Madhu Mehta

Vs

Union of India and Others

Writ Petition (Criminal) No. 216 of 1989

(Sabyasachi Mukharji, B. C. Ray JJ)

09.08.1989

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is a petition under Article 32 of the Constitution filed by one Madhu Mehta, who is the National Convenor of Hindustani Andolan. This petition seeks a writ of habeas corpus or an appropriate direction with regard to one Shri Gyasi Ram, s/o Shri Param aged above 60 years, who, it is claimed, has been waiting decision on his mercy petition pending before the President of India for about 8 or 9 years. The said Gyasi Ram was at all relevant time lodged in "Death Cell, Central Jail", Jhansi having been convicted for an offence punishable under Section 302 of Indian Penal Code and sentenced to death by the learned Sessions Judge, Jhansi on October 19, 1978. It appears that Gyasi Ram was convicted and sentenced to death by the learned Sessions Judge, Jhansi on October 19, 1978 for committing murder, which has been described by the Under-Secretary (Judicial), Ministry of Home Affairs, Government of India, as the 'cold blooded murder' of a government servant, namely, Bhagwan Singh, who was the resident of Mauranipur Tehsil, in District Jhansi, Uttar Pradesh. There were arrears of land revenue due from Gyasi Ram and also one Mool Chand. For the purpose of realising the said arrears of land revenue, their property was attached by Amin Bhagwan Singh and the same was put to sale by auction. The auction took place on December 26, 1976 and after the auction while the said Amin was returning along with his peon Sripat from village Kakwara after delivering the sale certificate to the auction purchaser, they were waylaid by Daya Ram (son of Mool Chand) and Gyasi Ram, the convicts involved in this case. In the evidence, it was stated that Daya Ram who was armed with pistol fired at the deceased Amin Bhagwan Singh who fell down from his cycle. While Daya Ram held down Amin Bhagwan Singh, Gyasi Ram, the person about whom this petition is concerned, cut Bhagwan Singh's throat with the sword he was carrying and inflicted other injuries also. After this incident, both Daya Ram and Gyasi Ram. it has been stated, escaped. Gyasi Ram was, however, arrested, tried, convicted and sentenced to death, as mentioned hereinbefore. The death sentence was passed on Gyasi Ram by the learned Sessions Judge on October 19, 1978. The Allahabad High Court confirmed this death sentence on February 28, 1979. This Court dismissed his Criminal Appeal No. 362 of 1979 on March 17, 1981 ((1981) 2 SCC 712 : 1981 SCC (Cri) 590). Mercy petition was filed by the wife of the convicted to the President of India on December 18, 1981. It appears that mercy petition has still not been disposed of. Daya Ram had absconded and could not be put on trial along with Gyasi Ram. It appears further that Gyasi Ram's mercy petitions dated October 6, 1981 and November 26, 1981 were rejected by the Governor of Uttar Pradesh on November 26, 1981 and were received in the Ministry of Home Affairs on December 5, 1981 for the consideration of President of India. From the affidavit filed on behalf of the Government of India, it appears that after processing the case, the matter was put up before the President of India on April 21, 1983 for his orders on the mercy

