who were

engaged at the sentry point near the Martyrs' Monument on the other side of the Gandhi statue because the platoon had only one communication set and that was with him.

Dr. Manoharan saw those near the Monument freely talking to their colleagues elsewhere using cell phones and Soorasinghe failed to mention that he had sealed off the exits from the beachfront, which would have required communicating with the others. An object of this claim was to pretend that he remained ignorant of what had happened near the Gandhi statue. We will say more on this later.

Platoon commander Soorasinghe said he attempted to go to the scene of crime only after a police vehicle (Inspector Zawahir's presumably) passed his point and went to the statue. He said he went on foot to see his men at the Martyrs' Monument 10 to 12 minutes after the blast, and 5 minutes after the police jeep. While passing the monument he saw some injured persons in civilian dress on the ground.

**A very important claim Soorasinghe makes is that he saw only one vehicle there, the police vehicle, and only policemen in uniform. He saw no one in commando dress. This contradicts Zawahir's testimony two days later that there were men in commando dress when they arrived and also more importantly the STF inspector Vas Perera's claim the next day that his men (in commando dress) were the first to get there.** After going to the Martyrs' monument Soorasinghe testified that he found his men flat alert on the ground in firing position. Again, this contradicts Dr. Manoharan's testimony. Dr. Manoharan found them chatting on the cell phones, and listening to music as though nothing had happened. Also Soorasinghe alleged that he could not see what was happening at the Gandhi statue because *Alari* trees along the road supposedly blocked his view. But according to other eyewitnesses, the trees were virtually leafless.

The first witness the following day (17<sup>th</sup>) was **Sub-Inspector Ananda Bulanawewa**, feeling extremely uncomfortable. Like Zawahir he too was in the category of 'did not want to know and did not want to ask'. SP Kapila Jayasekera assigned Bulanawewa to the STF party and was on that occasion with the 12 under Inspector Vas Perera, wearing police uniform. A significant point in his testimony is that the unit was at the Clock Tower from 10.00 AM to 1.00 PM, at Anuradhapura Junction from 1.00 PM to 6.50 PM and were brought back to the Clock Tower for the last hour of their duty from 7.00 PM to 8.00 PM, within easy access to the Gandhi statue. **We were told independently that individual policemen were going around the area tipping off people they knew not to go out after 6.00 PM on that fatal day.**

Bulanawewa heard the bomb blast at 7.45 to 7.50 PM and gunshots 1 or 2 minutes later. He says he then heard on his police communication set that the bomb blast came from the direction of the Old Police Station. Vas Perera decided to proceed there with all his men in the Land Rover jeep assigned to them, but Bulanawewa did not know why. When they set off it was 8.05 to 8.10 PM.

Continuing, Bulanawewa said that they were stopped at the checkpoint at UC junction and were not allowed to proceed. There were one or two policemen there and some men in commando dress, and like Inspector Zawahir he could not say who they were (Police, Army or Navy). (Vas Perera had no difficulty in identifying them as navy – according to the arrangements there were only police and navy at that point.) Bulanawewa does not know why

they were stopped and had no occasion to ask. Vas Perera left him in the vehicle with 3 of the STF men and proceeded to the Gandhi statue on foot.

When Vas Perera went, Bulanawewa saw a vehicle with police markings pass the UC junction 1 or 2 minutes later, presumably Zawahir's, and stopping near the Gandhi statue. After about 5 minutes he decided to walk up and join the policemen who came, but the 3 STF men stayed behind. He then observed a second vehicle with police markings coming towards them along Fort Road. He saw injured persons being loaded into the two police jeeps with Vas Perera's men helping. It never occurred to him to bring up his vehicle and help the injured. He saw men in commando uniform there (other than the STF) but did not know who they were. He did not know why he decided to go to the Gandhi statue.

In fact Bulanawewa claimed not to have known anyone there. He significantly did not mention the presence of SP Kapila Jayasekera who had assigned him to Vas Perera, although he claims to have left the scene with Vas and his men. It was left to Vas Perera to tell us about Kapila's presence for his own excellent reasons.

**Inspector Vas Perera** of the STF testified next. He claimed that he heard the bomb blast at 7.45 to 7.50 PM, left the Clock Tower shortly afterwards driving most of the way, and was first to reach the Gandhi statue at 8.20 PM. It is difficult to believe that this elite force of commandos modelled after the British SAS, known for speed and flexibility, took 30 minutes to travel the ½ mile that a casual walker could have covered in less than 10 minutes. Nothing in his account is believable except his meeting Kapila Jayasekera at the scene. What Vas Perera did by flexing the time was to put on the record that he and his men arrived on the scene well after 7.55 PM when the gunshots were heard, as the victims' party had already testified. **We will see that there is partial truth in Perera's times, except that he spoke only of his second journey to the scene of crime and concealed the first.**

According to Vas Perera, he heard from Bulanawewa that the police radio had spoken of an explosion in the direction of the Old Police Station and decided to go there to see if his men there were in trouble. This cannot be believed. Vas Perera could have communicated with his men with a regular police set and if not by cell phone, which nearly all security persons now have. In the first place, according to Sergeant Gunawardene he told the Police Information Centre that the explosion was from the beach side. This is what Inspector Zawahir said he heard over the police radio. There was no reason for thinking that something happened at the Old Police Station, 500ft (150 m) inland from the UC where Sgt. Gunawardene was. Moreover, supposedly fearing that his men at the Old Police Station were in trouble, it took him 15 minutes to leave the Clock Tower.

Vas Perera claims that the naval personnel at the UC check point stopped them, but gave no reason. He then claims he proceeded on foot taking eight of his men, found there was no trouble at the Old Police Station and realised that something had happened further ahead and some youths were screaming on the ground. There were 7 youths he said, he saw with the aid of light from the mercury lamp. Vas claims he saw signs of life, but the victims did not ask for help. He asserted that he and his men were the first to be on the scene. He saw some men in commando uniform, but 75 yards from the Gandhi statue. It was then he said that two police vehicles came there, first one from the UC and the other along Fort Road. He said he knew no one whether from Inspector Zawahir's party or from the other vehicle.

