

Before

THE HONORABLE HIGH COURT OF PURVA PRADESH

2016

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:

HUMAN RIGHTS ORGANISATION - - - - - PETITIONER

V.

STATE OF PURVA PRADESH - - - - - RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT

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¶	Paragraph
&	And
AIR	All India Reporter
AP	Andhra Pradesh
All.	Allahabad
Anr.	Another
Bom.	Bombay
CCR	Current Criminal Reports
Co.	Company
CrPC	Criminal Procedure Code
Crl.A.	Criminal Appeal
Edn. / Ed.	Edition
FIR	First Information Report
Govt.	Government
Hon`ble	Honorable
I.L.R	Indian Law Reporter
Id.	Ibid
L.J.	Law Journal
Ltd.	Limited
Mr.	Mister

Mad.	Madras
MP	Madhya Pradesh
No.	Number
HC	High Court
Ors.	Others
Pg.	Page
Raj.	Rajasthan
Re.	Reference
Pvt.	Private
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SC	Supreme Court
Sd/	Signed
UP	Uttar Pradesh
UOI	Union Of India
V.	Versus
Vol.	Volume

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STATEMENT OF JURISDICTION

The counsels representing the petitioner have endorsed their pleadings before the Hon`ble High Court of Purva Pradesh under Article 226 of the Constitution of Indica in which the Hon`ble Court has the jurisdiction.¹

The present memorandum sets forth the facts, contentions and arguments.

¹Article 226, in The Constitution Of India 1950:

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

STATEMENT OF FACTS

For the sake of brevity and convenience of the Hon`ble Court the facts of the present case are summarized as follows:

1. Mr. X murdered his wife in a drunken rage at his house. The neighbours caught hold of Mr. X and handed him to the police. Mr X was tried by the Court and convicted of offences punishable under S.302 of IPC and sentenced to life imprisonment in 1984.
2. Mr. X was sent to the central prison in Purva Pradesh. While he was there, he became close friends with his cellmate, Mr Y. With time, X and Y became friends and Y suggested that X marry his daughter.
3. In the year 1987, X and Y obtained parole from the prison and the marriage between X and Y's daughter was solemnized. X's wife delivered twin baby boys.
4. However, by the year 1990, X had started suspecting the fidelity of his wife. One night, X was seized by rage. He seized an agricultural implement and hacked his wife to death. He then killed his two children who were sleeping.
5. According to the neighbours who rushed in, X was trying to commit suicide by hanging himself when they discovered him and overpowered him.
6. The lawyer did not cross examine witnesses of the prosecution nor did he produce any evidence on behalf of the defence. The Sessions Court sentenced X under S.302 and 303 of the IPC to death.
7. The matter was referred to a third judge of the High Court when division bench could not come on consensus, third judge felt that there was no discretion in the matter and confirmed the sentence of death. Mr X submitted a mercy petition to the President of Indica which came to be rejected in the year 1996.
8. Due to oversight on behalf of the prison authorities, Mr X was not kept in the death row cells at the prison, it is only in the year 2011, that the same was discovered and the prisoner was sent to death row confinement.
9. On 01.01.2013, the black warrant for the execution of Mr X was issued by the appropriate court. The very next day, lawyers representing a human rights organisation filed a writ petition claiming that Mr X cannot be executed on the grounds that his trial is vitiated by illegality and his execution would violate several provisions of the Constitution of Indica.

QUESTIONS PRESENTED

The following questions are presented before this Hon'ble court for adjudication in the instant matter:

- I. WHETHER THE ACT OF MR. X FALLS UNDER THE CATEGORY OF 'RAREST OF RARE' CASES?**
- II. WHETHER THE TRIAL OF THE ACCUSED WAS VITIATED BY ILLEGALITY?**
- III. WHETHER THE DELAY IN EXECUTION OF DEATH SENTENCE VIOLATES ARTICLE 21 AND CAN BE A SOLE GROUND IN COMMUTING DEATH SENTENCE OF MR. X?**

SUMMARY OF ARGUMENTS

I. ACT OF MR. X FALLS UNDER THE CATEGORY OF ‘RAREST OF RARE’ CASES.

Act of Mr. X falls under the category of ‘rarest of rare’ cases because of the nature & circumstances of the crime and the provisions which are manner of commission of the crime, socially abhorrent nature of the crime and such act which shocks the collective conscience of the community.

