REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 338 OF 2007

Jagdish **.....Appellant**

Versus

State of M.P. **...Respondent**

J U D G M E N T

HARJIT SINGH BEDI, J.

1. The appellant was convicted under Section 302 of the IPC for having murdered his wife, four minor daughters and a minor son all between 1 and 16 years of age and was sentenced to death by the Additional Sessions Judge, Manasa by judgment dated 24th April, 2006. On an appeal and reference to the High Court, the conviction and sentence has been maintained leading to the present appeal. The prosecution story is as follows:

2. At about mid night of the 19th August, 2005 PW1 Ramprasad, the brother of the appellant, on being informed by PW-4 Balchand that he had heard a huge commotion from the appellant's house, rushed that side and looking through the window saw the appellant sitting in the room with a bloodstained knife in his hand and his clothes soiled in blood and the dead bodies of his wife Amribai, and daughters Karibai, Vidhyabai, Rajubai and Rachna aged 16 years, 12 years, 8 years and 6 years respectively and his son Dilkhush aged 1 year lying besides him. Ramprasad asked the appellant as to what he had done but he threatened him with dire consequences and told him that he would kill him as well. Ramprasad thereupon retreated and raised an alarm which attracted the occupants of the neighbouring houses, and also locked the room from the outside to prevent the appellant's escape. He also rushed to Police Station, Manasa accompanied by Sarpanch Devilal (PW3) and recorded the F.I.R.. He then returned to the village with a police party, headed by PW15 SI Karulal Patel.

The appellant was arrested on the spot and on interrogation a bloodstained pajama and knife hidden in a quilt were seized. On the completion of the investigation, he was brought to trial on six counts of murders. He pleaded innocence and claimed trial. The trial court observed that the case rested almost exclusively on circumstantial evidence and then went on to examine the various circumstances. The court found that the evidence of PW1 Ramprasad that the dead bodies were lying in the room was supported by the evidence of PW3 Devilal, PW11 Vinod as also PW15 SI Karulal. The court also observed that the medical evidence of PW-8 Dr. R.K. Joshi and PW-9 Dr. Dinesh Bansal, who, between themselves, had carried out the post-mortem examinations on the dead bodies to the effect that the murders had been committed with a knife and that the knife which had been recovered at the instance of the appellant from inside the room could be the murder weapon, corroborated the ocular account. The court further held that though in a case of

circumstantial evidence motive was of great significance, it could not be said as a matter of principle that the absence of motive would render the prosecution story weak and in the light of the fact that the murders had been committed in the family home which was locked from the inside, with no other person present at that time, it was to some extent obligatory on the appellant to have given some explanation as to the murders. The court then observed that the explanation in the statement under Section 313 of the Cr.P.C. was unacceptable as it had been simply pleaded that he had been sleeping in the room and had woken up on hearing a noise outside and the police had entered the room and caught hold of him and had immediately arrested him. The appellant also undertook to produce evidence in defence, but ultimately did not do so. PW-1 Ram Prasad's statement at the trial that some thief had been present in the room on the date and time in question was rejected, as being an after thought as he was the appellant's brother, and was making a belated attempt to

save him. The court finally found that the extra judicial confession made before Ramprasad PW1 and Devilal PW3 and the fact that he had been arrested from the spot, clearly proved his involvement. On a cumulative assessment of the circumstances, the Court concluded that the appellant was involved in the multiple murders. The question as to the sentence to be imposed was then examined in depth and relying on various judgments of this Court and in particular on Mohan Singh vs. State of Delhi AIR 1977 SC 949, Rajendra Prasad vs. State of Uttar Pradesh AIR 1979 SC 916, Bachan Singh vs. State of Punjab AIR 1980 SC 898, Mahesh & Ors. Vs. State of M.P. AIR 1987 SC 1346, Darshan Singh vs. State of Punjab AIR 1988 SC 747, Dhananjay Chatterji vs. State of West Bengal 1994 JT 33 SC, and Nirmal Singh vs. State of Haryana AIR 1999 SC 1221 held that the offence which the appellant had committed was reprehensible and truly diabolical and that the only sentence appropriate to the gravity of the crime was a sentence of death. The plea on behalf of the appellant's