This claim is in sharp conflict with naval platoon commander (Lieutenant) Soorasinghe's testimony that when he arrived he saw only one vehicle and uniformed policemen. Neither did he say anything (in his testimony the previous day) about the STF's coming or stopping them at the UC checkpoint.

Towards the end of his testimony Vas Perera drops a brick, "*At that time Kapila Jayasekera came there.*" Vas Perera claimed that his men helped to put two injured into a police vehicle and did not ask the Navy for help. His men engaged themselves in securing the area. They all left for the Police HQ at 8.40 PM to drop SI Bulanawewa, before returning to the Old Police Station.

Before we move on, we will clear up a few points. We have the highest trust in those who gave us information. The testimony of the security forces, while untrustworthy and contradictory in so many crucial aspects, is largely interesting for what each one says to safeguard himself. Yet we would be doubly clear on what our civilian sources have told us.

## **6. Fixing Times, Lights and a note on Presentation of the Evidence**

### **Bomb blast: 7:35**

Poongulalon estimates the time of the bomb blast at 7.25 to 7.30 PM, Subashini Chitravel at 7.40 to 7.45, Yogarajah at 7.35 to 7.45, and naval witnesses Soorasinghe and Prasanna Pathirige at 7.30 to 7.45. We may in keeping with the approximate times given by the civilian witnesses, who were the ones intent on justice, fix the time at 7.35 PM as observed by Dr. Manoharan on his family clock and his testimony has withstood attempts by the security forces to discredit it. He assures us that this clock gave the time correctly.

Interestingly, all Police and STF witnesses place the time at 7.45 to 7.50 PM and the gunshots soon afterwards. Sergeant Gunawardene said he heard the blast at 7.50 PM and informed Police HQ immediately and Zawahir who claimed he did not hear the blast heard about it on his Motorola at 7.50 or 7.51. We will examine their reasons for this 10-15 minute delay.

### **Shooting: 7:55**

Poongulalon estimated the firing to have been 15 to 20 minutes after the bomb blast, Suhirtha Thangathurai at 10 minutes after and Yogarajah at 15 minutes after. Yogarajah's son told us that they were talking to an STF man who had taken Rohan's phone before the shooting (their home was quite close) and the time observed was 7.52 PM. We may thus fix the time of shooting at 7.55 PM.

Interestingly again, all witnesses from the security forces placed the time of the shooting less than 5 minutes of the blast, which would still place it at around 7.55 PM. We shall see that this need was pressing for the Police and the STF.

## **7. Lights at the Gandhi Statue: Switched off**

Dr. Manoharan who observed the scene from the south found the area of the crime in complete darkness when he came soon after the bomb blast and the area was still dark when

he left it after the victims had been moved to hospital. This was also confirmed by the naval officer at that point. We may take it that the lights were switched off on purpose locally either by the Navy or by Kapila Jayasekera's men who were nearby, who had observed the scene closely before the incident.

Police witness Sgt. Gunawardene who was to the north of the scene also said that the area was dark. Inspector Zawahir said that there was one light when he came to the UC junction and when he went near the Gandhi statue he could see the victims very dimly. We checked and were told that there was one streetlight near the UC junction towards the Gandhi statue. This cannot be seen from the Martyrs' Monument to the south. This seems to be the light Zawahir spoke of.

Only the two witnesses from the STF party claim that there were lights at the Gandhi statue. SI Bulanawewa claims that there were lights on the street as Vas Perera advanced towards the Gandhi statue, but the sides were dark. Vas Perera claims specifically that he was able to see by the aid of the mercury lamp at the Gandhi statue. This unlike the one at the UC junction was a powerful light and there would have been no occasion for anyone to claim that it was dark at the Gandhi statue. This too is interesting.

## **8. The Conduct of the Magistrate's Hearings**

The hearings began on 10<sup>th</sup> January and the evidence was led by ASP Mahinda Serasinghe before Magistrate Ramakamalan. Three witnesses testified and both Dr. Manoharan and Acting Magistrate Subashini Chitravel gave powerful testimonies placing the blame squarely on the security forces. That evening the harassment of Manoharan commenced and Subashini opted out.

There was then a break of 5 days and hearings commenced again on 16<sup>th</sup> January, which was when Bulanawewa and Vas Perera testified. This time there were two men from the AG's department. Senior State Counsel Mr. D. Thattawatte led the evidence with Deputy Solicitor General D.P.J. de Livera assisting the court on behalf of the AG. The Police (and STF) faced some glaring problems:

If they accepted that the bomb blast was at 7.35 PM, the delay in the local Police and the STF coming to the rescue would be unconscionable. According to their testimonies they came around 8.10 and 8.20 PM respectively. In claiming the bomb blast occurred at 7.50 and the gunshots immediately afterwards, their conduct appears more plausible. Zawahir had to pretend not to have heard the blast, wait for the STF to come in for the kill and make his entrance after being summoned by his superiors. Vas Perera had of course to do two trips to the Gandhi statue in his share of the drama.

The question of the lights follows similar needs. The lights were switched off locally, in part to make it impossible for witnesses to identify anyone including the various arms of the security forces at the scene. Also the lights being off facilitated the disposal of the victims; in the dark there was little the witnesses could see of the injuries to the victims. The Police and the STF needed to explain why they kept the place in darkness when they could simply have turned the lights on locally as was done after removing the victims. This may be one reason why Vas Perera said the mercury light was on and Bulanawewa said the street was lit. Zawahir did not back this up.

The police investigations were conducted by Zawahir, OIC Crimes, Harbour Police under the direction of DIG Abeygunawardene, SSP Amampola and SP Kapila Jayasekera. Despite the many holes in the evidence of the security forces, and plenty of other evidence inescapably pointing to their culpability, the Attorney General's Department has signally failed to move the case forward. What they were doing remains to be answered.

