SMT. SHASHI NAYAR

v.

UNION OF INDIA AND ORS.

OCTOBER 29,1991

[K.N. SINGH, P.B.SAWANT. N.M. KASLIWAL, B.P. JEEVAN REDDY AND G.N.RAY, JJ.]

Constitution of India, 1950: Article 32—Writ petition by wife of condemned prisoner—Capital punishment—Justification of—Hanging by neck—Scientific and less painful.

Constitution of India, 1950:Article 21—Death penalty—Awarding—Not unconstitutional.

The petitioner's husband was tried under Section 302, IPC for having killed his father and step brother.

The Sessions Judge convicted awarding sentence of death.

On appeal, the High Court confirmed the death penalty against which a special leave petition before this Court was filed and same was also dismissed.

The Review Petition filed by him was also dismissed.

His mercy petitions filed before the Governor of Jammu & Kashmir and the President of India, were rejected. He challenged the order of the President of India rejecting the mercy petition before this Court in a writ petition under Article 32 of the Constitution, which was also dismissed.

Another writ petition under Article 226 of the Constitution was filed before the Jammu & Kashmir High Court for quashing the sentence imposed on him. The High Court dismissed the same.

The husband of this petitioner, the condemned prisoner, was to be hanged on 26.10.1991.

The petitioner, filed the present petition under Article 32 of the Constitution challenging the validity of the capital punishment

A with a prayer for the quashing of the sentence awarded to her husband.

The petition was entertained by a Division Bench on 25.10.91 and the matter was referred to the Constitution Bench for consideration staying the execution of the condemned prisoner.

B

Petitioner contended that capital punishment was violative of Article 21 of the Constitution of India as the Article absolutely prohibits deprivation of a person's life; that capital punishment did not serve any social purpose and the barbaric penalty of death should not be awarded to any person as it had no deterrent effect; that the C penalty of death sentence had a dehumanising effect on the close relations of the victims and it deprived them of their fundamental rights under Article 21 of the Constitution, to a meaningful life; that the execution of capital punishment by hanging was barbaric and dehumanising and it should be substituted by some other decent and less painful method in executing the sentence.

D

Dismissing the petition, this Court,

HELD: 1. The capital punishment as provided by the law is to be awarded in rarest of the rare cases. The procedure established E by law for awarding the death penalty is reasonable and it does not in any way violate the mandate of Article 21 of the Constitution. Hanging by neck was a scientific and one of the least painful methods of execution of the death sentence. [106 G, 107 F]

2. The death penalty has a deterrent effect and it does serve a F social purpose, having regard to the social conditions in our country the stage was not ripe for taking a risk of abolishing it. [107 C-D]

3. A judicial notice can be taken of the fact that the law and order situation in the country has not only not improvided since 1967 but has deteriorated over the years and is fast worsening to- G day. The present is, therefore, the most inopportune time to reconsider the law on the subject. [107 E]

Jagmohan Singh v. *State of U.P.*, [1973] 1 SCC 20; *Bachan Singh* v. *State of Punjab*, [1979] 3 SCC 727; *Deena alias Deen Dayal & Ors. etc. etc.* v. *Union of India & Ors. etc. etc.*, [1983] 4 SCC 645, referred to.

H

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 1339 of 1991. A

(Under Article 32 of the Constitution of India).

R.K. Jain, A. Mariarputham, Ms. Aruna Mathur, Udai Lalit, Shankar C. Ghosh and Ms. Chanchal Ganguli for the Petitioner. B

The Judgment of the Court was delivered by

K.N. SINGH, J. Smt. Shashi Nayar wife of Raj Gopal Nayar who has been awarded death sentence for offence under Section 302 of the Indian Penal Code ['IPC' for short] has approached this Court by means of this petition under Article 32 of the Constitution challenging the constitutional validity of death penalty. C

Raj Goapal Nayar, the petitioner's husband was tried for offence under Section 302, IPC for having killed his father and step brother. The Sessions Judge by his judgment and order dated 24.4.1986 convicted Raj Gopal Nayar and awarded sentence of death. On appeal, the High Court D confirmed the death penalty and dismissed Raj Gopal's appeal against the order of the Sessions Judge. Raj Gopal thereafter filed a special leave petition before this Court challenging the judgment and order of the Sessions Judge and the High Court, but the special leave petition was also dismissed by this Court. Review petition filed by him was also dismissed. Consequently, his conviction and the sentence of death stood confirmed E by all the courts. Thereupon, he filed mercy petitions before the Governor of Jammu & Kashmir and the President of India, but the same were rejected. He challenged the order of the President of India rejecting the mercy petition before this Court by means of a writ petition under Article 32 of the Constitution, but the same was also dismissed. Another writ petition under Article 226 of the Constitution was filed before the Jammu F & Kashmir High Court for quashing the sentence imposed on him but the same was also rejected. As the legal proceedings before the court failed, he was to be hanged on 26.10.1991. Smt. Shashi Nayar, the petitioner, thereupon filed the present petition under Article 32 of the Constitution before this Court challenging the validity of the capital punishment with a prayer for the quashing of the sentence awarded to Raj Gopal Nayar. G The petition was entertained by a Division Bench on 25.10.1991 and the matter was referred to the Constitution Bench for consideration, and meanwhile the execution of the condemned prisoner was stayed.