counsel based on the judgment of this Court in Nathu Garam vs. State of Uttar Pradesh AIR 1979 SC 716 that a conviction based on circumstantial evidence should not ordinarily invite a death penalty, was rejected. A Reference was thereafter made by the Sessions Judge to the High Court as postulated by Section 366 of the Cr.P.C. and the accused too challenged the judgment in appeal. The High Court first examined the appeal and concluded that the evidence against the appellant was conclusive as to his involvement and though there was no apparent motive, the other circumstances were sufficient to bring home the charge. The merits of the murder reference were then examined and after days consideration it was held that the matter fell within the category of the rarest of rare cases and relying on the judgments of this Court in Ravji vs. State of Rajasthan 1996(2) SCC 175, Umashankar Panda vs. State of M.P. 1996 (8) SCC 110, Dayanidhi Bisoi vs. State of Orissa JT 2003 (5) SC 590, State of Rajasthan vs. Kheraj Ram JT 2003(7) SC 419, Sushil Mumu vs. State of Jharkhand JT

2003(10) SC 340, and Union of India & Ors. Vs. Devendra Nath Rai 2006 (2) SCC 243 observed that as the murders were particularly foul, vile and senseless, the death penalty was the only appropriate sentence in such a situation. The High Court, accordingly, dismissed the appeal and confirmed the Reference. The matter is before us by way of special leave in this backdrop.

3. This Special Leave Petition first came up before this Court on the 1st September, 2006 and was adjourned to call for the records. On 25th September, 2006, when the case was again taken up, it appears that an argument was raised that the appellant had been suffering from some mental ailment at the time of the murders and the counsel sought time to go through some documents pertaining to his treatment. On 8th January, 2007, this Court made an order that the counsel should find out, if possible, the date and place where the petitioner may have been treated. On 12th February, 2007, the counsel made a statement that the appellant's family members

had been able to collect some documents which would be received by him shortly. On 12th March, 2007 leave was granted, limited however, to the question of sentence only. During the pendency of this appeal, and on the direction of this Court, yet another enquiry was made to find out if the appellant had any mental disorder and had been undergoing any treatment to this effect. Consequent to the enquiry, a report has been tendered to this Court supported by an affidavit of Shri Vineet Kumar, Additional Superintendent of Police, District Neemuch, Madhya Pradesh to the effect that no medical record which could establish that the appellant had undergone treatment for a mental or psychological problem had been found but statements of his family members and others including Mohan Lal, his elder brother and his parents Mohan Lal and Sita Devi and the Secretary of the Gram Panchayat, Achalpur which were to the effect that the appellant had been addicted to drugs, particularly to Ganja, and had become mentally disturbed and had been under treatment, and it was on

account of this mental illness that he had killed his family, had been received, were being put on record.

4. Relying on these statements, the learned counsel for the appellant has pointed out that as the appellant appeared to be of unsound mind and incapable of understanding the nature of his actions he was absolved of any liability under Section 84 of the IPC. On merits, it has been urged that in the light of the fact that there was no eye witness to the incident, the mere circumstance that the murders had happened in the family home, was insufficient to prove the case beyond reasonable doubt, and reliance has finally been placed on Nathu Ram's case (supra) to contend that a sentence of death based on circumstantial evidence was a risky proposition, and was thus not called for.

5. We have heard the learned counsel for the parties and gone through the record very carefully. The sheer enormity of the crime, the diabolical manner of the

murders, and the feeling of abhorrence which would undoubtedly be raised in the mind of the court, are factors which have persuaded us to examine the entire story with even greater care and notwithstanding that a notice limited to the question of sentence only had been issued, we have, in the backdrop of the new issue that has been raised, and the horrific consequences for the appellant, permitted his counsel to argue the entire appeal.

6. We first examine the argument of the appellant's counsel based on Section 84 of the I.P.C.. Section 84 reads as under:

> "Act of a person of unsound mind. – Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

7. The benefit of this provision is available to a person who at the time when the act was done was incapable of knowing the nature of his act or that what he was doing

was wrong or contrary to law. The implication of this provision is that the offender must be of this mental condition at the time when the act was committed and the fact that he was of unsound mind earlier or later are relevant only to the extent that they, alongwith other evidence, may be circumstances in determining the mental condition of an accused on the day of incident. We have gone through the status report filed by Shri V.K.Jain, Additional S.P. and find it based exclusively on the statements made by close family members of the appellant. It is significant that before the trial court as well as in appeal in the High Court, no plea with regard to the appellant's mental condition had been taken and it was only in this Court at the SLP stage when, shaken by the sheer brutality of the crime, this Court perhaps felt that only a person of unsound mind could commit such a horrendous crime, and it had thus been thought prudent to have the matter re-examined. We are of the opinion however, that the statements in the status report and the affidavit do not advance the appellant's case whatsoever.