## 9. Fixing Some Salient Facts

**The Route Taken by the STF from the Clock Tower to the Scene of Killings:** We have already indicated strongly that the STF vehicle being stopped at the UC is very misleading. In the first instance, Police Sgt. Gunawardene and Naval Lt. Soorasinghe, who were both at the UC checkpoint at the time of the incident, and testified on 16<sup>th</sup> January, said nothing on the arrival of the STF unit at the checkpoint and seemed indeed very reluctant to talk about them. Five minutes after the blast according to Sgt. Gunawardene, someone from the area of the incident shouted for a vehicle to help the victims. If indeed the STF vehicle arrived there before any other, why did he not send it to the aid of the victims? Lt. Soorasinghe walked past the Gandhi statue and asserts that only uniformed policemen (and not the STF in 'jungle dress') were there. We have testimony from persons of standing who were then close to the victims that a naval officer, very likely Soorasinghe, went to the victims after the blast and checked their identity cards, but then went away. We will come to this later.

Moreover neither the police nor navy personnel at the UC checkpoint were preventing police officers or their vehicles from going towards the scene of the incident. Both Inspector Zawahir's vehicle and ASP Serasinghe's vehicles were allowed to pass that way. The STF came in an unmarked police Land Rover and SI Bulanawewa attached to the Trincomalee Police was also present. But Bulanawewa does not know who supposedly stopped them or why, asked nothing and heard nothing. There was something making the personnel at the UC reluctant to cover-up for the STF.

How did then the STF go to the execution scene? Dr. Manoharan's and Poongulalon's testimonies that were already known spoke of a vehicle (with only parking lights on) coming from the direction of Fort Frederick along Fort Road and stopping at the Gandhi statue prior to the executions. It was eminently possible that despite the intimidation other witnesses too may come forward to support Manoharan and Poongulalon. There were good reasons for SI Bulanawewa and especially Vas Perera to feel very nervous. Naval Lt. Soorasinghe had already undermined their story of being the first to the rescue of the victims.

Both SI Bulanawewa first and then Vas Perera spoke about the vehicle that came along Fort Rd. Bulanawewa only said that it had police markings, but did not know any of those who came. Vas Perera too mentioned its arrival after they had dispatched two victims to hospital in the first jeep, but offered no other information on its purpose or who came. Zawahir only mentioned a vehicle from HQ.

Based on our investigation, we accept Manoharan's and Poongulalon's testimony as factual, and are convinced by the evidence that the STF party played a key role in the executions, and were proximately present when the deed was done. Witnesses on the scene (e.g. Dr. Manoharan) also said that the STF defender vehicle went back along Fort Rd. immediately after carrying out the executions. This is also the import of Poongulalon's testimony to the

Magistrate. He said *'then (after the shooting) the jeep left'*, although he could not say in which direction. According to other sources, the vehicle went past the Pansala army checkpoint to the Clock Tower along Konesar Rd., made a turn and came back to the UC Junction. It was then that Vas Perera and some of the STF men went back to the scene to be part of "helping the victims."

**It is this last twist that explains how Inspector Vas Perera and his men took, by his own claims, 45 minutes after the blast to get to the Gandhi statue. His testimony actually accounts for his second trip to the Gandhi statue while concealing the first. That too explains how Naval Lt. Soorasinghe said he saw only Zawahir's party at the scene when he went past contrary to Vas Perera's claim that he was the first on the spot. Further indications that Vas Perera actually concealed his first visit to the Gandhi statue and testified about his second visit are to be found in the inconsistencies concerning whether the place was lit or in darkness.**

**Were the Exits from the Scene Sealed by the Navy or Not?** Based on testimony given to us, the Navy which was in charge of the area sealed the exits at the UC Junction and at the Martyr's Monument. The discredited testimonies of Inspector Vas Perera and SI Bulanawewa attempt to throw doubt on this suggesting that the civilians were free to move out and Perera claims that there was no one near the victims and they had all run away. We said in Bulletin No.40 that they had been forced by the Navy to kneel down and an elderly woman who was present when the masked killers arrived had tried to stop the killings. The killers, who were lavish in their abuse, thrust a gun into her mouth and shoved her aside. Poongulalon too testified that the killers were shouting in Sinhalese.

The testimony of Indika Prasanna Hewa Pathirige, the naval NCO in charge of the checkpoint at the Martyrs' Monument suggests that there was no movement through his checkpoint. Pathirige makes the remarkable claim that he did not have a gun and that after the incident they lay down in firing position facing the opposite (Hospital) direction, away from the scene. He said rather vaguely that people were moving along the beach to the east. The poor man was it seems, as transpires from the testimonies of himself and his superior, placed in charge of a checkpoint without a gun and without a communication set to alert his superiors of any danger.

We verified that the civilians could not have moved along the beach as they would soon have been stopped because it was dangerous and sentries were posted on the sea front in either direction. Poongulalon says that persons nearby and the owner of the cart selling potato chips ran away, as he too tried to, after seeing the bomb thrown from the auto rickshaw, when shrapnel hit him. That does not mean they went far.

Only Inspector Vas Perera and SI Bulanawewa tell us that people were running towards them at the UC Junction. Naval Lt. Soorasinghe is silent on the matter. But Sergeant Gunawardena who was there gives a fairly credible picture. He says that he sensed that there was trouble near the beach when he saw parents and children come running. Later he puts this number at ten!

**The Missing Weapon:** According to testimony in the magistrate's proceedings the personal weapons of the 12 STF men in Vas Perera's party were secured and sent for comparison with bullets recovered from the bodies of the victims. Poor SI Bulanawewa had only a .38 revolver, which too was taken.