petitions and that the President after examining the case file, returned the file on July 30, 1983 for further consideration. While the Ministry of Home Affairs was processing the case of Gyasi Ram further, the intimation was received from this Court on November 13, 1984 that Daya Ram, son of Mool Chand had also filed a special leave petition against the judgment dated October 17, 1984 of the Allahabad High Court by which the sentence of death was confirmed on him. It appears from the order of this Court dated February 18, 1985 dismissing Daya Ram's special leave petition that this Daya Ram was the same person who was Gyasi Ram's partner in the crime as mentioned hereinbefore. Subsequently, two mercy petitions were filed on behalf of Daya Ram which were forwarded for the consideration of the Governor of Uttar Pradesh in the first instance by the Ministry of Home Affairs dated April 9, 1984 and August 9, 1985 respectively. These still remain undisposed of. It has been asserted on behalf of the Government of India in the half-yearly return dated August 8, 1985 submitted by the Government of Uttar Pradesh that it was reported that they had received a mercy petition from Daya Ram. Thereafter, in successive half-yearly reports, the last of these being dated January 16, 1989, the State Government had been saying that the mercy petition of Daya Ram was still under consideration. It is the version of the government that in view of the implications of Daya Ram and Gyasi Ram in the same crime, it was consideration, it is stated that the decision on the mercy petition of Daya Ram by the Governor of Uttar Pradesh would have a direct bearing on the consideration of the mercy petition of Gyasi Ram by the President of India. It was, accordingly, felt, so it is asserted, that it was desirable to await the decision of the Governor of Uttar Pradesh on Daya Ram's mercy petition. But it was only on January 18, 1989 that by a wireless message, the Central Government asked the State Government to let the Ministry of Home Affairs know the decision of the Governor on Daya Ram's mercy petition to send it immediately for consideration of the President of India so that cases of Gyasi Ram and Daya Ram could be submitted together to the President. But the Government did not move. It is further stated that in reply to the wireless message of January 18, 1989, the State Government through its letter dated February 1, 1989 intimated that the mercy petition of Daya Ram was still under consideration. Thereafter, there was another request to the Chief Secretary by semi-official letter of the Ministry of Home Affairs dated February 3, 1989 to expedite consideration of Daya Ram's mercy petition. And upon this, it is stated that by a telex message dated March 15, 1989, the State Government had intimated that the Governor of Uttar Pradesh had rejected the mercy petition and that formal letter of State Government would follow. It was stated on behalf of the Government of India that mercy petition of Daya Ram was received by the Ministry of Home Affairs on March 21, 1989 along with the letter. In the affidavit, it is stated that after collecting certain further information from the Supreme Court Registry, the Ministry of Home Affairs "was now ready to process the mercy petitions of Gyasi Ram and Daya Ram and submit the same to the President of India for consideration". The dependent was good enough to state in the affidavit that the delay factor would be kept in view while taking a final decision in the case of Gyasi Ram and he was fully aware of the agony of Gyasi Ram and members of his family. It was stated that in view of the reasons stated above, it was not possible to avoid the delay.

2. The learned District and Sessions Judge, Jhansi had, in the meantime, visited the said convict Gyasi Ram in jail on May 22, 1988 and had sent a report to the Inspector General of Prisons stating "Gyasi's mental stated is such that he might commit suicide by banging his head on the iron grill of his cell if a decision on his petition is not taken soon. If he is to be hanged, it should be done without any delay or he should be released." The Inspector General's Office further sent an official to Delhi to expedite the case. Thereafter, this petition was filed for the condemned prisoner. Gyasi Ram, until the orders of this Court passed in these proceedings on May 3, 1989, was kept in the Death Cell and it is only pursuant to the orders of this Court that the prisoner was allowed to stay in

the ordinary cell during the daytime. The petitioner moved this Court on April 11, 1989 and the notice was issued returnable on April 19, 1989. Time was taken to file affidavit and the order of this Court dated May 3, 1989 was passed. The matter was adjourned for three months. Affidavits have been filed but his mercy petition still remains undisposed of. The question is : what is to be done ? This question of delay in these matters has been examined by this Court from time to time, and how far delay in execution of death sentence necessitates the commutation of the death sentence or release of the condemned prisoner has been a matter of some controversy and debate. In T. V. Vatheeswaran v. State of Tamil Nadu ((1983) 2 SCC 68 : 1983 SCC (Cri) 342 : (1983) 2 SCR 348) a bench of two learned Judge considered this aspect. Speaking for this Court, Chinnappa Reddy, J. stated in that decision that Article 21 of the Constitution enjoins that any procedure, which deprives a person of his life or liberty must be just, fair and reasonable. It implies humane conditions of detention, preventive or punitive. 'Procedure established by law' does not end with the pronouncement of sentence; it includes the carrying out of sentence. Prologued detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. Reddy, J. was of the view that the sentence of death is one thing; sentence of death followed by lengthy imprisonment prior to execution is another. A period of anguish and suffering is an inevitable consequence of sentence of death, but a prolongation of it beyond the time necessary for appeal and consideration of reprieve is not. And it was no answer to say that the man would struggle to stay alive. It was therefore, found in that case that a 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. This Court did so and substituted the sentence of imprisonment in that case. That decision was rendered on February 16, 1983. The validity of that decision did not last long. On March 24, 1983, in Sher Singh v. State of Punjab ((1983) 2 SCC 344 : 1983 SCC (Cri) 461 : (1983) 2 SCR 582) a bench of three learned Judges of this Court held that the prolonged delay in the execution of a death sentence is unquestionable an important consideration for determining whether the sentence should be allowed to be executed. But no hard and fast rule 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 invoke Article 21 and demand the quashing of a sentence of death' can be laid down as has been done in Vatheeswaran case ((1983) 2 SCC 68 : 1983 SCC (Cri) 342 : (1983) 2 SCR 348). It is not necessary, therefore, to go into the aspect of this matter any more. Chief Justice Chandrachud observed that a self-imposed rule should be folowed by the executive authority rigorously that every mercy petition should be disposed of within a period of three months from the date on which it was received. Long and interminable delays in the disposal of these petitions, it was observed, are serious hurdles in the dispensation of justice and indeed, such delays tend toshake the confidence of the people in the very system of justice. The learned Chief justice stated that undoubtedly, the executive has the power, in appropriate case, to act under the aforesaid provisions but, all exercise of power is preconditioned by the duty to be fair and quick. Delay defeats justice, it was observed. In this back-ground, we have to consider the reasons given in the affidavit in this case. We have set out the reason advanced on behalf of the government. They are self-explanatory. These do not, in our opinion, indicate any justifiable ground for keeping the mercy petitions of Daya Ram and Gyasi Ram pending for such a long time. Indeed, it is not disputed from the affidavit of the Under Secretary, Ministry of Home Affairs, Government of Indian that in the half-yearly return dated October 8, 1985 and thereafter in the successive half-yearly returns of the Uttar Pradesh Government up to January 16, 1989 year after year, the mercy petitions of Daya Ram remained unattended and consequently the mercy petition made to the President of India by Gyasi Ram was also undisposed. The time and the manner in which the mercy petition has been death with in this case in respect of Gyasi Ram make said reading and speak of the deplorable lack of speed

