PETITIONER:
SHER SINGH & OTHERS

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT24/03/1983

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
TULZAPURKAR, V.D.
VARADARAJAN, A. (J)

CITATION:
1983 AIR 465 1983 SCR (2) 582
1983 SCC (2) 345
CITATOR INFO :

R	1983 SC 585	(3)
E	1985 SC 231	(3)
D	1988 SC 30	(5)
RF	1989 SC 142	(1)
APR	1989 SC1335	(1,2,28,29,51,56,66,73)
RF	1989 SC1933	(27)
R	1989 SC2299	(2)
F	1991 SC 345	(11,14,15,18)

ACT:
Constitution of India-Art. 2I-Fair procedure-Prisoner sentenced to death-Delay in execution of sentence-Prisoner entitled to invoke jurisdiction under Art. 21 for examining whether it is just and fair to allow sentence to be executed-Prisoner cannot demand that sentence of death should be quashed and substituted by sentence of life imprisonment-Prolonged delay is an important consideration but several other factors must also be taken into account-No absolute or unqualified rule can be laid down.

HEADNOTE:
The petitioners were convicted under s. 302 read with s. 34 I.P.C. and were sentenced to death on November 26, 1977. The High Court upheld the conviction and sentence on July 18, 1978. The petitioners' Special Leave Petition against the judgment of the High Court was dismissed on March 5, 1979 and the Review Petition against the dismissal of the Special Leave Petition was also dismissed on March 27, 1981. The petitioners' successive writ petitions challenging the validity of ss. 302 and 34 I.P.C. were dismissed on January 20, 1981 and August 24, 1981 respectively. The present writ petitions were filed on March 2, 1983 on the basis of the decision in T.V. Vatheeswaran v. State of Tamil Nadu which was rendered on February 16, 1983.
The contention on behalf of the petitioners was that more than two years had elapsed since they were sentenced to death by the trial court and therefore they were entitled in terms of the ruling in vatheeswaran to demand that the said sentence should be quashed and substituted by the sentence of life imprisonment.
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HELD : Prolonged delay in the execution of a death sentence is unquestionably an important consideration for determining whether the sentence should be allowed to be executed. But no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Art. 21 and demand the quashing of the sentence of death" can be laid down as has been done in Vatheeswaran. [594 E-F]

(i) No absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence, the
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sentence must be substituted by the sentence of life imprisonment. There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated. A convict is entitled to pursue all remedies lawfully open to him and get rid of the sentence of death imposed upon him and his taking recourse to them to ask for the commutation of his sentence even after it is finally confirmed by this Court is understandable. But, it is, at least, relevant to consider whether the delay in the execution of the death sentence is attributable to the fact that he has resorted to a series of untenable proceedings which have the effect of defeating the ends of justice. It is not uncommon that a series of review petitions and writ petitions are filed in this Court to challenge judgments and orders which have assumed finality, without any seeming justification. Stay orders are obtained in those proceedings and then, at the end of it all, comes the argument that there has been prolonged delay in implementing the judgment or order. The Court called upon to vacate a death sentence on the ground of delay caused in executing that sentence must find why the delay was caused and who is responsible for it. If this is not done, the law laid down by this Court will become an object of ridicule by permitting a person to defeat it by resorting to frivolous proceedings in order to delay its implementation. Further, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition if the death sentence is vacated, re matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula as a matter of "quod erat demonstrandum." [595 D-H; 596-AE]

T.V. Vatheeswaran v. State of Tamil Nadu. [1983] 2 S.C.R. 348 overruled.

(ii) The period of two years purports to have been fixed in Vatheeswaran after making "all reasonable allowance for the time necessary for appeal and consideration of reprieve." It is not possible to agree with this part of the judgment in that case. The fixation of the time limit of two years does not accord with the common experience of the time normally consumed by the litigative process and the proceedings before the executive. A period far exceeding two years is generally taken by the High Court and this Court together for the disposal of matters involving even the death sentence. Very often four or five years elapse between the imposition of death sentence by the Sessions Court and the disposal of the Special Leave Petition or an Appeal by this Court in that matter. This is apart from the time which

the President or the Governor, as the case may be, takes to consider petitions filed under Art. 72 or Art. 161 of the Constitution or the time which the Government takes to dispose of application filed under ss. 432 and 433 of the Code of Criminal Procedure. [594-F-H; 595-AC]

(iii) Piare Dusadh is not an authority for the proposition that if a certain number of years have passed since the imposition of a death sentence,