II. TRIAL OF THE ACCUSED WAS NOT VITIATED BY ILLEGALITY.

The trial of the accused was fair and legal from commencement to conclusion. Though defense lawyer was disinterested but this fact does not establish that his trial was not illegal. It is irrelevant that section 303 of IPC is unconstitutional because still his conviction is legal under section 302 of IPC and doctrine of ‘rarest of rare’ cases.

III. DELAY IN EXECUTION OF DEATH SENTENCE NOT VIOLATES ARTICLE 21 AND IT CANNOT BE A GROUND IN COMMUTING DEATH SENTENCE OF MR. X.

Delay cannot be a ground for commutation of death sentence because delay can only be taken as a ground for commutation of death sentence when it is beyond prisoner’s control but in the present case the delay has been caused by Mr. X himself.

PLEADINGS AND AUTHORITIES

I. ACT OF MR. X MURDERING HIS WIFE FALLS UNDER THE DOCTRINE OF “RAREST OF RARE” CASES.

1. The present act of Mr. X killing his wife and two children falls into the category of “rarest of rare” cases. It is significant to mention that there is no hard and fast criterion of “rarest of rare” cases and special circumstances has to be taken into consideration.² However, Apex Court has time to time enumerated certain factors which have to be taken into consideration by court for putting an incident in category of “rarest of rare case” which are: manner of commission of the crime, socially abhorrent nature of the crime and such act which shocks the collective conscience of the community.³ In other words, it is the nature and gravity of the crime which are germane for consideration of appropriate punishment in a criminal trial.⁴ In the present case, act of the accused fulfils all the criterion of the doctrine of “rarest of rare” cases.

- **Manner of commission of the crime**

2. Hon’ble Apex Court in the case of *Machhi Singh v. State of Punjab*⁵ described meaning of manner of murder and stated that when murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community then such act is one of the aspects of the doctrine of “rarest of rare” cases. Court described some instances and one of them was that when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner. In the present matter accused hacked his wife and children, which means he cut them into pieces. Thus, manner of commission of crime by accused i.e. hacking of his wife and children to death⁶ certainly make the present case falls in the category of “rarest of rare” cases.

- **Socially abhorrent nature of the crime**

3. In the present case act of accused is abhorrent because he hacked his own wife and innocent children who could not have provided even an excuse, much less a provocation, for murder. Apex Court has already stated that killing children is an act of brutality and sufficient to

²Kehar Singh v. State (Delhi Admn.), AIR 1988 SC 1883.

³Saibanna v. State Of Karnataka, App. (Crl.) 656 of 2004; *See also*: Machhi Singh v. State of Punjab, AIR1983 SC 957.

⁴Yakub Abdul Razak Menon v. State of Maharashtra, 2015 (8) Scale 339.

⁵AIR 1983 SC 957; *See also*: Bachhan Singh v. State of Punjab, AIR 1980 SC 898.

⁶Sudam v. State of Maharashtra, (2011) 7 SCC 125.

apply doctrine of “rarest of rare” cases.⁷ In the present case, accused hacked his own children with agricultural implement which clearly establishes that his act falls under the purview of “rarest of rare” cases.

• **Act of accused shocks the collective conscience of the community.**

4. Killing someone is a different case but when an individual kills his wife and infant children then such act directly affects the collective conscious of the society. Father is considered protector of his children; he is always in the position of trust. However, in the present case father became killer of his own infant children and cut them into pieces. Killing innocent children is in itself an act of brutality but if father has killed his own infant children then certainly such act shocks the collective conscious of the community. Therefore, act of accused shocks the collective conscience of the community and falls under the purview of “rarest of rare” cases⁸.
5. In addition to the above, there are no mitigating factors in the present case. There are only aggravating factors like accused was habitual drunker⁹, he had killed his both the wives in drunken rage, pattern of murder is such that there is reasonable probability of repetition of such act¹⁰. Hence, present matter of the accused falls into the category of “rarest of rare” cases.