8. We find that the case against the appellant has been proved by the evidence of PW1 Ramprasad, his brother, PW3 Devilal and PW11 Vinod his neighbours, who had all seen the dead bodies with the appellant sitting beside them armed with a knife and he had in fact threatened that anyone else interfering would meet the same fate. It is also significant that Ramprasad had locked the door from the outside and it was in that condition that the appellant had been arrested by SI Karulal and his bloodstained clothes and knife had been recovered. It is true that in a case of circumstantial evidence motive does have extreme significance but to say that in the absence of motive, the conviction based on circumstantial evidence cannot, in principle, be made is not correct. It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt. The story that a thief was

present in the room introduced by Ramprasad at the stage of the trial was doubtless an attempt to help the appellant who was his brother. The medical evidence also supports the prosecution story in its entirety. The two doctors, R.K.Joshi and Dinesh Bansal who had conducted the post-mortem examination on the dead bodies, concluded that the knife recovered at the instance of the appellant could have been used to commit the murders. There is another extremely relevant circumstance pointing towards the appellant's involvement. The appellant, after arrest, was found with injuries on his person and was subjected to a medical examination by PW5 Dr. K.C.Kothari. The doctor reported six superficial incised injuries on his person, some on the neck and the others on the fingers, and opined that they could all be self suffered. This statement was further corroborated by the unrebutted testimony of PW3 Devi Lal who testified that the appellant had told him that after killing his family he had attempted to commit suicide. All the factors referred to above are undoubtedly

circumstances, but they are so evidently categoric, that they constitute a chain even stronger than an eye-witness account, and do remind us of the cliché that men often lie, circumstances do not. We are, therefore, of the opinion that the conviction of the appellant on the charge of multiple murders is fully justified.

9. The crucial question, and the question on which the learned counsel for the appellant has argued with some emphasis, is the question of sentence. It has been submitted that the death sentence in a case of circumstantial evidence was not called for and as there appeared to be some evidence that the appellant was of unsound mind and the sheer enormity and senselessness of the killings also pointed in that direction, and also indicated that something unusual had happened on that day were all factors which required consideration. He has also submitted that as the murders had been committed in the year 2006 and as the death sentence had been hanging over the appellant's head for more

than three years was itself a punishment, the death sentence ought to be commuted to life. He has also referred us to some of the judgments abovementioned. The learned State counsel has submitted with equal emphasis that the enormity of the crime, the brutality with which had been executed, the helpless state of the victims vis-à-vis the assailant who was a husband and father were all factors which brought the matter within the category of the rarest of the rare cases. He too has relied on Ravji vs. State of Rajasthan 1996(2) SCC 175, Umashankar Panda and Devendra Nath Rai cases (supra). In Ravji's case (supra), which pertained to the inexplicable murder of a wife and 5 others (including three minor children) this Court, after examining several earlier cases, observed that the killing of a wife in an advanced stage of pregnancy and three minor children for no reason whatsoever "was one of the most heinous crimes" and that the appellant being the head of the family had a solemn duty to protect them but he had on the contrary "betrayed the trust reposed in him in a very

cruel and calculated manner without any provocation whatsoever" and that the court "would be failing in its duty in not imposing an adequate punishment for a crime which had been committed not only against the individual victim but also against the society to which the criminal and victim belonged," and that the "enormity of the crime requires that the society's cry for justice against such a criminal should be heard." Umashankar Panda's case again pertained to the murder of a wife and two children and grievous injuries to 3 children during an attempt to kill them and it was observed as under:

> "We have already given the injuries inflicted on the deceased persons as well as on the children who escaped death. We find that the accused had caused in all 64 sword injuries to all the six persons including the three deceased persons and those injuries speak for themselves about the gruesome nature of the crime committed by the accused. Be it noted that there was no provocation and there is nothing to suggest that there was any quarrel between the accused and his wife or among any one of the family members. The way in which the crime was executed clearly shows that it was a premeditated one and not on account of sudden provocation or any "mental

> derangement". The motive suggested in the course of cross-examination of the prosecution witnesses is also not helpful to the accused inasmuch as he has pleaded alibi in his statement (under Section 313 CrPC) and that has also been taken note of by the trial court as well as by the High Court. As pointed out earlier, both the Sessions Judge and the High Court have given special reasons for awarding death sentence and we are also of the opinion that the crime indulged by the accused is undoubtedly gruesome, cold-blooded, heinous, atrocious and cruel. We are also satisfied that on the facts established on the record, there appears to be no mitigating circumstances whatsoever, but only aggravating circumstances which justify the imposition of death sentence. If we look into the manner in which the crime was committed, the weapon used, the brutality of the crime, number of persons murdered, the helplessness of the victims, we cannot come to any other conclusion except the one, the Sessions Judge and the High Court arrived at to award the capital sentence to the appellant."

In Devendra Nath Rai's case (supra) this Court after examining Bachan Singh vs. State of Punjab (1980) 2 SCC 684, Machhi Singh v. State of Punjab (1983) 3 SCC 470 and and Devender Pal Singh vs. State of NCT of Delhi (2002) 5 SCC 234 culled

out the broad principles with regard to the infliction of the death penalty in the following terms:

> "The community may entertain such sentiment in the following circumstances:
>
> (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.
>
> (2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the mother land.
>
> (3) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
>
> (4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
>
> (5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in dominating position, or a public

> figure generally loved and respected by the community.
>
> If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

These aggravating circumstances have been reiterated in Dhananjay Chatterjee's case (supra).

10. A bare perusal of the aforesaid judgments would bring this matter within principles 1, 4 and 5. We find the case in hand that the murders were particularly horrifying, as the assailant was in a dominant position and a position to trust as well as he was the head of the family, the crime was enormous in its proportions as the entire family had been done away, the hapless victims being the wife and the minor children of the assailant, the youngest being the only son, just one year old. We have also examined the mitigating circumstances referred to in Bachan Singh's case (supra) and in **Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra** (2009) 6

SCC 498. We find that the balance sheet is heavily weighted against the appellant.

11. The appellant's counsel has also referred to the lapse of about three years between the sentence of death awarded by the Sessions Judge and the hearing of this appeal and has submitted that as a delay in the execution of the death sentence was itself a dehumanizing and an unreasonable procedure, the death sentence ought to be converted to one for life. We have examined this matter very carefully. In **T.V.Vatheeswaran vs. State of Tamil Nadu** (1983) 2 SCC 68 and **Ediga Anamma vs. State of Andhra Pradesh** (1974) 4 SCC 443 it has been held that a delay of two years was permissible beyond which the sentence ought to be converted to life. In **Bhagwan Bux Singh & Anr. vs. The State of U.P.** (1978) 1 SCC 214 similar observations were made with respect to a delay of two and a half years and in **Sadhu Singh vs. State of U.P.** (1978) 4 SCC 428 to a delay of three and a half years. We find, however, that as per the latest position in law, no hard and fast rules can be laid down with respect to

the delay which could result as a mitigating circumstance, and each case must depend on its own facts. We have in this connection gone through the judgment in **Vivian Rodrick vs. The State of West Bengal** (1971) 1 SCC 468 and this is what the Court had to say:

> "It seems to us that the extremely excessive delay in the disposal of the case of the appellant would by itself be sufficient for imposing a lesser sentence of imprisonment for life under Section 302. Section 302, IPC prescribes two alternate sentences, namely, death sentence or imprisonment for life, and when there has been inordinate delay in the disposal of the appeal by the High Court it seems to us that it is a relevant factor for the High Court to take into consideration for imposing the lesser sentence. In this particular case, as pointed out above, the appellant was committed to trial by the Presidency Magistrate as early as July 31, 1963, and he was convicted by the Trial Judge on September 4, 1964. *It is now January 1971, and the appellant has been for more than six years under the fear of sentence of death.* This must have caused him unimaginable mental agony. In our opinion, it would be inhuman to make him suffer till the Government decides the matter on a mercy petition. We consider that this now a fit case for awarding the sentence of imprisonment for life. Accordingly, we accept the appeal, set aside the order of the High Court awarding death sentence and award a sentence of imprisonment for life. The sentences under Section 148,IPC and Section 5 of the Explosive Substances Act

and under Section 302, IPC, shall run concurrently."