and promptitude which in these matters should be there. In the meantime, there is no denying the fact that Gyasi Ram has suffered a great deal of mental pain and agony, His condition has been described by the learned Sessions Judge as indicated hereinbefore. Whether death sentence is the appropriate punishment for the crime of murder, cold blooded in certain cases, is another doubted. This Court in Bachan Singh v. State of Punjab ((1982) 3 SCC 24 : 1982 SCC (Cri) 535 : (1983) 1 SCR 145) at page 221 of the report, observed as follows : (SCC p. 729, para 132)

> "To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue It evoked strong divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, IPC on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners' argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelised through the people's representatives in parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the farmers of the Indian Constitution were fully aware ... of the existence of death penalty as punishment for member, under the Indian Penal Code, if the Thirty-fifth Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 254(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-73 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alterative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter not the ethos of Article 19".

In that decision, Bhagwati, J. (as the learned Chief Justice then was), dissented (Reported separately at (1982) 3 SCC 24 : 1982 SCC (Cri) 535). He held that death sentence was bad morally as well as constitutionally. It is no longer necessary in view of the majority judgment to deal with these views in detail. This aspect was examined in several cases and a bench of five learned Judges considered this question again in Smt. Triveniben v. State of Gujarat ((1989) 1 SCC 678 : 1989 SCC (Cri) 248) where Oza, J. speaking for the majority analysed the trend and observed at p. 688 that it was not necessary to go into the jurisprudential theories of punishment, deterrent or retributive, in view of what has been laid down in Bachan Singh case ((1982) 3 SCC 24 : 1982 SCC (Cri) 535 : (1983) 1 SCR 145) with which the learned Judge therein agreed. It is well settled now that undue long delay

in execution of the sentence of death would entitle the condemned person to approach this Court or to be approached under Article 32 of the Constitution, but this Court would 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 reopen the conclusions reached by the Court while finally maintaining the sentence of death. But the court is entitled and indeed obliged to 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 carried out or should be altered into imprisonment for life. No fixed period of delay can be considered to be decisive. It has been emphasised that Article 21 is relevant in all stages. Speedy trial in criminal cases though may not be fundamental right, is implicit in the broad sweep and content of Article 21. Speedy trial is part of one's fundamental right to life and liberty. This principle is no less important for disposal of mercy petition. It has been universally recognised that a condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture. See the observations of Shetty, J, in Triveniben case ((1989) 1 SCC 678 : 1989 SCC (Cri) 248), at pages 713-14 of the report, where it has been observed that as between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only the dead body while the mental worry burns the living one. In the instant case, Gyasi Ram has suffered a great deal to mental agony for over eight years. It is not disputed that there has been long delay. We do not find reasons sufficiently commensurate to justify such long delay. The convict has suffered mental agony of living under shadow of death for long, far too long. He should not suffer that agony any longer.

4. In the aforesaid fact and the circumstances of the case, therefore, we direct that the death sentence should not be carried out and the sentence imposed upon him be altered to imprisonment for life. We order accordingly.

5. This writ petition is disposed of with the aforesaid direction.

</html