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that sentence must necessarily be commuted to life imprisonment. In that case the Federal Court commuted the sentence of death to sentence of transportation for life for reasons other than that a long delay had intervened after the death sentence was imposed. In Ediga Anamma, Piare Dusadh was regarded as a leading case on the point. In the other judgments of this Court referred to in Vatheeswaran, this Court was hearing appeals against judgments of High Courts confirming the sentence of death. However, the 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. 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. [589 B-D-H; 590-A-D]

Piare Dusadh, [1944] F.C.R. Vol.6 61; Ediga Anamma, [1974] 3 S.C.R. 329; Sunil Batra v. Delhi Administration, [1979] 1 S.C.R. 392; Maneka Gandhi [1978] 2 S.C.R. 621; Bachan Singh, [1980] 2 S.C.C. 684, Hussainara Khatoon, [1980] 1 S.C.C. 98; Hoskot, [1978] 3 S.C.C. 544; Bhuvan Mohan Patnaik, [1975] 2 S.C.R. 24; and Prabhakar Pandurang Sangzgiri, [1966] 1 S.C.R. 702 referred to.

(iv) 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. It is well established that a prisoner cannot be tortured or subjected to unfair or inhuman treatment. It is a logical extension of the self same principle that the death sentence, even if justifiably imposed, cannot be executed if supervening events make its execution harsh, unjust or unfair. A prisoner who has experienced living death for years on end is 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 Art. 21 of the Constitution. [593 B-G]

Bhuvan Mohan Patnaik, [1975] 2 S.C.R. 24; Prabhakar Pandurang Sangzgiri, [1966] 1 S.C.R. 702; and Sunil Batra v. Delhi Administration, [1979] 1 S.C.R. 392 referred to.

(v) Traditionally, subsequent events are taken into account in the area of civil law. There is no reason why they should not receive due consideration in other jurisdictions, particularly when their relevance on the implementation or execution of judicial verdicts is undeniable. Principles analogous to res judicata govern all judicial proceedings but when new situations emerge, particularly factual, after a verdict has assumed finality in the course of the hierarchical process, advertence to those situations is not barred on the ground that a final decision has been rendered already. That final decision is

not a decision on new facts. Courts are never powerless to do justice, that
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is to say, to ensure that the processes of law do not result in undue misery, suffering or hardship. That is why, even after the final seal of approval is placed upon a sentence of death, this Court has exercised its power to direct, ex debito justiciae, that though the sentence was justified when passed, its execution, in the circumstances of the case, is not justified by reason of the unduly long time which has elapsed since the confirmation of that sentence by this Court. [590-E-H]

In the instant case, the sentence of death imposed upon the petitioners by the Sessions Court and which was upheld by the High Court and this Court cannot be vacated merely for the reason that there has been a long delay in the execution of that sentence. Counsel for the petitioners have been asked to argue upon the reasons why, apart from the delay caused in executing the death sentence, it would be unjust and unfair to execute that sentence at this point of time. The question will be decided after hearing the parties. [596-G-H; 597-A-B]

2. Petitions filed under Arts. 72 and 161 of the Constitution and under ss. 432 and 433, Cr. P.C. must be disposed of expeditiously. A self imposed rule should be followed by the executive authorities that every such petition shall be disposed of within a period of three months from the date on which it is received. [597-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 232 & 233 of 1983.

(Under article 32 of the Constitution of India)

M.S. Joshi, N.D. Garg and Rajiv Kumar Garg for the Petitioners.

D.D. Sharma for the Respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, CJ. An important question arises for consideration in these two writ petitions. That question is whether a delay exceeding two years in the execution of a sentence of death must be considered sufficient for setting aside that sentence. Learned counsel who appears on behalf of the petitioners relies upon a decision of this Court in T.V. Vatheeswaran v. The State of Tamil Nadu(1) and contends that since more than two years have passed since the petitioners were sentenced to death by the Trial Court, they are entitled to demand that the said sentence should be quashed and substituted by the sentence of life imprisonment.