Likewise in **State of U.P. vs. Sahai & Ors.** (1982) 1 SCC 352 which pertained to a murder of four persons in a particular ghastly manner, it observed as under :

> "The next question that remains is as to the sentences to be imposed on the respondents. Although the Sessions Judge had given all the respondents, excepting Sahai, sentences of life imprisonment under Section 302 read with Section 149 of the Indian Penal Code, he had passed the sentence of death on Sahai because he alone had shot dead three of the deceased persons. *The occurrence took place sometime in December 1972, and more than eight years have elapsed since. The accused had been convicted by the Sessions Court but acquitted by the High Court. The present appeal has been pending for five years. Having regard to the reasons given above, therefore, we feel that although the murders committed by Sahai were extremely gruesome, brutal and dastardly, yet the extreme penalty of death is not called for in the circumstances of this particular case."*

It is true that in some of the cases referred to above, a delay beyond two or three years has been said to be excessive but in **Sher Singh vs. State of Punjab** (1983) 2 SCC 344, this

Court while agreeing with the broad proposition with regard to the delay in death penalty cases, declined to accept the outer time limit of two years for the execution of a death sentence, failing which it would be incumbent on the court to commute it to life but at the same time had some very pertinent observations to make. We reproduce some of them herein below:

> "But we must hasten to add that this Court has not taken the narrow view that the jurisdiction to interfere with a death sentence can be exercised only in an appeal against the judgment of conviction and sentence. The question which arises in such appeals is whether the extreme penalty provided by law is called for in the circumstances of the case. The question which arises in proceedings such as those before us is whether, even if the death sentence was the only appropriate sentence to impose in the case and was therefore imposed. It will be harsh and unjust to execute that sentence by reason of supervening events. In very recent times, the sentence of death has been commuted to life imprisonment by this Court in quite a few cases for the reason, inter alia, that the prisoner was under the spectre of the sentence of death for an unduly long time after the final confirmation of that sentence, consequence upon the dismissal of the prisoner's special leave petition or appeal by this Court."

and further

> "The prolonged anguish of alternating hope and despair, the agony of uncertainty, the consequences of such suffering on the mental, emotional, and physical integrity and health of the individual can render the decision to execute the sentence of death an inhuman and degrading punishment in the circumstances of a given case."
>
> "Death sentence is constitutionally valid and permissible within the constraints of the rule in Bachan Singh. This has to be accepted as the law of the land. We do not, all of us, share the views of every one of us. And that is natural because, every one of us has his own philosophy of law and life, moulded and conditioned by his own assessment of the performance and potentials of law and the garnered experiences of life. But the decisions rendered by this Court after a full debate have to be accepted without mental reservations until they are set aside."

The Bench also relied on a sociological study "Condemned to Die, Life Under Sentence of Death" by Robert Johnson which we too have found appropriate to quote to complete the narrative :

> "Death row is barren and uninviting. The death row inmate must contend with a segregated environment marked by immobility, reduced stimulation, and the prospect of harassment by staff. There is also the risk that visits from loved ones will become increasingly rate, for the man who is "civilly dead" is often

abandoned by the living. The condemned prisoner's ordeal is usually a lonely one and must be met largely through his own resources. The uncertainties of his case – pending appeals, unanswered bids for commutation, possible changes in the law – may aggravate adjustment problems. A continuing and pressing concern is whether one will join the substantial minority who obtain a reprieve or will be counted among the to-be-dead. Uncertainty may make the dilemma of the death row inmate more complicated than simply choosing between maintaining hope or surrendering to despair. The condemned can afford neither alternative, but must nurture both a desire to life and an acceptance of imminent death. As revealed in the suffering of terminally ill patients, this is an extremely difficult task, one in which resources afforded by family or those within the institutional context may prove critical to the persons's adjustment. The death row inmate must achieve equilibrium with few coping supports. In the process, he must somehow maintain his dignity and integrity.