II. THE TRIAL OF THE ACCUSED WAS NOT VITIATED BY ILLEGALITY.

6. It is humbly submitted before this Hon`ble court that trial of the accused was never vitiated by illegality. Trial of the accused was fair and legal from commencement to the conclusion. Firstly, though defence lawyer was disinterested but this fact does not establish that his trial was illegal. Secondly, conviction of Me. X by Sessions Court is completely legal as Section 303 of IPC is irrelevant in present case because even if section 303 is set aside from the present trial, still Mr. X would have been certainly sentenced to death under section 302 of IPC considering nature of the crime involved in the present matter. Finally, third judge of the High Court gave due consideration to the matter and then only decided not to use his discretion while confirming the death sentence of the accused.

A. Performance of counsel had no adverse effect on the final conclusion of the trial.

7. In the present case, it has been already established that it was prima facie Mr. X has committed the murder and case of the accused falls under the category of rarest of the rare

⁷Balwant Singh v. State of Punjab, AIR 2003 SC 3617.

⁸Balwant Singh and Ors.v. State of Punjab and Anr., 1983 (1) C.L.R. 473.

⁹Bhagwan Tukaram Dange v. State of Maharashtra, App. (Cr.) No.1823 of 2008 (2014)

¹⁰Jagmohan Singh v. State of UP, AIR 1973 SC 947.

cases. In such an open case, it is not possible for the defence counsel to produce even single evidence. Consequently, non-production of the evidence by defence counsel nowhere establishes his ineffectiveness.

8. Furthermore, defence counsel did not cross examine witnesses of the prosecution which is an omission of the important exercise in the trial. However, in order to establish that trial became illegal due to this, it has to be established that if counsel had performed adequately, the result would have been different,¹¹ which means either Mr. X would have been acquitted or given lesser punishment. In the present case it has been already established that matter of the accused was already an open and shut case. Thus, omission of cross examination by defence counsel had no prejudice to the trial of Mr. X.
9. Therefore, also, non-production of the evidence by defence counsel and omission of cross examine does not establish that conduct of counsel had adverse effect on the final conclusion of the trial which is death sentence.

B. Decision of the Sessions Court is legal.

10. In the present case, Sessions Court convicted Mr. X under sections 302 and 303 of IPC. Though section 303 is unconstitutional, it is pertinent to mention here that consideration of section 303 is irrelevant in present case. Sessions Court convicted him under section 302 also which is a relevant provision here. It has been already established that matter of Mr. X falls in the category of rarest of the rare cases, thus, even if we set aside section 303 of IPC, still he would be sentenced to the death under section 302 of IPC.
11. It is a settled position of law that after removing illegal provisions from the ruling of the Court, if punishment remains same then such ruling will be valid and removed provision would be considered mere an irregularity in the decision.¹² The Code of Criminal Procedure, like all other procedural laws, is to further ends of justice and not to frustrate it by introduction of endless technicalities.¹³
12. Therefore, in present case there is no relevancy of section 303 of IPC because even after setting aside section 303 from the trial, quantum of punishment remains exactly same under section 302 of IPC due to the nature of the crime.

C. Confirmation of death sentence by the High Court bears no illegality.

¹¹Strickland v. Washington, 466 U.S. 668 (1984); *See also*: State of Delhi v. Mohd. Afzal Guru, 2003 VIIAD Delhi 1.

¹²State of Chhattisgarh v. Hariram Ray, App. (Cr.) No. 545 & 628 of 2013 (2015); *See also*: Suresh Kumar Ray v. Raju @ Rajesh Ray, 2013 CriLJ 4671.

¹³William Slaney v. State of M.P., AIR 1956 SC 116.

