

(2012) 02 SC CK 0120
In the Supreme Court Of India
Case No : SLP (Criminal) No. 1105 of 2012

Mahindra Nath Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Constitution of India, 1950 — Article 32
Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 3 SCALE 533

Hon'ble Judges : Swatanter Kumar, J;A.K. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Shyam Divan, learned senior Counsel appearing for the Petitioner and Mr. R.F. Nariman, learned Solicitor General appearing for the Union of India. We have also heard Mr. Avijit Roy, Learned Counsel appealing for the State of Assam.

2. The Petitioner has been convicted u/s 302 of the Indian Penal Code and has been sentenced to death. He committed this offence while on bail in another murder trial in which he was also convicted. The conviction and the death sentence has been confirmed by the High Court as well as this Court. The judgment of this Court was delivered on 14.5.1999 in Criminal Appeal No. 700 of 1998. Thereafter, Mercy Petitions were filed by the Petitioner before the Governor of Assam as well as the President of India. The Governor rejected the Mercy Petition on 7.4.2000 and the President of India rejected the Mercy Petition on 8.5.2011. On account of long delay in the execution of the death sentence, the Petitioner moved the Gauhati High Court in W.P.(Crl.) No. 35/2011 for commutation of the death sentence to life imprisonment relying on Constitution Bench judgment of this Court in Triveniben Vs. State of Gujarat, . The High Court has, however, dismissed the writ petition by the impugned order dated 30.1.2012.

3. Delivering the majority judgment in *Smt. Triveniben v. State of Gujarat* (supra), Ojha, J. held that undue long delay in execution of sentence of death will entitle the condemned person to approach this Court under Article 32 of the Constitution of the India but this Court will examine the nature of the delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusion reached by the Court while finally maintaining the sentence of death. In the concurring judgment, K. Jagannatha Shetty, J., has, however, observed that "if the Court wants to have a look at the grievance as to delay, it is needless to state, that there should not be any delay either in listing or in disposal of the matter. The person who complains about the delay in the execution should not be put to further delay".

4. Accordingly, when this matter was taken up by us as a mentioned matter on 7.2.2012, we directed notice only to the Union of India and State of Assam and directed the matter to be listed for final disposal on 9.2.2012.

5. When the matter was taken up for hearing today, it was brought to our notice that similar matters are pending in this Court before other Benches and one such matter is Writ Petition(Crl.) D No. 16039 of 2011. In the circumstances, we think it appropriate to direct the Registry to place this matter before Hon'ble the Chief Justice of India for appropriate orders as to whether all the similar matters need to be heard by the same Bench, and if so, which Bench and on what date.

6. Since we have not stayed the execution of the death sentence in the present case and the matter requires urgent consideration, the Registry will forthwith place the matter before Hon'ble the Chief Justice of India for orders.