Death row is a prison within a prison, physically and socially isolated from the prison community and the outside world. Condemned prisoners life twenty-three and one-half hours alone in their cells....."

The Court concluded with the following significant observations :

"A prisoner who has experienced living death for years on end is therefore entitled to

invoke the jurisdiction of this Court for examining the question whether, after all the agony and torment he has been subjected to, it is just and fair to allow the sentence of death to be executed. That is the true implication of Article 21 of the Constitution and to that extent, we express our broad and respectful agreement with our learned Brethren in their visualisation of the meaning of that Article. The horizons of Article 21 are ever widening and the final word on its conspectus shall never have been said. So long as life lasts, so long shall it be the duty and endeavour of this Court to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation. Therefore, Article 21 is as much relevant at the stage of execution of the death sentence as it is in the interregnum between the imposition of that sentence and its execution. The essence of the matter is that all procedure, no matter what the stage, must be fair, just and reasonable."

The judgments rendered aforesaid have thrown model underlying philosophy of the aforesaid judgments has already indicated above stem out not only from Article 21 of the Constitution but from the judgments rendered by the 8th Amendment in the US Constitution ratifying way back in 1791 which provide that no cruel and unusual punishment shall be inflicted. While construing this provision, the Court of the Magistrates while observing that the Eight Amendment does not prohibit capital punishment did indicate that as pending execution had it dehumanizing effect and lengthy imprisonment prior to execution and the judicial and administrative procedures essential to the due process of law are carried

out. Penologists and medical experts agreed that the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture. Relying on Coleman vs. Balkcom, 451 U.S. 949, 952 (1981) observed that "the deterrent value of incarceration during that period of uncertainty may well be comparable to the consequences of the ultimate step itself" and when the death penalty "ceases realistically to further these purposes,.....its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State would be patently excessive and cruel and unusual punishment violative of the Eighth Amendment." The Courts have, however, drawn a distinction whereby the accused himself has been responsible for the delay by misuse of the judicial process but the time taken by the accused in pursuing legal and constitutional remedies cannot be taken against him. The Court nevertheless cautious which we have reproduced as under:

> "We must take this opportunity to impress upon the Government of India and the State Governments that petitions filed under Article 72 and 161 of the Constitution or under Sections 432 and 433 of the Criminal Procedure Code must be disposed of expeditiously. A self-imposed rule should be followed by the executive authorities rigorously, that every such petition shall be disposed of within a period of three months from the date on which it is received. Long and interminable delays in the disposal of

> these petitions are a serious hurdle in the dispensation of justice and indeed, such delays tend to shake the confidence of the people in the very system of justice. Several instances can be cited, to which the record of this Court will bear testimony, in which petitions are pending before the State Governments and the Government of India for an inexplicably long period. The latest instance is to be found in Criminal Writ Petition Nos. 345-348 of 1983, from which it would appear that petitions filed under Article 161 of the Constitution are pending before the Governor of Jammu & Kashmir for anything between five to eight years. A pernicious impression seems to be growing that whatever the courts may decide, one can always turn to the executive for defeating the verdict of the court by resorting to delaying tactics. Undoubtedly, the executive has the power, in appropriate cases, to act under the aforesaid provisions but, if we may remind, all exercise of power is pre-conditioned by the duty to be fair and quick. Delay defeats justice."

12. We have also examined the case law on this aspect with respect to other jurisdictions. We may refer to a few such decisions. It has been repeatedly emphasized that the death sentence has two underlying philosophies ;

(1) that it should be retributive, and
(2) it should act as a deterrent

and as the delay has the effect of obliterating both the above factors, there can be no justification for the execution of a prisoner after much delay. Some extremely relevant observations have been quoted above from **Coleman v. Balkcom, 451 U.S. 949, 952 (1981).** While examining the matter in the background of the Eighth Amendment to the U.S. Constitution which provides that :

> "excessive bail should not be required, nor excessive fine imposed, nor cruel and unusual punishment inflicted"

it has observed that though the death penalty was permissible, its effect was lost in case of delay **(Gregg v. Georgia, 428 U.S. 153 (1976).** The Court also has repeatedly examined the consequences on a prisoner who was under the spectre of death over a period of time and has emphasised "when a prisoner sentenced by a Court to death is confined in the penitentiary awaiting the execution of the sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it". The U.S. Supreme Court and other courts have repeatedly held that

