

BOMBAY HIGH COURT

Bhagwan Patilba Palve

Vs.

State of Maharashtra

Cri. W.P. No. 910 of 1988

(S.W. Puranik and Ashok Agarwal, JJ.)

13.09.1989

JUDGMENT

S.W. Puranik, J.

1. The following are the circumstances in brief under which this suo motu Criminal Writ Petition came to be registered by this Court.
2. Bhagwan Patilba Palve was charge sheeted for the offence of multiple murders committed by him on the night intervening 6th and 7th September, 1978 at Pandhade, taluka Pathardi, district Ahmednagar. It was alleged that he committed the murder of four of his close relatives in one sequence during the said night.
3. The trial of the said Bhagwan Patilba Palve was placed before the learned Extra Additional Sessions Judge, Ahmednagar in Sessions Case No. 93 of 1979 and after the evidence was recorded and parties heard, the learned Extra Additional Sessions Judge by his judgment and order dated 23rd July, 1980, convicted Bhagwan Patilba Palve for the offences under sections 302 and 324 of the Indian Penal Code and sentenced him to suffer imprisonment for life.
4. The State challenged the said order regarding the sentence and filed Criminal Appeal No. 859 of 1980 in this Court for enhancement of sentence of life imprisonment to one of death sentence, in view of the multiple murders and the brutal manner of assault.
5. The accused also being aggrieved by the order of conviction and sentence preferred an appeal, being Criminal Appeal No. 963 of 1980, praying for acquittal.
6. A Division Bench of this Court consisting of Pratap and Tulpule, JJ. decided both these Appeals on 12th July, 1982. By the said judgment they dismissed the Appeal preferred by

Accused Bhagwan Patilba Palve and allowed the appeal filed by the State for enhancement of sentence. Accordingly, the sentence of life imprisonment was enhanced to one of death sentence.

7. Special Leave Petition was preferred by Accused Bhagwan Patilba Palve before the Supreme Court on 15th November, 1982 and by its decision dated 17th September, 1984, the Special Leave Petition came to be rejected.

8. The appellant made a second attempt before the Supreme Court by filing a Review Petition on 31st May, 1984, which was also rejected on 18th September, 1984.

9. In the meantime, just before filing the Review Petition, the prisoner-convict filed a mercy petition both addressed to the President of India and the Governor of the State of Maharashtra. This petition was dated 7th May, 1984.

10. As provided by the Maharashtra Prison Manual Rule 8, the Superintendent of Jail at Yeravada where the prisoner was lodged, forthwith filed the said mercy petition to the Governor of Maharashtra through the Home Department of the State.

11. As per the detailed affidavit filed by Shri J. J. Deshmukh, Desk Officer, Home Department, Mantralaya, Bombay, the Governor of Maharashtra rejected the mercy petition on 20th March, 1985 and forwarded the same to the President of India on 1st April, 1985. The Home Department of the State of Maharashtra sent reminders to the Union Home Department requesting them for early decision by the President of India in respect of the mercy petition.

12. Sri Solkar, the learned Public Prosecutor, appearing with Shri Deshmukh, Desk Officer, states on referring to the entire record maintained by the Home Department at Bombay that as many as ten reminders were sent by the Home Department at Bombay to the Union Home Department. There was no reply received at Bombay from Delhi, save and except, one letter in response, that the mercy petition was under consideration of the President. This reply was received on 30th April, 1986.

13. It was only on 15th June, 1988 that a communication was received from the Union Home Department to the Home Department of the State at Bombay, that the President of India had declined to interfere with the said mercy petition. This letter was received in the State Government Office on 27th June, 1988. It was then placed before the Chief Minister of Maharashtra on 3rd August, 1988, which was endorsed by him on 12th August, 1988.

14. On 16th August, 1988 the Home Department of the Government of Maharashtra issued a memo to the Superintendent, Yeravada Central Prison, to execute convict Bhagwan Patilba Palve on 26th August, 1988. Simultaneously this rejection of the mercy petition and fixing of the date of execution was also communicated to the prisoner on the same day.

