

[2014] 12 S.C.R. 441

AJAY KUMAR PAL

v.

UNION OF INDIA AND ANOTHER
(Writ Petition (Criminal) No. 128 of 2014)

DECEMBER 12, 2014

[DIPAK MISRA, UDAY UMESH LALIT AND
R.F. NARIMAN, JJ.]

Constitution of India, 1950 – Art. 6, 21 and 32 – Writ Petition – Maintainability – Death sentence confirmed upto Supreme Court – Petitioner put in solitary confinement right from the day of award of death sentence by trial court – Mercy Petition – Delay of 3 years 10 months in disposal thereof – Writ petition seeking commutation of death sentence to life imprisonment – On the ground of inordinate delay in disposal of Mercy Petition – Held: Petition u/Art. 32 is maintainable – The delay in disposal of Mercy Petition comes within the expression ‘inordinate delay’ – Segregation of the petitioner to solitary confinement before disposal of the Mercy Petition was in complete transgression of the right u/Art. 21 — The death sentence is commuted to imprisonment for life – Death Sentence – Prisons Act, 1894 – s. 30(3).

Allowing the Petition, the Court

HELD: 1. The death sentence awarded by the trial court on 09.04.2007 attained finality on 16.03.2010. The Mercy Petition of the petitioner preferred on 10.04.2010 i.e. within a month of the decision of this Court was forwarded on the same day with all relevant documents so as to enable the concerned functionaries to exercise requisite jurisdiction. Though no time limit can be fixed within which the Mercy Petition ought to be disposed of, the period of 3 years and 10 months to deal with such Mercy Petition in the present case comes within the

A expression "inordinate delay". The delay is not on account of the petitioner or as a result of any proceedings initiated by him or on his behalf but is certainly on account of the functionaries and authorities concerned. [Para 9] [450-B-E]

B *Triveniben v. State of Gujarat* (1989) 1 SCC 678: 1989 (1) SCR 509 – followed.

C *T.V. Vatheeswaran v. State of Tamil Nadu* (1983) 2 SCC 68: 1983 (2) SCR 348; *Sher Singh and Ors. v. State of Punjab* 1983 (2) SCC 344; *Shatrughan Chauhan and Anr. v. Union of India and Ors.* 2014 (1) SCALE 437 – relied on.

D 2. Furthermore, the petitioner has all the while been in solitary confinement i.e. since the day he was awarded death sentence. The petitioner could never have been "segregated" till his Mercy Petition was disposed of. It is only after such disposal that he could be said to be under a finally executable death sentence. The law laid down by this Court was not adhered to at all while confining the petitioner in solitary confinement right since the order of death sentence by the first court. This is complete transgression of the right under Article 21 of the Constitution causing incalculable harm to the petitioner. [Para 10] [450-F; 451-G-H]

F *Sunil Batra v. Delhi Administration* (1978) 4 SCC 494: 1979 (1) SCR 392 – relied on.

G 3. The combined effect of the inordinate delay in disposal of Mercy Petition and the solitary confinement for such a long period, has caused deprivation of the most cherished right. A case is definitely made out under Article 32 of the Constitution of India and it is proper to reach out and grant solace to the petitioner for the ends of justice. Therefore, the death sentence is commuted

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and substituted to sentence of life imprisonment. [Para 1] [452-A-B] A

Case Law Reference:

2014 (1) SCALE 437	relied on	Para 5	
1983 (2) SCR 348	relied on	Para 8	B
1983 (2) SCC 344	relied on	Para 8	
1989 (1) SCR 509	followed	Para 8	
1979 (1) SCR 392	relied on	Para 10	C

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 128 of 2014.

Under Article 32 of the Constitution of India.

Urmila Sirur (A.C.) for the Petitioner. D

Ratan Kr. Choudhary, Binu Tamta, Sushma Suri for the Respondents.

The Judgment of the Court was delivered by E

UDAY UMESH LALIT, J. 1. This petition under Article 32 of the Constitution of India prays that the sentence of death imposed upon the present petitioner be commuted to the imprisonment for life for the reasons dealt with in detail hereafter. F

2. In Sessions Trial No.67 of 2005, the court of Special Judge, CBI, Ranchi by its judgment and order dated 09.04.2007 had awarded death sentence to the petitioner. The matter reached Jharkhand High Court in Death Reference No.3 of 2007 and also as a result of the appeal preferred by the petitioner. The High Court dismissed the appeal and confirmed the death sentence by its judgment and order dated 28.08.2007, which was challenged in this Court vide Criminal Appeal G

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A Nos.1295-96 of 2007. This Court concurred with the view taken by the courts below and dismissed the appeals on 16.03.2010. The death sentence imposed upon the petitioner thus stood confirmed on 16.03.2010.

