

HARBANS SINGH

v.

STATE OF U.P. & OTHERS

February 12, 1982

[Y.V. CHANDRACHUD, C.J., D.A. DESAI AND
AMARENDRA NATH SEN, JJ.]

*Penal Code—Death Sentence imposed on three accused for the same offence—
One accused executed—Sentence of death commuted in case of another accused—
Mercy petition rejected by President in another—Court if could interfere.*

By a common judgment the petitioner and the two other accused (JS and KS) were convicted and sentenced to death for the murder of four persons. The High Court affirmed their conviction and sentence.

The special leave petition filed by JS was dismissed and he was executed. The sentence of death passed on KS was commuted by this Court into imprisonment for life. The petitioner's ('HS's) special leave petition and later his review petition were dismissed by this Court and his petition to the President of India for commutation of death sentence was dismissed, whereupon he filed the present petition.

(Per Chandrachud, CJ and D.A. Desai, J. A.N. Sen, J. concurring.)

HELD: The petitioner and the other two co-accused were sentenced to death by a common judgment. No distinction could at all be made between the part played by KS and the petitioner. Since the death sentence in his case was commuted by this Court it would be unjust to confirm the death sentence imposed upon the petitioner. [238 B-C]

In view of the background of the case it would not be wrong if this Court had commuted the sentence of death imposed upon the petitioner but in the interest of comity between the powers of this Court and the powers of the President it would be more in the fitness of things if this Court were to recommend that the President be so good as to exercise his power under Article 72 of the Constitution to commute the death sentence into imprisonment for life because the President had already considered the mercy petition of the petitioner once and had rejected it. [238 E-G]

[The Court directed that prior to the actual execution of any death sentence the Jail Superintendent should ascertain personally whether the sentence of death imposed upon any of the co-accused of the prisoner

A who was due to be hanged had been commuted. If it had been commuted, the Superintendent should apprise the superior authorities of the matter, who must take prompt steps for bringing the matter to the notice of the Court concerned.] [239 A-B]

(*Per A.N. Sen, J. concurring*)

B It would be unjust to allow the death sentence imposed on the petitioner executed. [242 G]

C Considering that the responsibility, involvement and complicity of the petitioner in the commission of the offence is the same as that of the other co-accused, it would be sheer travesty of justice if for the same offence the petitioner had to pay the extreme penalty of death while the death sentence imposed on the co-accused, for the very same offence had been commuted to one of life imprisonment. Had the petitioner mentioned either in the special leave petition or review petition or mercy petition to the President this all important and significant fact, death sentence imposed on him would have been commuted. [242 C-F]

D Apart from the very wide jurisdiction and powers conferred on this Court under Arts. 32 and 136 of the Constitution this Court retains and must retain, an inherent power and jurisdiction for dealing with any extra-ordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used for furthering the ends of justice. Having regard to the facts and circumstances of this and interfere case, this is a fit case where this Court should entertain the present petition. [243 A-C]

E Since in the instant case the petitioner's mercy petition had earlier been considered by the President propriety and decorum require that the matter should be referred back to the President. [243 D]

F ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 7453 of 1981.

(Under Article 32 of the Constitution of India)

A.P. Mohanty for the Petitioner.

G *R.K. Bhatt* for the Respondent.

The following judgments of the Court were delivered

H CHANDRACHUD C.J. By this writ petition the petitioner Harbans Singh prays that the death sentence imposed upon him should not be executed in view of the following circumstances.

The petitioner and three other persons, Mohinder Singh, Kashmira Singh and Jeeta Singh were involved in the murder of Jindi Singh, Surjeet Singh, Bira Singh and Gurmeet Singh. Mohinder Singh died in an "encounter" with the police. The petitioner and the other two accused, Kashmira Singh and Jeeta Singh, were committed to stand their trial for the murder of the aforesaid four persons. By a judgment dated May 1, 1975 the learned Additional Sessions Judge, Pilibhit, convicted all of them for the murder of Jindi Singh, Surjeet Singh and Bira Singh and sentenced them to death. On October 20, 1975 the High Court of Allahabad affirmed the judgment of the Trial Court in Criminal Appeal No. 1080 of 1975.

