

Smt. Triveniben

Vs

State of Gujarat

Harbhajan Singh

Vs

State of J & K

Lal Singh

Vs

Union of India and Another

Indian Council of Family and Social Welfare

Vs

State of Tamil Nadu

Gurcharan Singh and Pritam Singh, Represented By Their Mother

Vs

State of Punjab

Writ Petitions (Criminal) Nos. 1566 of 1985, 186 and 191 of 1986, 338 of 1988 and 649 of 1987
with Criminal Miscellaneous Petitions No. 3543 of 1986 and 4576 of 1987

(K. N. Singh, L. M. Sharma, M. M. Dutt, G. L. Oza, K. Jagannatha Shetty JJ)

11.10.1988

ORDER

OZA, J.-

1. In view of the conflicting decisions in (i) T. V. Vatheeswaran v. State of Tamil Nadu; (ii) Sher Singh v. State of Punjab and (iii) Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, the question as to whether prolonged delay in execution of death sentence entitle the accused to the lesser sentence of life imprisonment has come up for consideration before the Constitution Bench. We have examined the question carefully in the light of the submissions made by counsel on both sides. We have also examined the individual cases listed for consideration. We now give only our conclusion to avoid further delay in these matters. The reasons in support of the conclusion will follow later.

2. We are of the opinion that :

Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but this Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to re-open the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran* case cannot be said to lay down the correct law and therefore to that extent stands overruled.

3. In the light of these principles and giving our anxious consideration to every one of these cases, we allow in part only W. P. (Cri) No. 186 of 1986 and quash the Sentence of death awarded to the accused (*Harbajhan Singh*). In the place of the sentence of death, we substitute the sentence of imprisonment for life to that accused.

4. We dismiss all other writ petitions.

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