The petitioners, Sher Singh and Surjit Singh, and one Kuldip Singh were convicted under section 302 read with section 34 of the
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Penal Code and were sentenced to death by the learned Sessions Judge, Sangrur, on November 26, 1977. By a judgment dated July 18, 1978 the High Court of Punjab and Haryana reduced the sentence imposed upon Kuldip Singh to life imprisonment but upheld the sentence of death imposed upon the petitioners. The High Court also imposed a sentence of fine of Rs. 5000 on Kuldip Singh and a fine of Rs. 5000 on each of the petitioners. Special Leave Petition (Crl.) No. 1711 of 1978 which was filed by the petitioners against the judgment of the High Court was dismissed by this Court on

March 5, 1979. The petitioners then filed a Writ Petition in this Court challenging the validity of section 302 of the Penal Code. That petition was dismissed on January 20, 1981. Review Petition No. 99 of 1981 filed by the petitioners against the dismissal of their S.L.P. was dismissed by this Court on March 27, 1981. The petitioners filed yet another petition under article 32 of the Constitution, this time challenging the validity of section 34 of the Penal Code. That petition was dismissed on August 24, 1981. After failing in these seemingly inexhaustible series of proceedings, the petitioners filed these two writ petitions on March 2, 1983, basing themselves on the decision rendered by Justice Chinnappa Reddy and Justice R.B. Misra on February 16, 1983 in Vatheeswaran.

The question which arose for consideration in Vatheeswaran is formulated by Chinnappa Reddy, J., who spoke for the Court, in these terms:

> "But the question is whether in a case where after the sentence of death is given, the accused person is made to undergo inhuman and degrading punishment or where the execution of the sentence is endlessly delayed and the accused is made to suffer the most excruciating agony and anguish, is it not open to a court of appeal or a court exercising writ jurisdiction, in an appropriate proceeding to take note of the circumstance when it is brought to its notice and give relief where necessary ?"

This question arose on the following facts as stated in the judgment of Brother Chinnappa Reddy:

(1) The prisoner was rightly sentenced to death.

(2) He was the 'arch-villain of a villainous piece' and the brain behind a cruel conspiracy to impersonate Customs officers, pretend to question unsuspecting visi-

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tors to the city of Madras, abduct them on the pretext of interrogating them, administer sleeping pills to the unsuspecting victims, steal their cash and jewels and finally murder them. The plan was ingeniously fiendish and the appellant was its architect.

(3) Since January 19, 1975 when the Sessions Judge pronounced the sentence of death, the prisoner was kept in solitary confinement contrary to the decision of this Court in Sunil Batra v. Delhi Administration. (1) Before that, he was a 'prisoner under remand' for two years.

On these facts, the argument advanced in this Court on behalf of the prisoner was that taking away his life after keeping him in jail for ten years, eight of which were spent in illegal solitary confinement, is a gross violation of the fundamental rights guaranteed by Article 21 of the Constitution.

In Vatheeswaran, our learned Brethren have drawn sustenance to their conclusion from one judgment of the Federal Court of India, five judgments of this Court, one of the Privy Council and one of the U.S. Supreme Court. As to the meaning and implications of Article 21 of the Constitution, they have relied upon the decisions of this Court in Sunil Batra,(1) Maneka Gandhi,(2) Bachan Singh, (3) Hussainara Khatoon (4) and Hoskot.(5) The judgment in Bhuvan Mohan Patnaik (6) and Prabhakar Pandurang Sangzgiri (7) have been relied upon to show that prisoners who are under a sentence of death and detenus are entitled to certain fundamental rights.

In Piare Dusadh, (8) the Federal Court was considering appeals against the judgments of the High Courts of Allahabad, Madras, Nagpur and Patna, under the special Criminal Courts Ordinance II of 1942. In Case Nos. XLI and XLII, the High Court of Patna had
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confirmed the sentence of death passed on the appellants by the Special Judge. It was urged before the Federal Court that the death sentence imposed in those cases should be reduced to transportation for life on account of the time that had elapsed since the sentences were first pronounced. The Court observed:

> "It is true that death sentences were imposed in these cases several months ago, that the appellants have been lying ever since under threat of execution, and that the long delay has been caused very largely by the time taken in proceedings over legal points in respect of the constitution of the courts before which they were tried and of the validity of the sentences themselves. We do not doubt that this court has power, where there has been inordinate delay in executing death sentence in cases which come before it, to allow the appeal in so far as the death sentence is concerned and substitute a sentence of transportation for life on account of the time factor alone, however right the death sentence was at the time when it was originally imposed. But this is a jurisdiction which very closely entrenches on the powers and duties of the executive in regard to sentences imposed by courts. It is a jurisdiction which any court should be slow to exercise. We do not propose ourselves to exercise it in these cases. Except in Case No. XLVII (in which we are commuting the sentence largely for other reasons as hereafter appears), the circumstances of the crimes were such that if the death sentence which was the only sentence that could have been properly imposed originally, is to be commuted, we feel that it is for the executive to do so."