Jeeta Singh filed Special Leave Petition No. 343 of 1976 in this Court which was dismissed on April 15, 1976. Kashmira Singh filed Special Leave Petition No. 104 of 1976 from jail and obtained leave on the question of sentence. By an order dated April 10, 1977 his appeal (No. 172 of 1977) was allowed by a Bench consisting of Bhagwati and Fazal Ali, JJ. who commuted his sentence of death into imprisonment for life. The petitioner, Harbans Singh, filed Special Leave Petition No. 658 of 1978 from jail which was dismissed by Sarkaria and Shinghal, JJ. on October 16, 1978. His Review Petition (No. 140/79) was dismissed by Sarkaria and A.P. Sen, JJ. on May 9, 1980. It appears that though the Registry of this Court had mentioned in its Office Report that Kashmira Singh's death sentence was already commuted, that fact was not brought to the notice of the Court specifically when the petitioner's Special Leave Petition and his Review Petition were dismissed.

The petitioner had filed a petition to the President of India for commutation of his sentence, which was dismissed on August 22, 1981. Upon the dismissal of that petition, the execution of the death sentence imposed upon the petitioner was fixed for October 6, 1981, whereupon he filed this petition in this Court.

The course which this case has taken makes a sad reading. Three persons were sentenced to death by a common judgment and, regretfully, each one has eventually met with a different fate. One of those three persons, Jeeta Singh, who did not file any Review Petition or Writ Petition in this Court was executed on October 6, 1981. The other person, Kashmira Singh, succeeded in having his death sentence commuted into life imprisonment. The petitioner

A was to be executed on the same day on which Jeeta Singh was executed but, fortunately, he filed this Writ Petition on which we passed an order staying the execution of his death sentence.

B As we have stated earlier, the petitioner and the two other co-accused were sentenced to death by a common judgment. We have seen the facts from which it is clear that no distinction at all can be made between the part played by Kashmira Singh on the one hand and the petitioner on the other. Since Kashmira Singh's death sentence was commuted by this Court, it would be unjust to confirm the death sentence imposed upon the petitioner. That will involve the Court as well as the authorities concerned in the violation of rudimentary norms governing the administration of justice.

C It is unfortunate that Jeeta Singh could not get the benefit of the commutation of Kashmira Singh's sentence. Were he to approach this Court like the petitioner, the sentence imposed upon him would have been commuted into life imprisonment because no distinction could have been made between his case and that of Kashmira Singh whose sentence was commuted prior to the execution of Jeeta Singh.

D The question which then arises for consideration is as to the proper course to be adopted in the circumstances of the case. In view of the background of the case, to which we have referred above, it would not be wrong if we were ourselves to commute the sentence of death imposed upon the petitioner to imprisonment for life. But in the interest of comity between the powers of this Court and the powers of the President of India, it will be more in the fitness of things if we were to recommend that the President of India may be so good as to exercise his power under Article 72 of the Constitution to commute the death sentence imposed upon the petitioner into imprisonment for life. This is so because the President of India has already considered the mercy petition of the petitioner once and has rejected it. We, therefore, recommend that for reasons aforesaid, which could not have been before the President of India when he rejected the mercy petition, he may commute the death sentence imposed upon the petitioner.

E The fate of Jeeta Singh has a posthumous moral to tell. He cannot profit by the direction which we propose to give because he is now beyond the processes of human tribunals. But we direct

that prior to the actual execution of any death sentence, the Jail Superintendent should ascertain personally whether the sentence of death imposed upon any of the co-accused of the prisoner who is due to be hanged, has been commuted. If it has been commuted, the Superintendent should apprise the superior authorities of the matter, who, in turn, must take prompt steps for bringing the matter to the notice of the Court concerned.

Order accordingly. The execution of the death sentence is stayed until the decision of the President to whom a copy of this judgment should be forwarded forthwith.