15. Since the High Court had awarded the death sentence by allowing the appeal for enhancement, the warrant of execution for hanging the prisoner was placed before the Division Bench of this Court on 23rd August, 1988, on which date the Division Bench consisting of S.C. Pratap and G. H. Guttal, JJ. registered the matter as a suo motu Criminal Writ Petition and directed the State Government to send a detailed report as to why and under what circumstances the death sentence imposed by this Court by its judgment and order dated 12th July, 1982 on Bhagwan Patilba Palve was and could not be executed till now, i.e. for the last over six years. The Division Bench further directed that the report be sent to the Court by 5th September, 1988. Pending further orders, the Division Bench stayed the execution of death sentence which was scheduled to be carried out on 26th August, 1988.

16. Shri J. J. Deshmukh, Desk Officer, promptly filed his reply affidavit on 31st August, 1988 stating the entire chronology of the events that have taken place from the date of the decision of the Sessions Court till the memo of execution of convict Bhagwan Patilba Palve in August, 1988.

17. This Court, however, was aware of the fact that the question regarding delay in execution of the warrant of death sentence was heard and decided by the Supreme Court at about the same time and called upon the learned Public Prosecutor to present before this Court a copy of that relevant judgment of the Supreme Court. A fortnight's time was afforded for the purpose.

18. However, it appears that even though the conclusions of the Supreme Court in its judgment were pronounced sometime in October, 1988, the full text of the reasons was received much later and it is in these circumstances that the full judgment of the Supreme Court was placed on this file on 14th August, 1989, almost 8 months thereafter.

19. Shri S. G. Deshmukh, learned counsel appointed as amicus curiae on behalf of the convict, strenuously urged on the basis of the judgment of the Supreme Court in Writ Petition (Cri.) No. 1566 of 1985 whereby the Supreme Court decided a bunch of Writ Petitions (Cri.) on the question, amongst others, about the delay in execution of death sentence finally confirmed at the culmination of the judicial process, that in the instant case mercy petition was filed on 7th May, 1984 by the prisoner and he was communicated the rejection of his mercy petition and the date of execution of sentence only on 16th August, 1988, i.e. more than four years from the date of his mercy petition. He contended that during all this time the prisoner was waiting for the decision of the mercy petition and the sword of death was hanging all along over his head. The enormous mental torture that a prisoner under fear of death any day cannot be explained and, according to him, this by itself should be consideration to commute the death sentence to one of life.

20. Shri Solkar, the learned Public Prosecutor, persuaded us to go through the judgment of the Supreme Court and contended that the circumstances in which the offence was committed or the subsequent improvement in the conduct of the prisoner while awaiting the result of the mercy

petition or for that matter the delay in the judicial process from the date of his initial trial to the decision of the Apex Court, cannot be taken into consideration. He also pointed out that the Superintendent of the Yeravada Prison had promptly forwarded the mercy petition to the Home Department of the Government of Maharashtra the very next day after it was received from the prisoner. He had therefore carried the duty enshrined in Rule 8 of the Prison Manual. According to Shri Solkar, the Home Department forwarded the papers immediately to the Governor of Maharashtra who rejected it on 20th March, 1985 and within a fortnight thereof forwarded the same to the President of India. As many as ten reminders were forwarded by the Home Department of the State to the Union Home Department at Delhi requesting for early decision of the mercy petition. Shri Solkar is, however, unable to explain how delay has occurred at the President's Secretariat at Delhi where the petition was pending for more than three years before its decision. He further pointed out that no sooner the rejection of the mercy petition by the President was communicated to the State Government on 27th June, 1988, prompt steps were taken thereafter to carry out the death sentence and the memo to execute was issued on 16th August, 1988. Lastly, he contended that even according to the Supreme Court, no particular period of delay would entitle the Court to consider commutation of death sentence to one of life imprisonment. It all depends on the facts of each individual case.