Witnesses place the number of security personnel present at 50 or more, about half of them hooded and the rest in uniform (regular or commando). We are now told that the reports of ballistic tests proved negative, and as President Rajapakse himself contended, there is no evidence. Given the signs of premeditation, it is not unlikely that the gun used did not belong to the STF party. But there were also other STF men at the Old Police Station about whose actions that evening there has been absolute silence. Vas Perera's pretence that he could not communicate with them and therefore had to go personally to find out if they were safe and well has been shown to be nonsense.

Poongulalon testified that following the explosion while they were lying helpless, he saw 4 or 5 persons coming towards them as though to help. Then the jeep also came and the rush of persons shouting in Sinhalese. Going by Vas' claim (however discredited) that the STF were the first to get there and all other security personnel were 75 yards away, it is worthwhile checking if some of those first seen by Poongulalon came from the Old Police Station, 500 ft away from the UC. There is little reason to believe that they stayed put watching television.

That it was a coordinated operation of masked STF personnel is also seen from Dr. Manoharan's testimony that as he saw the vehicle with only parking lights on appearing along Fort Road, he also heard the sound of motorcycles coming along Dockyard Rd. from the direction of the UC. Surely, testing just 12 weapons among 50 or more available to the killers at the scene and pretending that there is no evidence is disingenuous to say the least.

A further point worth checking is the claim of Hewa Pathirige, the naval NCO in charge at the Martyrs' monument checkpoint that he had no weapon. He could not have gone for checkpoint duty without a weapon. What became of it?

#### 10. New Information:

About early November 2006, 10 months after his son had been killed and the family had been thoroughly harassed and intimidated, Dr. Manoharan and family were about to leave the country. **A man who was regularly present at the Gandhi statue, called on Dr. Manoharan, and remarked that it looked as if the case of the students would not get anywhere. He then added that after the STF men had arrived on the scene, he saw Naval Lt. Udawatte Weerakody (of whom there will be more) and another naval officer on a motorcycle ride from the scene of the incident towards the Dockyard Rd. checkpoint where Prasanna Hewa Pathirige was. They returned with three guns instead of the two originally slung on their shoulders and handed one to the STF.**

**From the beginning, civilians who dared not testify had maintained that Udawatte Weerakody, who was well known in Trincomalee, had an intimate role in the executions and that just one gun had been used for all of them.**

#### 11. Vas Perera's Dilemma

Vas Perera was perhaps determined not to take the risks of the entire responsibility for the case. For all the lies in his testimony, he told a crucial truth to buy his insurance. He made it very clear that he was very intimately under the command of SP Kapila Jayasekera. He says almost gratuitously at the beginning of his testimony in court that he, who was an instructor at the STF Training School at Katukurunda, was brought to Trincomalee at the request of SP

Kapila Jayasekere – i.e. Jayasekere handpicked him. One wonders what sort of instructions STF trainees are given.

Towards the end of his testimony, having said he helped to put some injured persons at the Gandhi statue into a police jeep, he informs us, “*At that time Kapila Jayasekere came there.*” The sensitive nature of this seemingly casual remark could be seen from that fact that the previous witness, SI Bulanawewa, another of Jayasekere’s subordinates who too was present, breathed no hint about Jayasekere being there. He simply denied knowing anyone present except the STF unit he was attached to.

Vas Perera has made it difficult for the State to limit the damage by sacrificing a few of rank inspector and below. It is this that would explain the intensely crude and concerted intimidation of civilian witnesses.

## **12. Kapila’s Peregrinations**

Inspector Vas Perera claims he arrived on the scene at 8.20 and left at 8.40 after the injured were dispatched. This suggests the injured were surrounded by the Navy and left screaming for 45 minutes. That was until the STF arrived through the sheer accident of going to the Old Police Station and seeing persons screaming on the ground more than 50 yards away. This is largely fictitious. According to Vas, Kapila arrived about 8.30 PM.

How and when did Kapila really arrive? Had he come after the killings, his presence would not be a matter of embarrassment. After all he was there when the Magistrate arrived at 9.15 PM. Why then did those doing sentry duty at the entry points say nothing about Kapila’s arrival, although Inspector Zawahir says that Kapila and ASP-1 came after he dispatched the injured? Sergeant Upali Gunawardene at the UC says a first police vehicle (Zawahir’s) was followed by ASP-1. The Sergeant who categorically stated that no other security vehicle came that way while he was on duty, is completely silent about the motorcycle unit that came that way at the time the killer vehicle approached along Fort Road and the STF Defender vehicle which Vas claims was stopped at that point.

Kapila Jayasekere’s was a very prominent pick up without police markings carrying commandos at the rear. This cannot be the vehicle with police markings that came along Fort Rd. according to SI Bulanawewa and Vas, after Zawahir had arrived at the scene. Naval NCO Prasanna Hewa Pathirige who was at the Dockyard Rd. checkpoint (lying flat in firing position though he did not have a gun!) vaguely speaks of a vehicle with police markings and police in civils entering the area of the incident 20 to 25 minutes after the blast. In short, all vehicles listed by security witnesses to have come into the area were jeeps having police markings. None fits the description of Kapila’s unmarked pick up. There is thus no account in the testimonies of the arrival of Kapila, the senior-most police officer on the scene, although the arrival of ASP-1 had been reported.

We may thus give the highest credit to Dr. Manoharan’s testimony that he saw Kapila Jayasekere’s vehicle parked near the Valluvar statue across the Gandhi statue on Dockyard Rd. ten minutes after the bomb blast. That was when Manoharan first arrived at the Martyrs’ Monument checkpoint on his motorcycle, setting off soon after the blast. He had further confirmation that he correctly identified Kapila’s vehicle when it moved towards the Hospital passing him at the same checkpoint after the shooting. The naval men at the point remarked “*Kapila Mahattaya eneva*” (*Kapila boss is coming*).

Thus Dr. Manoharan had seen Kapila's vehicle parked near the scene about 7.45 PM before the shooting. He must have arrived before the green auto rickshaw with the bomb set off the fireworks at 7.35 PM. We have another piece of his movements before the incident.