AMARENDRA NATH SEN, J. I have had the benefit of reading the judgment to be delivered by the learned Chief Justice. I agree with the order proposed by him. I, however, wish to make some observations of my own.

The relevant facts of the case have been succinctly and briefly stated by the learned Chief Justice in his judgment. Three persons, namely, the petitioner, Kashmira Singh and Jeeta Singh were convicted under S. 302 of the Indian Penal Code and sentenced to death by the Additional Sessions Judge, Pilibhit by his judgment dated 1st May, 1975. The High Court of Allahabad affirmed the judgment of the Trial Judge in Criminal Appeal No. 1080 of 1975 and confirmed the death sentence of the said three accused by its judgment dated 20th October, 1975. Jeeta Singh filed in this Court a Special Leave Petition (No. 343 of 1976) which was dismissed by this Court on 15th April, 1976. It appears that after the dismissal of the Special Leave Petition of Jeeta Singh by this Court, Jeeta Singh was executed on the 6th of October, 1981. Kashmira Singh filed a Special Leave Petition No. 104 of 1976 in this Court and leave was granted by this Court on the question of sentence only. By an order passed by this Court on the 10th April 1977 this Court allowed the appeal of Kashmira Singh (172/1976) by leave of this Court and this Court commuted his sentence of death to one of imprisonment of life. The other accused Harbans Singh who has filed this petition had also filed a special leave petition No. 658 of 1978. The Special Leave Petition filed by Harbans Singh was dismissed by this Court on 16th October 1978. It appears that Harbans Singh had applied for review of the said order of this Court and the review petition of Harbans Singh (140 of 1979) was also dismissed by this Court on 9th May, 1980. Harbans Singh had thereafter filed a petition to the President of India under Art. 72 of the Constitution. The Petition of Harbans

A Singh to the President of India was dismissed on the 22nd August, 1981. After the dismissal of the Petition of Harbans Singh to the President, the date for execution of the death sentence imposed upon him was fixed and Harbans Singh, has thereafter moved this Court and has filed this writ petition praying for commutation of his death sentence and in the alternative praying for a direction to the authorities to allow him the facilities to meet his near and dear ones before the sentence of death imposed upon him is actually executed.

B

C The unfortunate position appears to be that in respect of the very same offence committed, one of the accused persons, namely, Jeeta Singh has already been hanged; the death sentence imposed on another accused, namely, Kashmira Singh, has been commuted to one of life imprisonment; and Harbans Singh, the present petitioner, is now awaiting death sentence to be executed.

D When this Court dismissed the special leave petition of Jeeta Singh by its order dated 15th April, 1976, the decision of this Court in the case of *Bachan Singh v. State of Punjab*,⁽¹⁾ was not there. It appears from the report that *Bachan Singh's* case in which constitutional validity of the death penalty was upheld by this Court came to be decided by this Court on 9th May, 1980. It further appears that in that case the validity of the death sentence was upheld by four of the learned Judges on the Bench, but Bhagwati J. dissented from the view expressed by the majority and he was of the opinion that "S. 302 of the IPC in so far as it provides for imposition of death penalty as an alternative to life sentence, is ultra vires and void as being violative of Art. 14 and 21 of the Constitution, as it does not provide any legislative guidelines as to when life should be extinguished by imposition of death sentence". The majority judgment of the Bench was delivered by Sarkaria, J. on behalf of himself, Chandrachud, C.J. and Gupta and Untwalia, JJ. While upholding the constitutional validity of death sentence, this Court in *Bachan Singh's* case laid down certain principles on the basis of which capital punishment may normally be imposed, recognising at the same time that the punishment to be inflicted was a matter of judicial discretion to be exercised with due care and caution.

