

THE ORDER
of the
Supreme Court in response to the Petition of Last Resort for
Dhananjoy Chatterjee

The Constitutional Bench heard Mr. Gonsalves exclusively with respect to 'delay' and the list of dates, for two and a half hours. Woefully under prepared, despite all efforts to prepare him better (like summoning Dhananjoy's lawyer, one Mr. Joymalia Bagshi of Kolkata – a move Mr. Gonsalves refused to countenance until the very last day, seeing a 'sharing' of the case as diluting the notoriety that it would bring to him), Mr. Gonsalves represented only the three grounds with which he was most familiar, abandoning the rest.

Then, in a short Order (re-printed below) the Bench dismissed our Petition. As being 'without merit', on the basis effectively that they saw insufficient reason offered for them to challenge a Presidential Prerogative (which, as far as we knew, had never occurred) under one of the four heads under which they may (see the case of *Maru Ram*), namely if it is demonstrated that the President did not exercise 'application of mind.' The Bench saw insufficient reason to suggest that this was indeed the case, none of our grounds, and the questions we posed to the Supreme Court, were answered, and they disposed of our Petition. The disposal of the last legal obstacle to the sentence being executed, thereby confirming the sentence of Death.

In The Supreme Court Of India

Bikas Chatterjee v. Union of India & Ors.

ITEM No.1 Court No. 1 SECTION X

Writ Petition(Crl.) No. 188/2004(For Preliminary Hearing)

Date : 12/08/2004 This Petition was called on for hearing today.

CORAM: Hon'ble the Chief Justice

Hon'ble Mrs. Justice Ruma Pal

Hon'ble Mr. Justice Arun Kumar

Hon'ble Mr. Justice G.P. Mathur

Hon'ble Mr. Justice C.K.Thakker

ORDER

This is a petition under Article 32 of the Constitution of India putting in issue the order of the President of India under Article 72 of the Constitution rejecting the petitioner's prayer for pardon. We have heard Shri Colin Gonsalves, the learned counsel for the petitioner for about 1-1/2 hours as also Shri Altaf Ahmad, learned senior counsel for the State of West Bengal present on caveat.

The convict in this case has been held guilty of offences punishable under Sections 376, 380 and 302 of the Indian Penal Code and sentenced to death under Section 302 IPC. The capital sentence passed by the learned Additional Sessions Judge, Alipore was confirmed by the High Court, on the death reference having been dismissed. The matter came to this Court and the appeal filed by the convict was dismissed on January 11, 1994 by a decision of this Court reported as *Dhananjoy Chatterjee alias Dhana Vs. State of W.B.* (1994) 2 SCC, 220. The learned Sessions Judge, the High Court and this Court have all recorded a finding that the case was 'rarest of the rare cases' warranting the award of capital punishment.

In the decision of this Court in *Dhanjoy Chatterjee* (supra) it is clear that anxious consideration was given to the question of sentence keeping in view the changed legislative policy, as also the observations made by this Court in *Bachan Singh Vs. State of Punjab*

(1980) 2 SCC, 684 laying down the principles on the application of which the award of capital punishment can be justified. This Court summed up its conclusions in the matter of awarding capital punishment to the accused/appellant in the following words :

“The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience.”

The Court also held that there were no extenuating or mitigating circumstance whatsoever in the case. The Court showed its concern and awareness that the consequence of the sentence of death would be depriving of a human life and then held that the facts of the case warranted no punishment other than the capital punishment being awarded to the accused. Accordingly, the sentence of death imposed upon the appellant was confirmed.

The sequence of events furnished on behalf of the petitioner makes it clear that successive petitions have been filed either by the petitioner or on his behalf under Articles 72 and 161 of the Constitution which have all been rejected at the end. Successive petitions under Article 226 of the Constitution before the High Court and under Article 32 of the Constitution before this Court have been filed, which have also been dismissed as devoid of merit.