About 6.30 PM. Police Sergeant Paramasivam was near the bus stand on Dockyard Rd. between the Clock Tower and the UC, closer to the former, buying his dinner. Kapila Jayasekera's pick up stopped on the road near him. The men in the vehicle flashed one of the lights and told him, "*Sergeant Mahattaya, ickmantta yanda*" ("*Sergeant Sir, go away soon*"), indicating that there was going to be trouble. This spot was near the Clock Tower. SI Bulanawewa testified that the STF unit was brought to the Clock Tower from Anuradhapura Junction before 7.00 PM. This suggests Kapila met Vas Perera and his men at the Clock Tower, gave them the final go and positioned himself for a ringside view before summoning the green auto rickshaw. Within the Police there was no doubt that the incident was well planned and who executed it.

Kapila's sponsors fearing that more witnesses may come forward to back Manoharan's incriminating testimony, left him in authority in Trincomalee to enforce silence. They even rewarded him, promoting him to SSP (Crimes and Operations) about June 2006. Later, he was entrusted with the investigations into the massacre of the 17 ACF staff in Mutur on 4<sup>th</sup> or 5<sup>th</sup> August 2006 – another glorious cover up by the State.

We might thus conclude that Kapila on 2<sup>nd</sup> January 2006 was on the spot directing operations. His vehicle had been seen about the place several times that day. Vas Perera told the Magistrate that he was Kapila's hand picked man, following his instructions. The arrival of the motorcycle unit along Dockyard Rd. at the same time that the STF vehicle came along Fort Rd. indicates a co-ordinated operation, beyond the authority of Vas Perera. We also have Poongulalon's testimony that the order to kill came when the assailants were apparently leaving after assaulting them with guns and fists. Given that Kapila was there Vas would hardly have done this without an order from Kapila.

What did Kapila do next? We may infer that Kapila instructed Zawahir (over whom Vas had no authority) to inform the Magistrate that there were casualties from a bomb blast. Kapila then left for the Hospital or its vicinity passing the Dockyard Rd. checkpoint, as seen by Manoharan before the truck which went that way 20 to 25 minutes after the firing. Kapila, we may infer gave instructions for posting hooded and armed men at the Hospital to ensure a verdict of fatality due to a bomb blast. Kapila then went back to the Gandhi statue to see that the Magistrate gets the correct message.

### **13. The Green Auto Rickshaw and Further Ramifications**

The Appendix gives some of the background against which the killing of the students took place. The victim families were convinced in the immediate aftermath that Weerakody's son in the Navy, Udawatte, allegedly a lieutenant, played a key role in the Students' tragedy. A close link has been drawn between Weerakody Jr. and the green auto rickshaw from which the grenade was thrown at the students. Moreover, Weerakody Jr. has also been linked by civilians to a series of incidents aimed at terrorising the Tamil community in Trincomalee. When by June the case was looking hopeless, a new international interest set things moving raising the possibility of new witnesses coming forward. About early July Weerakody Jnr. became prominent in the Navy's motorcycle unit and his presence where Dr. Manoharan, the main witness so far, lived became frequent.

On 22<sup>nd</sup> July, after a new CID investigation commenced under the urging of the Attorney General, Weerakody, who did not identify himself, with another naval officer calling himself the town commandant, knocked on Dr. Manoharan's door and walked in with their weapons. Until then no security officer had come into his house with weapons. They tried to tell him that there had been a petition complaining about Weerakody and it was all a mistake. Dr. Manoharan asked why they came to him and they must go to the petitioner. There is a further link, which if probed, promises to be fruitful, provided the suspect is arrested and questioned by officers interested in bringing out the truth.

**The Underworld Link to the Green Auto Rickshaw:** The green auto rickshaw from which the bomb was thrown at the students, according to local residents, is connected to Trincomalee's underworld. Persons with contacts in the Police said earlier that the auto rickshaw was owned by a Sinhalese home guard. Civilian sources in Trincomalee are now quite certain that the auto rickshaw No. QA 2178, which used to be parked in Madathady, a border area between Tamil and Sinhalese suburbs, and also in front of the Police Station opposite Orr's Hill, was the one used in the bombing.

The driver, we learn, moves closely with home guards and this vehicle is allegedly used in drug running. He may not have been the same driver involved in the bombing. It would appear that SP Kapila Jayaseskere delegated the task of finding the auto rickshaw to an agent with good contacts in the underworld.

The green auto rickshaw driver is identified as L. Hemachandran of 26 Railway Station Rd., Trincomalee. His mother is Ranjithamalar. Hemachandran was reportedly involved in a police case, accused of murdering his father by pushing him inside a well. He later became involved in a company of Sinhalese squatting in land belonging to a Pillayar Temple. His contacts according to local reports were generally criminals and members of the security forces. The owner sold his fairly new green auto rickshaw and bought another in mid-July 2006 just when the new CID investigation commenced.

It was another auto-rickshaw driver Balachandran (40) who was instrumental in making the connections between the green auto-rickshaw used in the killings, Trincomalee's underworld and the 'naval lieutenant', Udawatte Weerakody. Balachandran, a former member of the PLOTE had been forward in helping people whenever there was a tragedy for the community. After the killing of the 5 students, he had participated in decorating the streets for the funeral. He had evidently been marked out. He survived an attempt on his life in December-end 2005 soon after the killing of two other auto rickshaw drivers.

Leads supplied by Balachandran, identified the owner of the green auto rickshaw as being frequently in the company of one of 'Lieutenant' Weerakody's brothers. Orr's Hill residents saw this brother regularly talking to the owner seated in the vehicle opposite Orr's Hill, near the Police Station. On 24<sup>th</sup> August 2006, a white van and a green auto-rickshaw went to the house of Balachandran in Madathady. He was taken in the white van and shot dead. Local sources say that the 'Lieutenant' was seen near Balachandran's house before and after the incident.

#### **14. What were the Navy, Police and Army Doing?**

Before moving on to the question of command responsibility, we try to answer questions posed but not answered earlier.