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H When a bench of this Court dismissed the special leave petition of Jeeta Singh who has since been executed, this Court

(1) [1980] 2 SCC 684.

must have on a consideration of the facts and circumstances come to the conclusion that death penalty had been rightly imposed on Jeeta Singh and there was no need for interference by this Court with the judgment or the sentence imposed. The special leave petition of Kashmira Singh was entertained by another Bench of this Court. Though arising out of the same offence, this Court must have felt that there were circumstances which did not justify the imposition of the extreme penalty of death and this Court commuted the sentence of death to one of life imprisonment. It may be noticed that at the time the special leave petition of Kashmira Singh was entertained by this Court and his death sentence was commuted by an order of this Court dated 10th April, 1977, the decision in the case of *Bachan Singh* was not there, though various other decisions which came to be considered in the case of *Bachan Singh* were there.

The Special Leave Petition of the Petitioner was dismissed by this Court on the 16th December, 1978. The review petition was also dismissed by a Bench presided over by Sarkaria, J. on the 9th of May, 1980, the very day on which *Bachan Singh's* case appears to have been decided.

It unfortunately appears that the attention of the Bench which dismissed the special leave petition and also the review petition of the petitioner was not drawn to the fact that special leave petition of the co-accused Kashmira Singh had already been entertained by this Court and the death sentence imposed on Kashmira Singh had been commuted by this Court to one of life imprisonment. The Bench which dismissed the special leave petition and also the review petition of the present petitioner Harbans Singh must have felt on consideration of the facts and circumstances that death penalty had been rightly imposed on Harbans Singh and no interference by this Court was called for. Though the Bench must have come to its decision on a consideration of the facts and circumstances of the case, yet, to my mind, the Bench would not have dismissed the special leave petition and the review petition of Harbans Singh and would have commuted his death sentence to one of life imprisonment, had the Bench been informed that in the identical case, the co-accused of the petitioner had earlier filed a special leave petition which had already been entertained by this Court and the capital punishment of the co-accused Kashmira Singh had been commuted by this Court to one of life imprisonment. It may be noticed that

A the responsibility, involvement and complicity of the petitioner Harbans Singh in the commission of the offence is the same as that of the co-accused Kashmira Singh. As I have earlier noticed, Harbans Singh had filed a petition to the President of India after the dismissal of his petition for Special Leave and his petition for review by this Court for commutation of death sentence and the said Petition of Harbans Singh has also been rejected by the President.

C To my mind, it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and pay the extreme penalty of death whereas the death sentence imposed on his co-accused for the very same offence is commuted to one of life imprisonment and the life of the co-accused is shared. The case of the Petitioner Harbans Singh appears, indeed, to be unfortunate, as neither in his special leave petition and the review petition in this Court nor in his mercy petition to the President of India, this all important and significant fact that the life sentence imposed on his co-accused in respect of the very same offence has been commuted to one of life imprisonment has been mentioned. Had this fact been brought to the notice of this Court at the time when the Court dealt with the special leave petition of the petitioner or even his review petition, I have no doubt in my mind that this Court would have commuted his death sentence to one of life imprisonment. For the same offence and for the same kind of involvement, responsibility and complicity, capital punishment on one and life imprisonment on the other would never have been just. I also feel that had the petitioner in his mercy petition to the President of India made any mention of this fact of commutation of death sentence to one of life imprisonment on his co-accused in respect of the very same offence, the President might have been inclined to take a different view on his petition.

G In the circumstances hereinabove stated, I am of the opinion that it will be manifestly unjust to allow the death sentence imposed on the petitioner to be executed. The question that, however, troubles me is whether this Court retains any power and jurisdiction to entertain and pass any appropriate orders on the question of sentence imposed on the petitioner in view of the fact that not only his special leave petition and review petition have been dismissed by this Court but also the further fact that his petition for clemency has also been rejected by the President.

Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Arts. 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extra-ordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere.

In the facts and circumstances of this case, this Court would have been justified in commuting the death sentence imposed on the petitioner to one of life imprisonment. As, however, the case of the Petitioner had earlier been considered by the President of India to whom the petitioner had presented the petition for mercy, I am of the opinion that propriety and decorum require that the matter should be referred back to the President instead of this Court deciding to commute the death sentence of the petitioner to one of life imprisonment.

With these observations, I respectfully agree with the order passed by the learned Chief Justice.

P.B.R.

Petition allowed.