21. We have given our careful consideration to the submissions of both the parties and we have gone minutely through the detailed reasons given by the Supreme Court in the decision referred to supra. The whole gamut of the case law right from the decision of 1944 given by the Federal Court in *Piare Dusadh and others v. The King Emperor*¹, and the several judgments of the Supreme Court upto 1988 were considered and the Supreme Court concluded :

"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 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. This Court, however, may consider the question of inordinate delay in the light of the 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's* case cannot be said to lay down the correct law and therefore to that extent stands overruled."

22. In the body of reasons by the Supreme Court judgment the following paragraph is relevant :

"It was contended that the delay in execution of the sentence will entitle a prisoner to approach this Court as his right under Article 21 is being infringed. It is well-settled now that a judgment of Court can never be challenged under Article 14 or 21 and therefore the judgment of the Court awarding the sentence of death is not open to challenge as violating

Article 14 or Article 21 as has been laid down by this Court in *Naresh Shridhar Mirafkar and Ors. v. State of Maharashtra and Anr*², and also in *A. R. Antulay v. R. S. Nayak and another*³. 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

¹1944 Federal Court Reports 61

³(1988) 2 SCC 602

²(1966) 3 SCR 744

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."

23. Bearing in mind the above principles laid down by the Supreme Court, we are not concerned with the circumstances under which the offence was committed. All these circumstances have already been taken into consideration by the Courts and finally confirmed by the Apex Court. It is only the question of delay in execution of the death sentence after the confirmation of the same which is to be taken into consideration. We find that after the decision of the Supreme Court on 17th April, 1984 rejecting the Special Leave Petition of the prisoner, the mercy petition came to be preferred on 7th May, 1984. It was with the Governor of Maharashtra up to March, 1985, when on 20th March, 1985 it was rejected by the Governor. It was then sent by the Governor of Maharashtra to the President of India on 1st April, 1985. In spite of ten reminders from the State Government, the mercy petition was not decided for about three years and two months. A communication dated 15th June, 1988 was sent by the Union Home Department to the State Home Department on 27th June, 1988 and thereafter the prisoner was informed on 16th August, 1988 when the memo to execute the sentence was also issued. We, therefore, find that from the date the prisoner forwarded his mercy petition on 7th May, 1984 till he received the information about the rejection of the said mercy petition in August, 1988, four years and three months had elapsed. Even assuming that prompt steps were taken by the Jail Superintendent and the Home Department at Bombay, there is no explanation why the said mercy petition was not disposed of for a period of four years and three months from the date of its presentation and the result communicated to the convict.

24. We need not repeat the observations of the Supreme Court. The enormous mental torture that

is suffered by the prisoner facing the death sentence, every day of the delay would constitute almost a year in one's logical thinking, and even a prisoner is likely to lose his mental balance, if he does not know for days and months together the result of his mercy petition. As was observed by K. Jagannatha Shetty, J. in his concurrent judgment in the aforesaid Writ Petitions (Cri.) "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".

25. In the instant case, this mental torment may become acute when the judicial verdict is finally pronounced against the accused. If there is an inordinate delay in execution, the condemned prisoner may approach this Court requesting it whether it is just and fair to allow the death sentence to be executed.

26. In our opinion, therefore, we find, the circumstances prevailing in this case after the verdict of death was finally confirmed by the Supreme Court and the judicial process had come to an end, the delay of four years and three months in disposing the mercy petition is enough ground to commute the death sentence to one of life imprisonment. This is in spite of the fact that the prisoner has been in custody since 1978.

27. In the result, we make the rule absolute and hereby direct that the death sentence imposed on convict Bhagwan Patilba Palve be and is hereby commuted to one of life imprisonment. The warrant to execute the prisoner issued by the State Home Department on 16th August, 1988, which was stayed pending the hearing of this petition, shall stand cancelled and set aside. Order accordingly.