**The Navy:** We know that the Navy closed both exits and made the crowd stay put. Naval Lt. Soorasinghe says that he informed HQ immediately and subsequently walked across to the other end (Martyrs' Monument). What was he doing for the 10-15 minutes before the STF first arrived leaving the injured unattended? Lt. Soorasinghe protested to the Magistrate that he had no authority whatsoever to take measures for the protection of the area and the people (besides checking vehicles).

Perhaps he was correct and did his duty by informing Naval HQ. Then it was incumbent upon the HQ to give him orders and take charge of the situation less than 5 minutes away along Dockyard Rd. We do know that a naval officer, probably Soorasinghe, went to see what had happened after the grenade blast. Iqbal Athas in his *Sunday Times* report of 8<sup>th</sup> January 2006 speaks of a Chief Petty Officer rushing to the scene with some naval men before the STF arrived.

An eyewitness at the scene, a deputy director of education who knew Sinhalese, said that navy men with a communication set came over and checked the identities of the victims and communicated with HQ by radio. They knew Dr. Manoharan as someone to whom they went for medical treatment and identified Ragihar as his son. Sivananda was also perhaps identified as the nephew of Actg. Magistrate Subashini Chitravel. When HQ found out the situation and very likely realising that some of the students were from influential families, asked Soorasinghe (probably) to let them go.

The naval men then moved off abruptly as the STF killers arrived. One of them shoved Ragihar, hinting at him to run away. Ragihar fell on the ground and sat there with Hemachandran. The killers did not at first see the two. The conduct of the naval men thus suggests a prearranged drama. They stayed, according to Vas Perera, 75 metres away and Soorasinghe, unbelievably, could not see what happened to the boys!

**The Army:** What directly incriminates the Army of complicity is the fact that the green auto rickshaw from which the grenade was thrown went along Fort Road into the Army HQ. This we have verified from several sources including from the security forces. The auto rickshaw has been identified as one frequently parked near the Police Station. Moreover, the Trinco Army Commander Major General Tissa Jayawardena's statement was transparently a pack of lies, well after the truth was public. These facts point to the Army too being party to the conspiracy.

**Unanswered Calls to the Police:** Soon after the bomb blast several citizens telephoned the Trincomalee Police HQ. Not one telephone was answered. We have verified this in the case of two callers who were leading citizens of the city. The rough picture is that the DIG has 4 telephones, one of them mobile, the SSP 3, one of them mobile, the HQI at least 2 and two other general lines for the station. The situation resembles the violence unleashed on Tamils on 12<sup>th</sup> April 2006, when again the telephones of all the security services went unanswered. Subashini Chitravel says in her statement that (unable to get through) she had to go personally to the Police HQ, who avoided the issue by directing her to the Harbour Police.

## **15. The Question of Command Responsibility**

What makes the crime of pivotal importance in checking the State's role in human rights abuses is the singular and very blatant high level of complicity between three arms of the security forces in jointly descending to such a brutal crime against young unarmed boys. It is

the key to getting to the root of the spate of violations that began with the assassination of Joseph Pararajasingham MP during the 2005 Christmas midnight mass at St. Mary's Cathedral, Batticaloa. This was the first instance within a month of the installation of the new government where there was coordinated action among different arms of the security forces to carry out the vigilante execution of a helpless man. There was a high level of security activity around the Cathedral, but once the Mass began, the area was almost deserted of security personnel.

We have argued along with many observers in Trincomalee that this level of complicity of different security arms could not have come about without the active connivance of the Defence Ministry. This has tragically been the spirit animating military operations from April leading to the bombing, shelling and displacement of thousands of civilians and the gruesome atrocities in Allaipiddy, Vankalai and against the ACF staff in Mutur. Not one person has been punished or held to account for any one atrocity among many in the span of a year. This again is the strongest indication that the cover up begins at the top.

It utterly debases, discredits and indeed potentially dismembers a nation state when its citizens have to flee by the thousands to a neighbouring country to be able to express freely the harrowing experience to which their government subjected them. The progress of the 5 Students' case shows a similar trend.

Fortunately we have other informed sources to back our charge against the Defence Ministry. The defence column of the *Sunday Times* of 8<sup>th</sup> January 2006 indicated that the STF unit was sent to Trincomalee on the orders of Defence Advisor HMGB Kotakadeniya who is also Treasurer of the extremist Jathika Hela Urumaya (JHU). It added that he '*is reported to have called upon the police commandos to act tough against terrorist elements*'. The column also said that this deployment took place without the knowledge of Defence Secretary Gotabhaya Rajapakse who was visiting India with his president brother.

The defence column of the *Sunday Times* of 15<sup>th</sup> January quoted Kotakadeniya refuting the charge that the STF unit was deployed without Defence Secretary Rajapakse's concurrence. He said that the deployment was in response to demands by Sinhalese residents in Trincomalee and to strengthen security in the strategic city, and had the concurrence of the Defence Secretary. The Defence Secretary declined to comment.

We could infer quite positively from the incidents described that the Defence Secretary had directly or indirectly told the Army and Navy to cooperate with any plan of violence designed for the STF by SP (Operations), now SSP, Kapila Jayasekera. Kotakadeniya had no authority over the Army and Navy. Kapila and DIG Trincomalee, Abeygunawardene, were former STF men. The Navy's complicity has already been discussed.

The Army HQ at Fort Frederick accommodating the green auto rickshaw involved in the bomb throwing is not a casual matter. As evident in the *Sunday Times* defence columns of 8<sup>th</sup> and 15<sup>th</sup> January 2006, defence officials were feeding the Press with stories that the STF unit in Trincomalee was some kind of a rogue operation that other service commanders knew nothing of. The facts of complicity and unanswered telephone calls, contradict this as stories meant to get the Defence Secretary off the hook.

We must also keep in mind the facts of the cover up: the virtual invasion of the Hospital by masked commandos, the attempts to meddle with the post mortem, and official statements claiming fatalities due to a grenade blast well after the truth was out.