It was urged before the Federal Court that in England, when cases in which death sentence has been imposed are allowed to be taken to the House of Lords on account of some important legal point, the consequential delay in finally disposing of the case was treated as a ground for the commutation of the death sentence and that a similar course might well be adopted in India in cases in which substantial questions of law as to the interpretation of the Constitution Act had to be considered by the Federal Court. This argument was rejected on the ground that these were matters primarily for the consideration of the executive.
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In Case No. XLVII, which was one of the cases before the Federal Court, the appellant was convicted by a special Judge of the offence of murder and was sentenced to death on September 30, 1942. The Allahabad High Court confirmed the sentence of death but the Federal Court commuted that sentence to transportation of life. As is evident from the parenthetical portion of the passage extracted above, this was done "largely for other reasons", that is to say, for reasons other than that a long delay had intervened after the death sentence was imposed. The Federal Court commuted the death sentence on the ground that the sentence of transportation for life was more appropriate in the circumstances of the case. They added that the appellant was awaiting the execution of his death sentence for over a year.

It is thus clear that Piare Dusadh is not an authority for the proposition that if a certain number of years have passed since the imposition of a death sentence, that sentence must necessarily be commuted to life imprisonment.

In Ediga Anamma(1) this Court was hearing an appeal against the sentence of death imposed upon the appellant. Finding that the appellant was a young woman of 24 who was flogged out of her husband's house by the father-in-law, this Court reduced her sentence to life imprisonment for a variety of factual reasons peculiar to the case, like her entanglement into a sex net, that she had a young boy to look after and so on. Speaking for the Court, Krishna Iyer, J. added:

> "What may perhaps be an extrinsic factor but recognised by the Court as of humane significance in the sentencing context is the brooding horror of 'hanging' which has been haunting the prisoner in her condemned cell for over two years. The Sessions Judge pronounced the death penalty on December 31, 1971, and we are now in February 1974. This prolonged agony has ameliorative impact according to the rulings of this Court."

Piare Dusadh was regarded by the Court as a leading case on this point. We have already adverted to the circumstances in which the death sentence was commuted to transportation for life in that case.

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In the other cases referred to in Vatheeswaran, (supra) this Court was hearing appeals against the judgments of High Courts confirming the sentence of death. In those cases, the sentence of death was commuted into life imprisonment by this Court by reason of the long interval which had elapsed either since the imposition of the death sentence or since the date of the occurrence.

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, consequent upon the dismissal of the prisoner's Special Leave Petition or Appeal by this Court. Traditionally, subsequent events are taken into account in the area of civil law. There is no reason why they should not receive due consideration in other jurisdictions, particularly when their relevance on the implementation or execution of judicial verdicts is undeniable. Undoubtedly, principles analogous to Res-judicata govern all judicial proceedings but when new situations emerge, particularly factual, after a verdict has assumed finality in the course of the hierarchical process, advertence to those situations is not barred on the ground that a final decision has been rendered already. That final decision is not a decision on new facts. Courts are never powerless to do justice, that is to say, to ensure that the processes of law do not result in undue misery, suffering or hardship. That is why, even after the final seal of approval

is placed upon a sentence of death, this Court has exercised its power to direct, ex debito justiciae, that though the sentence was justified when passed, its execution, in the circumstances of the case, is not justified by reason of the unduly long time which has elapsed since the confirmation of that sentence by this Court. Some of us dealing with this case have been parties to decisions directing, in appropriate cases, that the death sentence shall not be executed by reason of supervening circumstances.

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In Vatheeswaran, the prisoner was under the sentence of death for over eight years and was in the jail for two years before that. After the death sentence was pronounced upon him, he was kept in solitary confinement, contrary to this Court's ruling in Sunil Batra. These supervening considerations, inter alia, were unquestionably germane to the decision whether the death sentence should be allowed to be executed. The Court took them into account and commuted the sentence to life imprisonment.

