

SUPREME COURT OF INDIA

V.Sriharan @ Murugan

Vs.

Union of India

(P.Sathasivam CJI., Ranjan Gogoi and Shiva Kirti Singh JJ.)

18.02.2014

JUDGMENT

P.SATHASIVAM, CJI.

1. The above transferred cases which were borne out of the writ petitions filed by V. Sriharan @ Murugan, T. Suthendraraja @ Santhan and A.G. Perarivalan @ Arivu in the Madras High Court and which got transferred to this Court under Article 139A of the Constitution of India raise vital issues pertaining to violation of fundamental rights of death row convicts ensuing from inordinate delay caused at the hands of executive in deciding the mercy petitions filed under Article 72/161 of the Constitution. In all the writ petitions, the petitioners prayed for a writ of declaration declaring that the execution of the sentence of death, pursuant to the letter No. F.No.14/1/1999-Judicial Cell dated 12.08.2011 issued by the Union of India, is unconstitutional and thus sought for commutation of the sentence of death to imprisonment for life.

2. Akin to this issue was decided by us in a recent judgment viz., Shatrughan Chauhan & Anr. vs. Union of India & Ors. [Writ Petition (Criminal) No. 55 of 2013 etc.] decided on 21.01.2014 wherein this Court held that execution of sentence of death on the accused notwithstanding the existence of supervening circumstances, is in violation of Article 21 of the Constitution. One of the supervening circumstances sanctioned by this Court for commutation of death sentence into life imprisonment is the undue, inordinate and unreasonable delay in execution of death sentence as it attributes to torture. However, this Court, cogently clarified in its verdict that the nature of delay i.e. whether it is undue or unreasonable must be appreciated based on facts of individual cases and no

exhaustive guidelines can be framed in this regard. The relevant portion of Shatrughan Chauhan (supra), is as under:-

“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 however, only after satisfying that the delay was not caused at the instance of the accused himself...”

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“54. ... Therefore, in the light of the aforesaid elaborate discussion, we are of the cogent view that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 and thereby entails as the ground for commutation of sentence. However, the nature of delay i.e. whether it is undue or unreasonable must be appreciated based on the facts of individual cases and no exhaustive guidelines can be framed in this regard.”

3. Accordingly, the case at hand has to be decided under the guidance of this judgment. The two principles stipulated in the judgment for commutation of death sentence into life imprisonment on the ground of delay as the supervening circumstance are firstly, that the delay occurred must be inordinate and secondly, that the delay must not be caused at the instance of the accused. Let us assess the facts of the given case in the light of established principles in Shatrughan Chauhan (supra).

Factual Background:

4. In these petitions, we are concerned only with the rejection of the mercy petitions of the petitioners by the President of India under Article 72 of the Constitution after the confirmation of death sentence by this Court, thus there is no need to traverse the factual details leading up to the imposition of death sentence.

5. Initially, the mercy petitions were filed before the Governor of Tamil Nadu on 17.10.1999 and the Governor, on 27.10.1999, rejected the same. Subsequently, the said rejection was challenged before the Madras High Court in W.P. Nos. 17655-17658 of 1999 on the ground that the mercy petitions were decided without

consulting the Council of Ministers, which is unsustainable in law. Accordingly, by order dated 25.11.1999, the Madras High Court set aside the order of rejection of mercy petitions by the Governor and directed to reconsider the mercy petitions afresh. Thereafter, on 25.04.2000, the Governor again rejected the mercy petitions.

6. Consequently, the mercy petitions were forwarded to the President on 26.04.2000 for consideration under Article 72 of the Constitution. The President, on 12.08.2011, rejected these mercy petitions after a delay of more than 11 years. The rejection of the aforesaid petitions was communicated to the petitioners on 25.08.2011. Subsequently, the said rejection was also challenged in W.P. Nos. 20287-20289 of 2011 before the Madras High Court on 29.08.2011. Later, by order dated 01.05.2012, in Transfer Petition (Criminal) Nos. 383-385 of 2011 and 462-464 of 2011, this Court transferred all the three writ petitions to this Court in the interest of justice. Pursuant to the aforesaid order, the Madras High Court transmitted the original records to this Court, which have been registered as Transferred Case (Criminal) Nos. 1-3 of 2012. All the petitioners are currently lodged in the Central Prison, Vellore, Tamil Nadu and they are in incarceration since 1991, i.e., for more than two decades.

7. Heard Mr. Ram Jethmalani, learned senior counsel, Mr. Yug Mohit Chaudhary, learned counsel for the petitioners and Mr. Goolam E. Vahanvati, learned Attorney General and Mr. Sidharth Luthra, learned Additional Solicitor General for the Union of India.