"the cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanizing effects of the lengthy imprisonment prior to execution" and that "the prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death".**(Furman v. Georgia 408 U.S. 238, 288-289 (1972)**

13. We are of the opinion that the underlying principles of the Eighth Amendment with regard to the infliction of a cruel and unusual punishment has its echo in Article 21 of our Constitution as well and it would, therefore, be open to a condemned prisoner, who has been under a sentence of death over a long period of time, for reasons not attributable to him, to contend that the death sentence should be commuted to one of life. The power of the President and the Governor to grant pardon etc. under Articles 72 and 161 of our Constitution though couched in imperative terms, has nevertheless to be exercised on the advice of the executive authority. In this background, it is the Government which, in

effect, exercises that power. The condemned prisoner and his suffering relatives have, therefore, a very pertinent right in insisting that a decision in the matter be taken within a reasonable time, failing which the power should be exercised in favour of the prisoner. We, as Judges, remain largely unaware as to the reasons that ultimately bear with the Government in taking a decision either in favour of the prisoner or against him but whatever the decision it should be on sound legal principles related to the facts of the case. We must, however, say with the greatest emphasis, that human beings are not chattels and should not be used as pawns in furthering some larger political or government policy. We may hark back to our own experiences in life. Even a matter as mundane or trivial as the impending result of an examination or the report of a medical test arising out of suspicion of a serious disease, or the fate of a loved one who has gone missing or a person hanging between life and death on account of a severe injury, makes it impossible for a person to maintain his equanimity or normal way of life. Contrast this with the plight of a prisoner who has been under a sentence of

death for 15 years or more living on hope but engulfed in fear as his life hangs in balance and in the hands of those who have no personal interest in his case and for whom he is only a name. Equally, consider the plight of the family of such a prisoner, his parents, wife and children, brothers and sisters, who too remain static and in a state of limbo and are unable to get on with life on account of the uncertain fate of a loved one. What makes it worse for the prisoner is the indifference and ennui which ultimately develops in the family, brought about by a combination of resignation, exhaustion, and despair. What may be asked is the fault of these hapless individuals and should they be treated in such a shabby manner.

14. The observations reproduced above become extremely relevant as of today on account of the pendency of 26 mercy petitions before the President of India, in some cases, where the Courts had awarded the death sentences more than a decade ago. We, too, take this opportunity to remind the

concerned Governments of their obligations under the aforementioned statutory and Constitutional provisions.

15. Those of us who have had the occasion to inspect a Jail where executions are carried out have first hand knowledge of the agony and horror that a condemned prisoner undergoes every day. The very terminology used to identify such prisoners – death row in-mates, or condemned prisoners, with their even more explicit translations in the vernacular - tend to remind them of their plight every moment of the day. In addition to the solitary confinement and lack of privacy with respect to even the daily ablutions, the rattle on the cell door heralding the arrival of the Jailor with the prospect as the harbinger of bad news, a condemned prisoner lives a life of uncertainty and defeat. In one particular prison, the horror was exacerbated as the gallows could be seen over the wall from the condemned cells. The effect on the prisoners on seeing this menacing structure each morning during their daily exercise in the courtyard, can well be imagined. To cap it all, some of these prisoners, sentenced to death by the

Sessions Judge in a case of multiple murders, were later acquitted by the High Court in appeal for lack of evidence.

16. The facts of the present case; the incident happened on the 20th August 2005. The Additional Sessions Judge rendered his judgment on 24th April 2006 and the judgment was confirmed by the High Court on 27th June 2006. This matter first came up in this Court on 1st September 2006 and was adjourned repeatedly on the request of the appellant's counsel so as to find out if some material could be collected to substantiate his claim that he was unsound mind and it was on 12th March 2007 that leave was granted limited to the question of sentence only. The matter is being disposed of by us in September 2009. We are, therefore, of the opinion that there is no delay whatsoever in the aforesaid circumstances. The appeal is, accordingly, dismissed.

.....J.
(Harjit Singh Bedi)

.....J.

(J.M.Panchal)

New Delhi,
Dated: September 18, 2009