Like our learned Brethren, we too consider that the view expressed in this behalf by Lord Scarman and Lord Brightman in the Privy Council decision of Neol Riley (1) is, with respect, correct. The majority in that case did not pronounce upon this matter. The minority expressed the opinion that the jurisprudence of the civilized world has recognized and acknowledged that prolonged delay in executing a sentence of death can make the punishment when it comes inhuman and degrading: Sentence of death is one thing; sentence of death followed by lengthy imprisonment prior to execution is another. 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 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 fact that it is permissible to impose the death sentence in appropriate cases does not, however, lead to the conclusion that the sentence must be executed in every case in which it is upheld, regardless of the events which have happened since the imposition or the upholding of that sentence. The inordinate delay in the execution of the sentence is one circumstance which has to be taken into account

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while deciding whether the death sentence ought to be allowed to be executed in a given case. In his sociological study called 'Condemned to Die, Life Under Sentence of Death', Robert Johnson says:

> "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 rare, 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 live 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 person's adjustment. The death row inmate must achieve equilibrium with few coping supports. In the process, he must somehow maintain his dignity and integrity" (page 4)

"Death row is a prison within a prison, physically and socially isolated from the prison community and the outside world. Condemned prisoners live twenty-three and one-half hours alone in their cells..." (page 47)

The author proceeds to say:

"Some death row inmates, attuned to the bitter irony of their predicament, characterize their existence as a living death and themselves as the living dead. They are speaking symbolically, of course, but their imagery is an appropriate description of the human experience in a world where life is so obviously ruled by death. It takes

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into account the condemned prisoners' massive deprivation of personal autonomy and command over resources critical to psychological survival; tomblike setting, marked by indifference to basic human needs and desires; and their enforced isolation from the living, with the resulting emotional emptiness and death." (page 110)

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. It is well-established that a prisoner cannot be tortured or subjected to unfair or inhuman treatment. (See Prabhakar Pandurang Sangzgiri, Bhuvan Mohan Patnaik and Sunil Batra). It is a logical extension of the self-same principle that the death sentence, even if justifiably imposed, cannot be executed if

supervening events make its execution harsh, unjust or unfair, Article 21 stands like a sentinel over human misery, degradation and oppression. Its voice is the voice of justice and fairplay. That voice can never be silenced on the ground that the time to heed to its imperatives is long since past in the story of a trial. It reverberates through all stages-the trial, the sentence, the incarceration and finally, the execution of the sentence.

In cases too numerous to mention, this Court has released undertrial prisoners who were held in jail for periods longer than the period to which they could be sentenced, if found guilty: this jurisdiction relates to pre-trial procedure. In Hussainara Khatoon (supra) and Champalal(1), speedy trial was held to be an integral part of the

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right conferred by Article 21: this jurisdiction relates to procedure during the trial. In Prabhakar Pandurang Sangzgiri, the Court upheld the right of a detenu, while in detention, to publish a book of scientific interest called 'Inside the Atom'; in Bhuvan Mohan Patnaik, it was held that prisoners had to be afforded reasonable human conveniences and that the live-wire mechanism fixed on prison-walls in pursuance of administrative instructions could not be justified as reasonable if it violated the fundamental rights of the prisoners; in Sunil Batra, solitary confinement and bar-fetters were disapproved as normal modes of securing prisoners. These three cases are illustrative of the Court's jurisdiction to review prison regulations and to regulate the treatment of prisoners while in jail. And, last but not the least, as we have stated already, death sentences have been commuted to life imprisonment by this Court either while disposing of Special Leave Petitions and Appeals or while dealing with Writ Petitions filed after the unsuccessful termination of the normal processes of litigation: this jurisdiction relates to the execution of the sentence. This then is the vast sweep of Article 21.

What we have said above delineates the broad area of agreement between ourselves and our learned Brethren who decided Vatheeswaran. We must now indicate with precision the narrow area wherein we feel constrained to differ from them and the reasons why. Prolonged delay in the execution of a death sentence is unquestionably an important consideration for determining whether the sentence should be allowed to be executed. But, according to us, no hard and fast rule can be laid down as our learned Brethren have done that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death". This period of two years purports to have been fixed in Vatheeswaran after making "all reasonable allowance for the time necessary for appeal and consideration of reprieve". With great respect, we find it impossible to agree with this part of the judgment. One has only to turn to the statistics of the disposal of cases in High Court and the Supreme Court to appreciate that a period far exceeding two years is generally taken by those Courts together for the disposal of matters involving even the death sentence. Very often, four or five years elapse between the imposition of death sentence by the Sessions Court and the disposal of the Special Leave Petition or an Appeal by the Supreme Court in that matter. This is apart from the time which the President or the Governor, as the case may be, takes to consider petitions filed