What is impugned herein is the rejection of petition under Article 72 of the Constitution by the President of India in the first week of August, 2004. Although the decision of the President of India on a petition under Article 72 of the Constitution is open to judicial review but the grounds therefor are very very limited. In the Constitution Bench decision in Maru Ram Vs. Union of India & Ors. (1981) 1 SCC, 107 this Court has held that it is only a case of no consideration or consideration based on wholly irrelevant ground or an irrational, discriminatory or malafide decision of the President of India which can provide a ground for judicial review. In a Division Bench decision of this Court in Satpal and Another Vs. State of Haryana and Others (2000) 5 SCC, 170 these very grounds have been restated as - (i) Governor exercising the power under Article 161 himself without being advised by the Government; or (ii) Governor transgressing his jurisdiction; or (iii) Governor passing the passing order without application of mind; or (iv) the Governor's decision is based on some extraneous consideration; or (v) malafides. It is on these grounds that the Court may exercise its power of judicial review in relation to an order of the Governor under Article 161, or an order of the President under Article 72 of the Constitution, as the case may be. In the case of Maru Ram Vs. Union of India & Ors. (1981) 1 SCC, 107 the Bench noted that the power conferred by Article 72 is a high prerogative power vested by the Constitution in the highest functionary of the Union. The Constitution Bench has also held that while exercising the power of judicial review the Court shall keep in mind that where a power is vested in a very high authority, it must be presumed that the said authority would act properly and carefully after an objective consideration of all the aspects of the matter and further the higher the power the more cautious would be its exercise.

It was submitted by the learned counsel for the petitioner that the order passed by the President is an outcome of ‘non-application of mind’. It was further submitted that the rejection of petition under Article 72 of the Constitution is arbitrary and suffers from the vice of inequality and unfairness.

On the averments made in the petition and what has been emphasised to us during the course of hearing, we are not at all, even prima facie, inclined to accept, much less to hold that there is any substance in the criticism laid on the order passed by the President of India.

We are clear in our minds that we are not deciding an appeal against an order of conviction and the sentence passed thereon. Nor are we sitting in review over an order passed by this Court. We are called upon to exercise our jurisdiction of judicial review against an order passed by the President of India under Article 72 of the Constitution. Admittedly, the petition for pardon filed before the President of India remained pending receiving his consideration for about six weeks. We have no reason to assume that the President of India has not applied his mind to all the relevant facts and aspects of the case. Nor are we inclined to hold that there is any material which the President considered relevant and was inclined to look into but was not before him or was not called for by him when he took the decision to reject the petition for grant of pardon.

We do not find that any case has been made out for making a departure from the presumption and assumption which attaches with the order of the President of India passed under Article 72 of the Constitution.

Having given our anxious consideration to the facts and circumstances of the case, submissions made by the learned counsel and to all the relevant considerations, we find that this petition is wholly devoid of any merit and liable to be dismissed. It is dismissed accordingly.

.....CJI. (R.C. LAHOTI)
.....J. (RUMA PAL)
.....J. (ARUN KUMAR)
.....J. (G.P. MATHUR)
.....J. (C.K. THAKKER)
New Delhi
August 12, 2004

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Thirty-nine and a half hours after the Supreme Court pronouncement on our Petition, I sat on my rooftop, overlooking the Mosque next door, beneath a still twilight as dawn approached. It was 4:30 am, dawn on the 14th day of August, and the Imam cried, calling the faithful to prayer. A fitting soundtrack for the events that transpired at that moment in Alipore 'Correctional Facility', as a conflicted hangman got drunk so that he could spring the trapdoor, and hoped that Dhananjoy's neck would be properly broken in one fell swoop, to save him from having to go into the trap area, tuck the twitching, urinating and defecating hanging man's feet under his arms, and swing on them with all his body weight, in an attempt to properly break Dhananjoy's neck, end his life, and complete the task for which our Government pays him Rs. 10,000 per corpse.

It is not often that one has a client, with whom you know that if you lose, he is dead. But when the Imam stopped crying, I knew that it was over in Alipore, and a line was finally drawn under the whole sad affair, in my head, if not in my heart.