The facts speak loud. The year 2006 saw state sponsored killer groups and mounting violations against minorities, including a number of killings of Tamil MPs, community leaders, spokesmen and even women. Promises were repeatedly made, but not in one instance was any action taken. Kapila Jayasekere, Vas Perera and Udawatte Weerakody against whom it should be possible to pin criminal charges if witnesses feel free to testify, are but small fry. By allowing them free to continue their menace, more have been killed including at least one witness and hundreds more have fled Trincomalee.

The violence we confront is ideologically motivated – ‘*Me Rata Sinhala Rata*’ (*This Land is Sinhalese Land*) – and prosecuting a few small fry whom the State may be willing to sacrifice is not going to make a significant impact. It is important to fix command responsibility and press for measures to be taken whereby these persons and their ilk can no longer cause harm to ordinary citizens from the minorities. Without so doing the commission of inquiry, which includes some of the most suitable local persons along with reputed international observers, would become another meaningless exercise and a lost opportunity.

## **16. A Recapitulation of Events in the Five Students’ case**

From what has been discussed above, we may place the events as follows:

### **7.35 PM:**

SP Kapila Jayasekere at the location after seeing the STF Unit at the Clock Tower, having parked his vehicle near the Valluvar Monument opposite the Gandhi statue, when the grenade is thrown at the students from the green auto rickshaw, which proceeds into the Army HQ (Fort Frederick) passing the Pansala army checkpoint. The Navy closes off the area. A naval party probably led by Lt. Soorasinghe inspects the five injured students and the two trying to help them, informs Naval HQ, and withdraws as the STF Unit in the Defender with only parking lights on approaches along Fort Rd. Lights at the beach front switched off after the blast either by the Navy or Kapila’s men.

### **7.45 – 7.55 PM:**

The STF Unit let by Vas Perera assaults the injured, is supplied with a gun probably from one of the naval personnel nearby that is used to shoot the students. The Defender lights are switched on prior to turning and the headlights flash on the two uninjured students sitting on the ground away from the rest. They too are shot dead. The Defender with the STF men turns and returns along Fort Rd.

### **About 8.10 PM:**

Inspector Zawahir’s police party arrives on the scene. Naval Lt. Soorasinghe joins them in the very dim light from the street lamp near the UC.

### **8.10-8.30 PM:**

Vas Perera's STF party, which went down Fort Rd. and did a turn at the Clock Tower comes back along Dockyard Rd., parks the vehicle at the UC and returns to the scene at the Gandhi statue. The dead and injured are dispatched to the Hospital. ASP-1 arrives. Kapila Jaysekere crosses the road to the Gandhi statue and joins ASP-1 and Vas Perera.

## Appendix

### What Lay Behind the Crime?

A strong hint of what motivated those behind the crime and its attempted cover up is contained in the threatening letters received by victims' families demanding that they quit Trincomalee. A warning letter in the Tamil script written in colloquial Tamil often used by Sinhalese read:

*"...We shot your five sons because they are supporters of the Tigers who are attempting to link our Eastern Province with the North. This land (the East) belongs to the Sinhalese. All Tigers, Tiger supporters and besides Tamil loyalists (pattalarkal) will soon be evicted or killed."* The letter warned them against giving any further evidence against the accused and concluded, *"This is our sole kingdom, our earth...Meka ape rata, Sinhala rata (This is our kingdom, a Sinhalese kingdom)"*. The last was Sinhalese, but in the Tamil script. The circumstances leave no doubt that this organised intimidation was coming from within the security forces. Dr. Manoharan's home was in an area under tight Navy control. The knocks on his door, callers who came to intimidate or to throw stones on his roof from the very day he testified in court could hardly have done this without the knowledge of the Navy.

We are convinced that this reflected the growing domination of the Defence Ministry by Sinhalese extremists brought to the fore under the Rajapakse presidency. The agenda implied is an old one – Sinhalisation of the East. It was first pursued less obtrusively through state-sponsored colonisation schemes and became very violent in the mid-1980s. The security forces and armed home guards were used in the whole scale depopulation of Tamil villages in the Trincomalee District and the south of the Mullaitivu District. The Indo-Lanka Accord of 1987 brought a temporary check to this agenda.

With the resumption of war in 1990, there were severe attacks on Tamils by the security forces, but subsequently Trincomalee settled down to a stalemate. Tamil elements had launched reprisals against Sinhalese when the Indian Army arrived in 1987, but in 1990 the local Sinhalese civilians largely kept aloof from violence against Tamils. After 1990 both communities avoided overt violence against one another. They knew they had to live together and business relations between the two communities flourished. The Sinhalese extremists backed by some Buddhist monks and Colombo-based parties like the JHU could arouse emotions during a crisis but otherwise remained on the sidelines. Meanwhile one could quite safely say most Sinhalese Mudalalis (businessmen) in Trincomalee, developed also business ties with the LTTE.

The underlying rationale of both communities was to live and let live despite the overall flux of events being outside their control. Unless one appreciates this, one would tend to cast events and persons like Weerakody in black and white, which would play into the hands of nationalist demonology.

**The CFA and cracks in the Stalemate – Pongu Thamil vs Pongu Buddhism:** With the signing of the CFA in 2002 which allowed the LTTE into Trincomalee town for ‘political work’, many Tamils were as wary of the outcome as the Sinhalese. Apart from its free resort to child conscription and murder of political opponents, the LTTE started the unruly phenomenon of Pongu Thamil rallies. Prabhakaran’s image was carried on a temple chariot as the latest addition to the pantheon of deities with devotees ceremonially rolling behind in the hot sand. Then there were Vanni’s court jesters – the so-called TNA MPs – whose attendance was enforced; giving the Nazi-like salute behind visages that reflected fear rather than devotion. To the more perceptive Tamils, “*Pongu Thamil jesters made Trincomalee stink.*”

Unruliness invites unruliness. Pongu Thamil also gave opportunity for the Sinhalese-Buddhist extremists who had lain on the sidelines to work their mischief. They had their supporters in the armed forces and also the political establishment. It was now easy to arouse fears among the Sinhalese that the Tamils were going to join the LTTE and throw them out of Trincomalee. They too were determined to stir things up to create a situation where they could resume their stalled agenda of ‘*me rata Sinhala rata*’.