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under Article 72 or Art. 161 of the Constitution or the time which the Government takes to dispose of applications filed under sections 432 and 433 of the Code of Criminal Procedure. It has been the sad experience of this Court that no priority whatsoever is given by the Government of India to the disposal of petitions filed to the President under Article 72 of the Constitution. Frequent reminders are issued by this Court for an expeditious disposal of such petitions but even then the petitions remain undisposed of for a long time. Seeing that the petition for reprieve or commutation is not being attended to and no reason is forthcoming as to why the delay is caused, this Court is driven to commute the death sentence into life imprisonment out of a sheer sense of helplessness and frustration. Therefore, with respect, the fixation of the time limit of two years does not seem to us to accord with the common experience of the time normally consumed by the litigative process and the proceedings before the executive.

Apart from the fact that the rule of two years runs in the teeth of common experience as regards the time generally occupied by proceedings in the High Court, the Supreme Court and before the executive authorities, we are of the opinion that no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence, the sentence must be substituted by the sentence of life imprisonment. There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated. A convict is undoubtedly entitled to pursue all remedies lawfully open to him to get rid of the sentence of death imposed upon him and indeed, there is no one, be he blind, lame, starving or suffering from a terminal illness, who does not want to live. The Vinoba Bhaves, who undertake the "Prayopaveshana" do not belong to the world of ordinary mortals. Therefore, it is understandable that a convict sentenced to death will take recourse to every remedy which is available to him under the law, to ask for the commutation of his sentence, even after the death sentence is finally confirmed by this Court by dismissing his Special Leave Petition or Appeal. But, it is, at least relevant to consider whether the delay in the execution of the death sentence is attributable to the fact that he has resorted to a series of untenable proceedings which have the effect of defeating the ends of justice. It is not uncommon that a series of review petitions and writ petitions are filed in this Court to challenge judgments and orders which have assumed finality, without any seeming justification. Stay orders are obtained in those proceedings and then, at the end

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of it all, comes the argument that there has been prolonged delay in implementing the judgment or order. We believe that the Court called upon to vacate a death sentence on the ground of delay caused in executing that sentence must find why the delay was caused and who is responsible for it. If this is not done, the law laid down by this Court will become an object of ridicule by permitting a person to defeat it by resorting to frivolous proceedings in order to delay its implementation And then, the rule of two years will become a handy tool for defeating justice. The death sentence should not, as far as possible, be imposed. But, in that rare and exceptional class of cases wherein that sentence is upheld by this Court, the judgment or order of this Court ought not to be allowed to be defeated by

applying any rule of thumb.

Finally, and that is no less important, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula as a matter of "quod erat demonstrandum".

In the case before us, the sentence of death was imposed upon the petitioners by the learned Sessions Judge, Sangrur, on November 26, 1977. It was upheld by the High Court on July 18, 1978. This Court dismissed the Special Leave Petition filed by the petitioners on March 5, 1979. The matter is pending in this Court since then in one form or another, by reason of some proceeding or the other. The last of the writ Petitions filed by the petitioners was dismissed by this Court on August 24, 1981. We do not know why the sentence imposed upon the petitioners has not been executed for more than a year and half. The Government of Punjab must explain that delay. We are of the opinion that, in the instant case, the sentence of death imposed upon the petitioners by the Sessions Court and which was upheld by the High Court, and this Court, cannot be vacated merely for the reason that there has been a long delay in the execution of that sentence.

On the date when these Writ Petitions came before us, we asked the learned counsel for the petitioners to argue upon the

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reasons why, apart from the dealy caused in executing the death sentence, it would be unjust and unfair to execute that sentence at this point of time. Every case has to be decided upon its own facts and we propose to decide this case on its facts. After hearing the petitioners' counsel, we will consider the question whether the interests of justice require that the death sentence imposed upon the petitioners should not be executed and whether, in the circumstances of the case, it would be unjust and unfair to execute that sentence now

We must take this opportunity to impress upon the Government of India and the State Governments that petitions filed under Articles 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 Cri. Writ Petition Nos.345-348 of 1983, from which it would appear that petitions filed under Art. 161 of the Constitution are pending before the Governor of Jammu & Kashmir for anything between 5 to 8 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 preconditioned by the duty to be fair and quick. Delay defeats justice.

On the question as to whether the death sentence should not be allowed to be executed in this case, we shall pronounce later after hearing the parties. In the meanwhile, notice will go to the Government of Punjab.

Order accordingly.

H.L.C.

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