Mr. Ravi K. jain, learned counsel for the petitioner made the following submissions: H

A (1) Capital punishment is violative of Article 21 of the Constitution of India as the Article absolutely prohibits deprivation of a person's life.

(2) Capital punishment does not serve any social purpose and in the absence of any study, the barbaric penalty of death should not be awarded to any person as it has no deterrent effect.

B

(3) The penalty of death sentence has a dehumanising effect on the close relations of the victims and it deprives them of their fundamental rights under Article 21 of the Constitution, to a meaningful life.

C (4) The execution of capital punishment by hanging is barbaric and dehumanising. This should be substituted by some other decent and less painful method in executing the sentence.

The questions raised by Shri Jain have already been considered by this Court in detail on more than one occasion. In *Jagmohan Singh* v. *State of U.P.*,[1973] 1 SCC 20 and in *Bachan Singh* v. *State of Punjab,* D [1979] 3 SCC 727, this Court has on a detailed consideration, held that the capital punishment does not violate Article 21 of the Constitution. In *Bachan Singh's* case (supra), the court considered all the questions raised in this petition except question No.4, and the majority judgment rejected the same by a detailed reasoned order. Since we fully agree with those reasons, we do not consider it necessary to reiterate the same.

E

Learned counsel further urged that the view taken in *Jagmohan Singh's* and *Bachan Singh's* cases (supra) is incorrect and it requires reconsideration by a larger Bench. He, therefore, requested us to refer the matter to a larger Bench as the question relates to the life of a citizen. He urged that the award of death penalty is a serious matter as it deprives a F citizen of his life in violation of Article 21 of the Constitution and as such the court should consider the matter again. We are fully conscious of the effect of the award of capital punishment. But we are of the opinion that the capital punishment as provided by the law is to be awarded in rarest of the rare cases as held by this Court. The procedure established by law for awarding the death penalty is reasonable and it does not in any way G violate the mandate of Article 21 of the Constitution. Since we agree with the view taken by the majority in *Bachan Singh's* and *Jagmohan Singh's* cases (supra), we do not find any valid ground to refer the matter to a larger Bench. Learned counsel urged that the majority opinion in *Bachan Singh's* case (supra) was founded upon the 35th Report of the Law Commission submitted in 1967, which summarises the recommendations in the H following words:

"Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture India cannot risk the experiment of abolition of capital punishment." A B

Shri Jain urged that the above Report indicates that in 1967 the Law Commission was of the opinion that the country should not take the risk of experimenting abolition of capital punishment. However, since then much water has flown. Further, there is no empirical study before the Court to show that the situation which prevailed in 1967 is still continuing. Hence, the Court should reconsider the matter. We do not find any merit in this submission. The death penalty has a deterrent effect and it does serve a social purpose. The majority opinion in *Bachan Singh's* case (supra) held that having regard to the social conditions in our country the stage was not ripe for taking a risk of abolishing it. No material has been placed before us to show that the view taken in *Bachan Singh's* case(supra) requires reconsideration. Further, a judicial notice can be taken of the fact that the law and order situation in the country has not only not improved since 1967 but has deteriorated over the years and is fast worsening today. The present is, therefore, the most inopportune time to reconsider the law on the subject. Hence the request for referring the matter to a larger Bench is rejected. C D E

As regards the method of execution of the capital punishment by hanging, this Court considered the same in detail in *Deena alias Deen Dayal & Ors. etc. etc.*, v. *Union of India & Ors. etc. etc.*, [1983] 4 SCC 645 and held that hanging by neck was a scientific and one of the least painful methods of execution of the death sentence. We find no justification for taking a different view. Shri Jain, however, brought to our notice that a learned Judge of this Court while sitting during vacation had issued notice to the State on the question as to whether the execution by hanging is a cruel and unusual procedure. Hence, he urged that we should entertain this petition and reconsider the question. Since the question of the mode of execution of capital punishment has already been considered in detail by this Court in *Deen Dayal's* case (supra), we do not find any good reason to take a different view. F G

The question of reasonableness in the award of the capital punishment to Raj Gopal Nayar has been considered by the High Court and this H

A Court at various stages and consistently it has been answered against the prisoner. Hence the petition fails and is accordingly dismissed. Interim relief order dated 25.10.1991 is vacated.

V.P.R. Petition dismissed.