Contentions:

8. The only contention, as projected by Mr. Ram Jethmalani, learned senior counsel and Mr. Yug Mohit Chaudhary, learned counsel for the petitioners is that in view of inordinate delay of more than 11 years in disposal of mercy petitions, the sentence of death imposed upon the petitioners herein is liable to be commuted to life imprisonment as it is violative of Article 21 of the Constitution in addition to various International Conventions, Universal Declarations, to which India is a signatory. In support of their contention, they heavily relied on Shatrughan Chauhan (*supra*).

9. On the other hand, Mr. Goolam E. Vahanvati, learned Attorney General, assisted by Mr. Sidharth Luthra, learned Additional Solicitor General, submitted that the delay caused was not at the instance of the head of the executive and is not unreasonable. They further submitted that even if there was inordinate delay in disposal of mercy petitions in the light of the principles enunciated in Shatrughan

Chauhan (supra) and also from the information furnished by the petitioners in their affidavits filed before the High Court praying for commutation, the petitioners have not made out a case for passing similar order of commutation as ordered in Shatrughan Chauhan (supra).

Points for Consideration:

10. Firstly, as mentioned earlier, the question whether inordinate delay in disposing of mercy petitions is a supervening circumstance for commutation of sentence of death into life imprisonment is well settled in view of the recent verdict in Shatrughan Chauhan (supra). As a result, the task before this Court is confined only to finding out whether the nature of delay caused is reasonable or inordinate in the light of the circumstances of the given case and to verify whether the delay was caused at the instance of accused.

11. The second point for consideration before this Court is whether in Shatrughan Chauhan (supra), this Court, laid down for actually proving the dehumanizing effect on the accused or mere unreasonable and inordinate delay on face of it is sufficient for commutation of death sentence to life.

Discussion:

12. After having carefully analyzed all the materials and rival contentions, now let us venture to distinctively discuss on the aforesaid issues. At the outset, let us examine whether the delay of 11 years in disposing of mercy petitions is unreasonable and inordinate in the light of the facts of the given case.

13. Following the rejection of mercy petitions of the petitioners herein by the Governor on 25.04.2000, these petitions were forwarded to the Ministry of Home Affairs, Government of India on 04.05.2000. After an unreasonable delay of 5 years and 1 month, on 21.06.2005, the Ministry of Home Affairs submitted the petitioners' mercy petitions to the President for consideration. Thereafter, on 23.02.2011, the Ministry of Home Affairs recalled the petitioners' mercy petitions from the office of the President. Here also, there was a delay of 5 years and 8 months. Ultimately, the President, on 12.08.2011, rejected these mercy petitions after a delay of more than 11 years.

14. Across the bar, learned Attorney General, while explaining the delay ensued i.e., 5 years and 1 month submitted that shortly after the receipt of the mercy

petitions in 2000, a note was prepared but thereafter the file was lying in the drawer of some officer of the Ministry of Home Affairs, and, hence, could not be processed. As regards delay of 5 years and 8 months, learned Attorney General fairly admitted that this delay couldn't be explained in any way.

15. It is, therefore, indisputable that the delay ensued in the given petitions is inordinate and unreasonable and the same was not caused at the instance of the petitioners. Accordingly, the unreasonable delay caused qualifies as the supervening circumstance, which warrants for commutation of sentence of death into life imprisonment as stipulated in *Shatrughan Chauhan* (supra), inter alia, the judicial decisions in *Triveniben vs. State of Gujarat* (1988) 4 SCC 574, *Sher Singh and Ors. vs. State of Punjab* (1983) 2 SCC 344 and *T.V. Vatheeswaran vs. State of Tamil Nadu* (1983) 2 SCC 68.

16. Exorbitant delay in disposal of mercy petition renders the process of execution of death sentence arbitrary, whimsical and capricious and, therefore, inexecutable. Furthermore, such imprisonment, occasioned by inordinate delay in disposal of mercy petitions, is beyond the sentence accorded by the court and to that extent is extra-legal and excessive. Therefore, the apex constitutional authorities must exercise the power under Article 72/161 within the bounds of constitutional discipline and should dispose of the mercy petitions filed before them in an expeditious manner.

17. As regards the second contention, it was argued by learned Attorney General that the test laid down by this Court in cases involving delayed mercy petitions requires the petitioners to actively demonstrate the sufferings occasioned by the delay, and that in the present case, the petitioners have been having a good time in prison and they have not suffered at all. Hence, it is argued that the petitioners are not entitled to relief.

18. Before we advert to respond the aforesaid contention, it is relevant to comprehend the primary ground on the basis of which the relief was granted in cases of delayed disposal of the mercy petition and that is, such delay violates the requirement of a fair, just and reasonable procedure. Regardless and independent of the suffering it causes, delay makes the process of execution of death sentence unfair, unreasonable, arbitrary and capricious and thereby, violates procedural due process guaranteed under Article 21 of the Constitution and the dehumanizing effect is presumed in such cases. It is in this context, this Court, in past, has recognized that incarceration, in addition to the reasonable time necessary for

adjudication of mercy petitions and preparation for execution, flouts the due process guaranteed to the convict under Article 21 which inheres in every prisoner till his last breath.