**Buddha Statue and Strange Ironies:** The Sinhalese extremist reaction to Pongu Thamil came in the form of an overnight illegal erection of a Buddha statue on the sea front near the Trincomalee fish market on 15<sup>th</sup> May 2005. The Buddha statue is said to be one among a dozen gifted to Sri Lanka, in the hope that they would become symbols of peace and moderation. A crane released for the purpose by the Navy facilitated the erection. The proliferation of Buddha statues as symbols of conquest has been a cause of constant irritation among the Tamils in Trincomalee and the LTTE instigated violent protests where bombs were thrown.

Saner counsels among the Tamils advised against the protest, arguing that if simply ignored, the Buddha statue would go away. Its location was right next to the fish market and a bar. No orthodox monk would officiate in such a place. Removing the fish market and the bar to keep the statue in place would have run up against powerful Sinhalese business interests in Trincomalee.

The Attorney General commenced legal proceedings to remove all unauthorised religious structures, which would have been the best solution. But the Chief Justice thought otherwise and advised the AG to desist. The statue stayed, surrounded by barbed wire with an army guard, bemusing customers of the fish market and devotees of Bacchus at the bar. Pongu Buddhism won the round. A few weeks later a foreign reporter struck by the irony attempted to take a photograph. An alarmed soldier guarding the statue beat him up and a senior officer had to be called in. Although the Sri Lankan constitution enjoins the State to foster Buddhism, the Chief Justice in his wisdom thought it not proper that it should do so with dignity. The Sri Lankan state showed its religious devotion to be at the sham level of Pongu Thamil. The uneasy CFA stalemate was moving towards a break.

**Trincomalee’s Underworld Connections and the LTTE’s Exit:** Given a large presence of the security forces, Trincomalee had a thriving underworld in drugs and porn. Along with these there were strong incentives for doing business with the LTTE, by then a powerful multinational. Insights into these connections surfaced in the the killing of Lt. Col. Tuan Rizwi Meedin of Military Intelligence at the end of October 2005 in Kiribathgoda, near Colombo, after being called by Ice Manjula, a businessman in the fish trade, and a contact from Trincomalee. Press reports also spoke of Ice Manjula’s influence within the Trincomalee

Police. A sub-inspector who once arrested him was fined in a fundamental rights case and later transferred out. Manjula is also reported to have had police accomplices who helped him to sell fuel to the LTTE. Such stories about Sinhalese businessmen are not uncommon in Trincomalee.

The underworld is one in which various persons fished for intelligence, profit or both. Its activities were for the most part indemnified from police interference. The LTTE too was one of the players. But from July 2005 this status quo (tolerated as long as the LTTE killed only Tamil opponents) was changing after it killed SP Charlie Wijewardene in Jaffna, Lakshman Kadirgamar and by December began open attacks on security personnel. By September the LTTE had pulled out its open presence from political offices in government-controlled areas. But in all such instances it left its networks intact, particularly in the underworld. But those who earlier cooperated it would have been forced chameleon-like, to assume new dispositions when the security forces themselves unleashed their killer groups from December 2005.

**The Murder of Albert Hendric Weerakody:** Like many Sinhalese who moved to the East as colonists, artisans or government employees, Weerakody came to Trincomalee as an employee of the Ports Authority and in time built up his own businesses and prospered. Gunmen, suspected to be the LTTE, shot him dead near his home on 24<sup>th</sup> December. But we find the reasons for his killing in circulation among Tamils for the most part misleading. The story in Tamil circles was that the LTTE killed him because he was anti-Tamil and was involved in violence against Tamils in the mid-1980s. But we got a different picture when we spoke to Tamils who had spent their lifetime in Trincomalee, knew and did business with the Weerakody and Baby Tyre Mudalali.

The fact is that Weerakody lived on Orr's Hill, a Tamil neighbourhood, and moved with Tamils. The family spoke Tamil and one of his sons married a Tamil girl. He was reputedly was unpopular with many Sinhalese as a moneylender of notable severity regarding repayment. Other Tamils in Orr's Hill said that when the security forces killed and vandalised Tamil premises in the mid-1980s, Weerakody had also been involved in burning and looting, but they say in mitigation that, at such times, it is the security forces in Trincomalee that expect and urge the Sinhalese to commit patriotic crimes. But so far no one from the area has told us that he was involved in murder.

Another prominent Sinhalese, also a businessman killed by the LTTE was Baby Tyre Mudalali. Again similar justifications followed his murder. He too was accused of arson against Tamils in the mid-1980s. A Tamil who knew him told us, "*He completely came out of it and had good relations with Tamils.*" Weerakody may not have been a nice man, but he was manageable.

Weerakody's killing provoked considerable anger among security circles. To them Weerakody was a symbol of the Sinhalese dominance they were trying to secure, although his actual role may have been severely nuanced. The STF unit that had been dispatched to Trincomalee the day before the murder, arrived promptly in masks, cordoned off the area and searched it. At the funeral where Tamil neighbours were present, Weerakody's wife is said to have demanded that her husband's body should not be taken for interment until 10 Tamils are killed in revenge. But after some delay the body was taken away. The following day two Tamil auto rickshaw drivers were taken on hire and killed outside town. On 28<sup>th</sup> December an off duty soldier was killed at his home just outside town in an LTTE grenade attack.

Tamils in Trincomalee believe this to be the backdrop to the staged killing of the students in one terrifying act of revenge to teach the Tamils a lesson. A precedent was the bombing of the Tamil music festival in early 2000, very likely by elements close to the security forces.