B 3. The petitioner, who was in jail all through out, preferred Mercy Petitions addressed to the President of India as well as to the Governor of Jharkhand on 10.04.2010. The Mercy Petitions were immediately forwarded by the Superintendent, Birsa Munda Central Jail, Ranchi to the appropriate authorities on 10.04.2010 itself. Said forwarding letter had enclosed the following documents:

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1. Mercy Petition submitted by the petitioner – one page.
 2. Copy of the Order of Additional Judge/Special Judge C.B.I. Ranchi- 48 pages.
 3. Copy of the Order of Hon'ble High Court of Jharkhand, Ranchi – 25 pages.
 4. Petition filed in the Hon'ble Supreme Court – 33 pages.
 5. Hon'ble Supreme Court's Order – 8 pages.
 6. Copy of Rule 923(III) of Jail Manual -3 pages”

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F 4. On 27.01.2014 a communication was received by the Superintendent, Birsa Munda Central Jail from the Officer on Special Duty, Ministry of Home, Government of Jharkhand that the Mercy Petition was rejected by the President of India which fact was communicated by the Government of India, Ministry of Home Affairs vide its letter dated 08.11.2013. Thus, the petitioner was communicated the result of the disposal of his Mercy Petition preferred on 10.04.2014, nearly after three years and 10 months.

G 5. In these circumstances this petition has been preferred. Relying on the decision of this Court in *Shatrughan Chauhan*

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*and another v. Union of India and others*¹ it is submitted that because of inordinate delay in disposal of his Mercy Petition, the death sentence be commuted to imprisonment for life. It is also submitted that right from the day when the death sentence was awarded i.e. from 09.04.2007, the petitioner has been incarcerated in solitary confinement.

6. In *Shatrughan Chauhan*¹ (supra) while dealing with the issue relating to the maintainability of a petition under Article 32 in similar circumstances, it was observed that the challenge therein was not with regard to the final verdict imposing the death sentence but was based on the supervening circumstances or events that occurred after the confirmation of the death sentence. Relying on some of its earlier Judgments, this Court held such petitions under Article 32 to be maintainable.

7. The challenge in the instant petition is also not with regard to the verdict wherein the death sentence stands imposed, but the focus is on the subsequent circumstances which are relied upon in support of the case for commutation. Holding the present petition maintainable, we now proceed to deal with the submissions regarding delay in disposal of Mercy Petition and the effect of solitary confinement as canvassed. While dealing with delay in execution of death sentence and the resultant effect, we must note that the Mercy Petitions were forwarded by the Jail Authorities on the very day, enclosing all the relevant judgments pertaining to the matter. The time of 3 years and 10 months taken in disposal of the Mercy Petition and communicating the decision thereon is purely to the account of the authorities and functionaries concerned.

8. The question whether delay in execution of death sentence can be a sufficient ground or reason for substituting such sentence by life imprisonment has engaged the attention

1. 2014 (1) SCALE 437.

A of this Court over a period of time. Some of those salient instances are:

B (a) In *T.V. Vatheeswaran v. State of Tamil Nadu*², in an appeal arising from the Judgment of the High Court confirming the death sentence, the fact that the appellant was awarded death sentence by the first court eight years earlier, was noted by this Court. After referring to few earlier cases, where such delay during the pendency of the appellate proceedings was considered, it was observed:

C "20. In the United States of America where the right to a speedy trial is a constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence (vide *Strunk v. United States* [1973] 37 L.Ed. 56). Analogy of American Law is not permissible, but interpreting our Constitution sui generis, as we are bound to do, we find no impediment in holding that the dehumanising factor of prolonged delay in the execution of a sentence of death has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way as to offend the constitutional guarantee that no person shall be deprived of his life or personal liberty except according to procedure established by law. The appropriate relief in such a case is to vacate the sentence of death.

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G 21. Making all reasonable allowance for the time necessary for appeal and consideration of reprieve, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death. We therefore accept the special leave petition, allow the appeal as also the Writ Petition and quash the

H 2. (1983) 2 SCC 68.

sentence of death. In the place of the sentence of death, we substitute the sentence of imprisonment for life.”

(b) *Sher Singh and others v. State of Punjab*³ was a case where the death sentence already stood confirmed by dismissal of appeal and review petition therefrom by this Court. Relying on the observations in *Vatheeswaran* (supra), delay in execution was projected as a ground in a petition under Article 32 of the Constitution of India. Though the Court was broadly in agreement with observations in *Vatheeswaran* (supra) it did not agree with the statement to the effect “.... that delay exceeding two years in the execution of sentence of death should be considered sufficient to entitle the person under sentence to death to invoke Article 21 and demand the questioning of the sentence of death.” However in the context of Mercy Petitions and exercise of power in connection thereto, it was observed in para 23 as under:

“23. We must take this opportunity to impress upon the Government of India and the State Governments that petitions filed under Articles 72 and 161 of the Constitution or under Sections 432 and 433 of the Criminal Procedure Code must be disposed of expeditiously. A self-imposed rule should be followed by the executive authorities rigorously, that every such petition shall be disposed of within a period of three months from the date on which it is received. Long and interminable delays in the disposal of these petitions are a serious hurdle in the dispensation of justice and indeed, such delays tend to shake the confidence of the people in the very system of justice. Several instances can be cited, to which the record of this Court will bear testimony, in which petitions are pending before the State Governments and the Government of India for an inexplicably long period. Undoubtedly, the executive has the power, in appropriate cases, to act under the aforesaid provisions but, if we may remind, all

3. (1983) 2 SCC 344.