19. This Court has consistently held that prolonged delay in execution of death sentence, by itself, gives rise to mental suffering and agony which renders the subsequent execution of death sentence inhuman and barbaric. In *Shatrughan Chauhan* (supra), this Court held as under:

“33. This is not the first time when the question of such a nature is raised before this Court. In *Ediga Anamma vs. State of A.P.*, 1974(4) SCC 443 Krishna Iyer, J. spoke of the “brooding horror of haunting the prisoner in the condemned cell for years”. Chinnappa Reddy, J. in *Vatheeswaran* (supra) said that prolonged delay in execution of a sentence of death had a dehumanizing effect and this had the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend the fundamental right under Article 21 of the Constitution. Chinnappa Reddy, J. quoted the Privy Council’s observation in a case of such an inordinate delay in execution, viz., “The anguish of alternating hope and despair the agony of uncertainty and the consequences of such suffering on the mental, emotional and physical integrity and health of the individual has to be seen.” ...”

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“39. Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonizing delay caused to the convict only on the basis of the gravity of the crime.”

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“43. The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay on account of executive is unexcusable. Since it is well established that Article 21 of the Constitution does not end with the

pronouncement of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanizing effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence. In fact, in *Vatheeswaran* (supra), particularly, in para 10, it was elaborated where amongst other authorities, the minority view of Lords Scarman and Brightman in the 1972 Privy Council case of *Noel Noel Riley vs. Attorney General*, (1982) *Crl. Law Review* 679 by quoting "sentence of death is one thing, sentence of death followed by lengthy imprisonment prior to execution is another".

20. Thus, the argument that the petitioners are under a legal obligation to produce evidence of their sufferings and harm caused to them on account of prolonged delay is unknown to law and will be misinterpretation of *Shatrughan Chauhan* (supra). Such a prerequisite would render the fundamental rights guaranteed under Part III of the Constitution beyond the reach of death-row convicts and will make them nugatory and inaccessible for all intent and purposes. Besides, there is no requirement in Indian law as well as in international judgments for a death-row convict to prove actual harm occasioned by the delay. There is no obligation on the convict to demonstrate specific ill effects of suffering and agony on his mind and body as a prerequisite for commutation of sentence of death.

21. In any case, the petitioners have extensively pleaded the nature of their sufferings both in the petitions as well as in the reminder letters which each of them repeatedly have sent to the President which remained unheeded. As regards the argument of learned Attorney General, viz., the petitioners were enjoying themselves in prison, a perusal of specific averments in their writ petitions filed before the High Court shows a different picture. All the petitioners highlighted that the delay caused unendurable torture to them and they repeatedly requested the authorities to forthwith decide their mercy petitions.

22. In Transferred Case (Crl.) No. 1 of 2012 (*V. Sriharan @ Murugan*), in Writ Petition No. 20287 of 2011 filed before the High Court, in para 5, the petitioner has expressed his grievance in the following manner:

"I state that the extraordinary and unjustified delay in deciding my mercy petition is entirely caused by the office of the Hon'ble President of India. For each day after the sentence of death was confirmed by the Hon'ble Supreme Court, and while my mercy petition was pending before the

Hon'ble President of India, my family and I have undergone a living hell not knowing whether I would live or die, and whether I would live to see another day or draw another breath, or whether that day and that breath would be my last. I state that I have been swinging between life and death for these past many years confined in a single cell. I state that I have suffered enough and that it would not be in the interests of justice to compound this suffering by executing me. I submit that the interests of justice would be served by converting the sentence of death to one of life imprisonment. I state that cases where the delay has been less than half of what it is in the present case have been held by the Hon'ble Supreme Court and this Hon'ble Court to be unconscionable and excessive and in breach of Article 21, warranting substitution of death sentence by a sentence of life."

In paragraph 22, the petitioner has stated as under:

"I state that I have been in custody since 4.6.1991, i.e. for more than 20 years. I have been under sentence of death since the judgment of the trial court on 28.1.1998, i.e. for more than 13 years and 7 months. I further state that after the rejection of my review petition by the Supreme Court on 8.10.1999, i.e. for a period of about 11 years and 10 months, I have lived under the shadow of the hangman's noose. During this period, I have been kept in a single cell, with the threat of imminent death hanging over my head. My mercy petition was filed more than 11 years and 4 months ago (about 4100 days). During this long period, I have suffered excruciating mental agony and torture of a kind that is difficult to imagine or conceptualize. I have been swinging between life and death, believing every waking minute to be my last, not knowing whether I will be spared or not, and when the hangman's noose will close around my neck. Every person passing my prison cell is imagined to be the harbinger of news regarding the outcome of the mercy petition, or the date of my execution. Such torment is a punishment far worse than death."

