

PETITIONER:
JUMMAN KHAN

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT 30/11/1990

BENCH:
PANDIAN, S.R. (J)
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PANDIAN, S.R. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1991 AIR 345 1990 SCR Supl. (3) 398
1991 SCC (1) 752 JT 1991 (1) 31
1990 SCALE (2) 1167
CITATOR INFO :
D 1992 SC2100 (56)

ACT:

Indian Penal Code, 1860: Section 302--Murder--Death sentence Constitutional validity of.

Criminal Procedure Code, 1973: Sections 235(2)--Sentence-Pre-decisional opportunity of hearing to accused--Statutory mandate-Not a mere formality strict compliance required.

Sections 368, 413, 414 and 415--Sentence of death--Whether open to review--Undue delay in execution--Subsequent supervening circumstances warranting interference.

Constitution of India, 1950: Article 21: Capital punishment-Constitutional validity of.

Practice & Procedure: New plea--raising of--For the first time-Permissibility of.

HEADNOTE:

The petitioner was charged with rape and murder of his neighbour's six year old daughter. As per the post-mortem report, the victim was brutally raped and strangled to death. The Trial Court found the petitioner guilty under both the charges and sentenced him to undergo life imprisonment under Section 376 IPC and to death under Section 302 IPC. On an appeal preferred by him, the High Court confirmed the conviction and sentences passed by the Trial Court.

Aggrieved by the judgment of the High Court, the petitioner filed a special leave petition which was dismissed by this Court. Thereafter he presented a mercy petition and the Governor rejected the same. The petitioner filed a review petition against the rejection of his mercy petition. The execution was stayed initially, but the stay was vacated, later. The petitioner addressed a mercy petition to the President of India and it was rejected. Subsequent mercy petition to the President also met the same fate.

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In the present writ petition, the petitioner contended that there was substantial non-compliance with the mandatory provisions of Section 235(2) of the Code of Criminal Procedure of 1973, vitiating the imposition of the sentence of

death; that the constitutional validity of capital punishment upheld by this Court in Bachan Singh's case [1980] 2 SCC 684 deserved to be reviewed by a larger Bench since it was just and necessary that the vires of Section 302 IPC has to be re-examined taking into account all subsequent decisions of this Court rendered in the context of Article 21 of the Constitution; that since there has been an undue delay in consideration of the mercy petitions submitted by the petitioner praying for clemency both to the President as well as the Governor, the petitioner was entitled for commutation of the death sentence to one of imprisonment for life.

Dismissing the writ petition, this Court,

HELD: 1.1. The sentence in every criminal case when confirmed by this Court is justified and, therefore, normally it is not open for review or reconsideration. However, this Court on several occasions in appropriate cases, even after the imposition of sentence of death reached its final- 7
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by exercising its extraordinary powers when this Court felt that the execution of that sentence was not justified on account of the subsequent supervening circumstances namely, the undue long delay which has elapsed since the confirmation of this sentence by this Court. This is based on the principle that sentence of death is something and the sentence of death followed by lengthy imprisonment prior to execution is another. [406F-H]

1.2. In the instant case, there is no undue delay and so the sentence of death imposed on the petitioner does not call for interference on the ground of delay in execution of the death sentence. [404E]

Sher Singh v. State of Punjab, [1983] 2 SCC 344 and Triveniben v. State of Gujarat, [1989] 1 SCC 678, followed.

T.V. Vatheeswaran v. State of Tamil Nadu, [1983] 2 SCC 68, referred to.

2. Death sentence is constitutionally valid. The decision in Bachan Singh's case needs no reconsideration. [405E-F]

Bachan Singh v. State of Punjab, [1980] 2 SCC 684, affirmed. 400

Sher Singh v. State of Punjab, [1983] 2 SCC 344; Allau-din Mian v. State of Bihar, [1989] 3 SCC 5 and Triveniben v. State of Gujarat, [1989] 1 SCC 678, relied on.

3.1. The mandatory provision of Section 235(2) of the Criminal Procedure Code, 1973 provides that the accused must be given an opportunity in regard to the sentence and it is only after hearing him the Court has to pass the sentence according to law. The strict compliance of this provision is a statutory mandate but not a mere formality and so it must be scrupulously followed in its true spirit. [404D]

3.2 In the instant case, the plea that Section 235(2) of the Criminal Procedure Code was not complied with, has been raised for the first time. Since the Trial Court had in fact heard the petitioner on the question of sentence, but of course on the same day, such a new plea cannot be accepted at this stage. [404E-F]

Santa Singh v. State of Punjab, [1977] 1 SCR 229; Mu-niappan v. State of Tamil Nadu, [1981] 3 SCR 270 and Allau-din Mian v. State of Bihar, [1989] 3 SCC 5, relied on.

4. On the basis of the relevant records, there is absolutely no ground for reconsideration of the orders of the President 7
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Kehar Singh and Another v. Union of India and Another, [1989] 1 SCC 204, referred to.

JUDGMENT:

JUDIS