A exercise of power is preconditioned by the duty to be fair and quick. Delay defeats justice.”

(c) The issue was settled by the Constitution Bench decision in *Triveniben v. State of Gujarat*⁴, where it was concluded “No fixed period of delay could be held to make the sentence of death inexecutable”. The scope and ambit of exercise of jurisdiction in such cases was delineated thus in para 22:

“22. the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court while finally passing the verdict. It may also be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant. The question of improvement in the conduct of the prisoner after the final verdict also cannot be considered for coming to the conclusion whether the sentence could be altered on that ground also.”

(d) In *Shatrughan Chauhan* (supra) after considering law

H 4. (1989) 1 SCC 678.

on the point as regards delay in execution of the death sentence and the resultant effect, as also the scope and ambit of exercise of power, it was observed in paras 38, 41 and 42 as under:-

“38. In view of the above, we hold that undue long delay in execution of sentence of death will entitle the condemned prisoner to approach this Court under Article 32. However, this Court will only examine the circumstances surrounding the delay that has occurred and those that have ensued after sentence was finally confirmed by the judicial process. This Court cannot reopen the conclusion already reached but may consider the question of inordinate delay to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life.

41. It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/ President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage, viz., calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This court, in *Triveniben* (supra), further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.

42. Accordingly, if there is undue, unexplained and inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the grievance of the convict and commute the death sentence into life imprisonment on this ground alone

A however, only after satisfying that the delay was not caused at the instance of the accused himself. To this extent, the jurisprudence has developed in the light of the mandate given in our Constitution as well as various Universal Declarations and directions issued by the United Nations.”

B 9. In the light of the law laid down by this Court, the facts of the present case need to be considered. The death sentence awarded by the trial court on 09.04.2007 attained finality on 16.03.2010 with the dismissal of appeals by this Court. No further proceedings in the form of review petition etc. were taken on behalf of the petitioner. His Mercy Petition preferred on 10.04.2010 i.e. within a month of the decision of this Court was forwarded the same day with all relevant documents so as to enable the concerned functionaries to exercise requisite jurisdiction. Though no time limit can be fixed within which the Mercy Petition ought to be disposed of, in our considered view the period of 3 years and 10 months to deal with such Mercy Petition in the present case comes within the expression “inordinate delay”. The delay is not to the account of the petitioner or as a result of any proceedings initiated by him or on his behalf but is certainly to the account of the functionaries and authorities concerned.

F 10. Furthermore, as submitted in the petition, the petitioner has all the while been in solitary confinement i.e. since the day he was awarded death sentence. While dealing with Section 30(2) of the Prisons Act, 1894, which postulates segregation of a person ‘under sentence of death’ Krishna Iyer J. in *Sunil Batra v. Delhi Administration*⁵ observed :

G “The crucial holding under Section 30(2) is that a person is not ‘under sentence of death’, even if the sessions court has sentenced him to death subject to confirmation by the High Court. He is not ‘under sentence of death’ even if the High Court imposes, by confirmation or fresh appellate

H 5. (1978) 4 SCC 494.

infliction, death penalty, so long as an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if this Court has awarded capital sentence, Section 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, Code and Prison Rules, has not been disposed. Of course, once rejected by the Governor and the President, and on further application there is no stay of execution by the authorities, he is 'under sentence of death', even if he goes on making further mercy petitions. During that interregnum he attracts the custodial segregation specified in Section 30(2), subject to the ameliorative meaning assigned to the provision. To be 'under sentence of death' means 'to be under a finally executable death sentence'.

Speaking for the majority in the concurring Judgment D.A. Desai J. stated thus:

"The expression "prisoner under sentence of death" in the context of Sub-section (2) of Section 30 can only mean the prisoner whose sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutional procedure. In other words, it must be a sentence which the authority charged with the duty to execute and carry out must proceed to carry out without intervention from any outside authority"

In the light of the enunciation of law by this Court, the petitioner could never have been "segregated" till his Mercy Petition was disposed of. It is only after such disposal that he could be said to be under a finally executable death sentence. The law laid down by this Court was not adhered to at all while confining the petitioner in solitary confinement right since the order of death sentence by the first court. In our view, this is complete transgression of the right under Article 21 of the Constitution causing incalculable harm to the petitioner.

A 10. The combined effect of the inordinate delay in disposal
of Mercy Petition and the solitary confinement for such a long
period, in our considered view has caused deprivation of the
most cherished right. A case is definitely made out under Article
32 of the Constitution of India and this Court deems it proper
B to reach out and grant solace to the petitioner for the ends of
justice. We, therefore, commute the sentence and substitute the
sentence of life imprisonment in place of death sentence
awarded to the petitioner. The writ petition thus stands allowed.

Kalpana K. Tripathy

Writ Petition allowed.