23. In the year 2005, the petitioner-Sriharan @ Murugan sent a representation to the President of India reminding the pendency of his mercy petition. In that letter, apart from highlighting his pathetic position, he asserted that "it has been 5 years since I had sent my petition requesting Justice. I live like a moving dead body with the rope tangling in front of my eyes always in solitary confinement. I request justice but not mercy."

24. In another letter dated 17.06.2006, addressed to the President, he asserted to the sufferings of his family members in the following words:

“For about 8 years, I have been serving sentence as death sentence convict. So, the sufferings of my parents, brothers, wife and daughter can not be described in words. I ask God daily why they should suffer due to me. No body knows how many times the convicts who are sentenced to death like me die and how many times they dream about their being hanged and no body knows about this truth. No one who loves consciousness, humanity and truth do not fear death. But with the aim of making sacrificial goat, after being sentenced to death, and justice is not done for years together and being harassed and under the circumstances, there is every change for a man to disintegrate. When one’s life is unreasonably wasted, no human being can lead life without fear or suffering. This confusion and fear is very bad misery. I have been suffering this for many years. I request you to grant reduction of punishment and render justice at the earliest.”

In the subsequent letter dated 10.03.2007, addressed to the President of India, the petitioner has stated:

“Sir, 16 years have passed since I and my wife were imprisoned. The female child born to us in jail is suffering without security and education as a nomad. During this long time, the suffering undergone and undergoing now by our family members can not be said in words. Thinking of punishing me have punished my entire family. So, my life in jail has become a living death.”

In the same way, he also made several subsequent letters to the President highlighting his pathetic position, torture, sufferings of his family, etc.

25. In Transferred Case (Crl.) No. 2 of 2012 (T. Suthendraja @ Santhan) in Writ Petition No. 20288 of 2011 filed before the High Court and Transferred Case (Crl.) No. 3 of 2012 (A.G. Perarivalan @ Arivu) in Writ Petition No. 20289 of 2011 filed before the High Court, both the petitioners/death convicts have expressed their grievance in similar terms like the co-convict Murugan. These petitioners also sent similar letters to the President highlighting their agony in the prison and prayed for earlier disposal of their mercy petitions. They also highlighted sufferings on account of solitary confinement, mental agony, etc.

26. Having perused all the averments specifically averred in the writ petitions as well as the copies of the communication addressed to the Ministry of Home Affairs and to the President of India and also in view of other information/materials available in the affidavit filed before the High Court in the year 2011, we are unable to accept the views expressed by learned Attorney General on this point.

Conclusion:

27. At the outset, we once again clarify that the relief sought for under these kind of petitions is not per se review of the order passed under Article 72/161 of the Constitution on merits but on the ground of violation of fundamental rights guaranteed under the Constitution to all the citizens including the death row convicts.

28. The clemency procedure under Article 72/161 provides a ray of hope to the condemned prisoners and his family members for commutation of death sentence into life imprisonment and, therefore, the executive should step up and exercise its time-honored tradition of clemency power guaranteed in the Constitution one-way or the other within a reasonable time. Profuse deliberation on the nature of power under Article 72/161 has already been said in *Shatrughan Chauhan* (supra) and we embrace the same in the given case as well.

29. We are confident that the mercy petitions filed under Article 72/161 can be disposed of at a much faster pace than what is adopted now, if the due procedure prescribed by law is followed in verbatim. The fact that no time limit is prescribed to the President/Governor for disposal of the mercy petition should compel the government to work in a more systematized manner to repose the confidence of the people in the institution of democracy. Besides, it is definitely not a pleasure for this Court to interfere in the constitutional power vested under Article 72/161 of the Constitution and, therefore, we implore upon the government to render its advice to the President within a reasonable time so that the President is in a position to arrive at a decision at the earliest.

30. Before we conclude, we would also like to stress on one more aspect. We have learnt that the Union Government, considering the nature of the power under Article 72/161, set out certain criteria in the form of circular for deciding the mercy petitions. We hereby recommend that in view of the recent jurisprudential development with regard to delay in execution, another criteria may be added to

the existing yardsticks so as to require consideration of the delay that may have occurred in disposal of a mercy petition.

31. In the light of the above discussion and observations, in the cases of V. Sriharan @ Murugan, T. Suthendraraja @ Santhan and A.G. Perarivalan @ Arivu, we commute their death sentence into imprisonment for life. Life imprisonment means end of one's life, subject to any remission granted by the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433-A of the Code. All the writ petitions are allowed on the above terms and the transferred cases are, accordingly, disposed of.