

Munawar Harun Shah

Vs

State of Maharashtra

Shantaram Kanhoji Jagtap

Vs

State of Maharashtra

Dilip Dhyanoba Sutar

Vs

State of Maharashtra

Writ Petitions Nos. 1365 of 1982 and 147 & 445 of 1983

(V. D. Tulzapurkar, Ranganath Misra JJ)

18.04.1983

ORDER

1. In these three writ petitions filed by Munawar Harun Shah (original accused 3) and Dilip Dhyanoba Sutar (original accused 2) respectively a fervent appeal has been made by counsel appearing for each one of them that their death sentences should be commuted to life imprisonment.
2. It is pointed out that the concerned offences were committed between January 1976 and March 1977, that each one of them was sentenced to death by the trial court on September 28, 1978; that their sentences were confirmed by the Bombay High Court on April 6, 1979 and that their special leave petitions against their convictions and sentences were dismissed by this court on November 17, 1980. In other words, the death brooding over each one's head for an excruciatingly long period of about five years. So far as Munawar Harun Shah is concerned, it is urged that he was so to say a junior member of the gang of the killers and perhaps did not take part in the actual killing and it is pointed out that since his conviction he is writing Koran in Marathi and is also learning Arabic language and Homeopathy. So far as Shantaram Jagtap is concerned, it is pointed out that he has written one book bearing title Kalyan Marg in Marathi and has also translated into Marathi an English book titled Yogic Sukshama Vyayam authored by Mr. Dharendra Brahmachari and that he is present studying Buddhism and translating Dhamma Pada in Marathi. On the basis of these facts a strong plea has been made to us that their death sentences should be commuted to life imprisonment, particularly in view of the pronouncement made by the Constitution Bench of this court that death penalty should be inflicted in the rarest of rare cases.
3. Having given our anxious consideration to the plea so put forward we regret we are unable to accept the same. It is true that a period of five years has elapsed since the imposition of death penalty on them but as has been pointed out by this court in Sher Singh case such lapse of time is

not decisive of the matter but would be a factor to be borne in mind. In this case the normal judicial process itself came to an end only on November 17, 1980 when this court finally dismissed the special leave petitions of the petitioners against their convictions and sentences. But for the subsequent lapse of time the petitioners or at least some of them are responsible. Each one of them preferred a review petition against the dismissal of the special leave petition and those review petitions came to be dismissed on February 11, 1981. Even thereafter fresh writ petitions were filed by Shantaram Jagtap and Munawar Shah for a consideration of their sentences which were dismissed on February 5, 1982. Against such dismissal of his said writ petition Shantaram Jagtap filed a review petition which was dismissed on April 1, 1982. Even thereafter the present writ petitions have been filed by Munawar Shah on December 3, 1982 by Shantaram Kanhoji Jagtap on January 17, 1983 and by Dilip Dhyanoba Sutar on April 12, 1983 which are being disposed of by the present order. In other words, for part of the time gap that has occurred the petitioners, who have indulged in successive petitions, are responsible. True, two of them namely Munawar Shah and Shantaram Jagtap, on their statements have done translation work and written books but that requires a composed mind and concerned attention. If anything this belies that any spectre of death penalty was hovering over their minds during the period they have been in jail.

4. The sessions trial at Poona, which came to be popularly know as "Joshi-Abhyankar Massacre case" death with a sprawling criminal conspiracy in furtherance of which the petitioners and their co-conspirators got involved in six incidents during the course of which 10 murders and acts of robbery and dacoity were committed and from the record, it is clear that each one of the petitioners before us was involved in at least seven murders out of the 10. Having regard to the magnitude, the gruesome nature of offences and the manner of perpetrating them this case in all the facts and circumstances must be regarded as falling within the rarest of the rare category and the extreme penalty of death is clearly called for. Any leniency shown in the matter of sentence would not only be misplaced but will certainly give rise to and foster a feeling of private revenge among the people leading to destabilisation of the society. In the circumstances, we do not think that any leniency is called for in the case. The writ petitions are dismissed. The death sentence awarded to the petitioners should be carried out without any further loss of time in accordance with law, now that their mercy petitions have, according to the statement of counsel for the respondent, been dismissed.

</html