13. In the present case, confirmation of death sentence by the High Court is completely legal in the eyes of the law. Referred judge of the High Court, after analyzing the applied provisions and nature of the crime, decided not to use his judicial discretion.
14. Judicial discretion can be understood through section 366 of Cr.P.C. because High Court confirms the death sentence under this provision referred by Sessions Court. However, if the matter falls in any of the exceptions to the 'rarest of rare' cases, the judge may exercise its judicial discretion while imposing life imprisonment in place of death sentence.¹⁴ Thus, if any matter falls under the exceptions of “rarest of rare” cases, High Court judge can alter death punishment by using his discretion or if he feels that referred case is “rarest of rare” cases he can confirm the death sentence by deciding not to use his discretion.
15. In the present case it is clearly given that judge felt not to intervene once he analyzed the nature of the crime and section 302. If he would have blindly relied on the applied provisions specifically section 303 of IPC then it was not possible for him to analyze the nature of the crime because this provision clearly excludes judicial discretion.
16. Therefore, it can be safely inferred that after setting aside section 303, third judge considered Mr. X's matter as rarest of the rare under section 302 of IPC and decided not to use his judicial discretion by confirming the death sentence.

III. DELAY WAS NOT BEYOND THE CONTROL OF ACCUSED AND EXECUTION OF DEATH SENTENCE WILL NOT VIOLATE ARTICLE 14 & 21.

17. It is humbly submitted before this Hon`ble court that delay was not beyond the control of accused and execution of death sentence will not violate Article 14 & 21. The mercy petition has been rejected as per Article 72 of COI and settled position of Law.

A. Delay was not beyond the control of accused.

18. As per the settled position of law inordinate and unexplained delay is one of the grounds of commutation of death sentence. However, delay caused by circumstances, should be beyond the prisoner's control.¹⁵ In the present case, accused waited for 15 years to be discovered by prison authorities. In the meantime he never tried to know about his status in prison.
19. In the present case it has been claimed that accused has faced mental agony because of delay in execution. It is given that because of the oversight of prison authorities Mr. X was not kept in the death row cells at the prison. If he would have asked about his status from prison authorities anytime during those 15 years, certainly prison authorities would come to know

¹⁴Ramnaresh and Ors. v. State of Chhattisgarh, AIR 2012 SC 1357.

¹⁵Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.

about this oversight and would have send him in the death row cells at the prison from where without any inordinate delay he would have been executed. However, he remained silent so that he can save himself from execution and now petitioner on behalf of Mr. X wants to have benefit of delay in execution.

20. Aforesaid mention submission clearly establishes that Mr. X is not honest on his part.
21. Therefore, commutation of death sentence on a ground of delay claimed by petitioner has no significance because this delay was caused by Mr. X`s ignorance. Consequently, in the present case, there is no applicability of Article 21 of COI because the delay was caused by ignorance of Mr. X about his status in the prison, thus negating him to claim his right.

B. Execution of death sentence does not violate Mr. X`s fundamental right under Article 14.

22. It has been already established that the present case was decided on the basis of Section 302 of IPC and the nature of the crime leaving no possibility to adjudge it as an exception to the doctrine of “rarest of the rare” cases.
23. It is imperative to note that in the present case there is no relevancy of section 303 of IPC because after setting aside section 303, quantum of punishment remains same under section 302 of IPC due to the nature of the crime.
24. Since, section 303 of IPC has not been taken into consideration while sentencing Mr. X to death punishment, the question of violation of Mr. X`s fundamental right under Article 14 of COI does not hold any relevance and execution of death sentence cannot be held unconstitutional.

C. Mercy petition rejected by President of Indica is as per Article 72 and settled position of Law.

25. In the present case President has taken into consideration relevant materials put before him i.e., the nature of the crime, circumstances under which the crime was committed, has applied his mind and then only he passed the order of rejection of mercy petition, non-arbitrarily.
26. It is a settled position of law that courts can only judicially review the materials on the basis of which mercy petition was rejected or accepted as the power of President under Article 72 of Constitution is beyond judicial scrutiny per se.¹⁶
27. The judicial trend over the years depicts that to challenge the decision of President it has to be evident that he has not considered the relevant materials or not applied his mind. Thus, in

¹⁶Epuru Sudhakar v. Govt. of A.P., AIR 2006 SC 3385; *See also*: Shatrughan Chauhan v. Union of India, (2014)3 SCC 1

the present matter President has used his powers under Article 72 in an unbiased, proper and non-arbiter manner.

28. Therefore, the above arguments clearly establish that trial was not vitiated by illegality and the execution would not lead to violation of any provision of the Constitution of India.

PRAYER FOR RELIEF

Wherefore, in light of the facts stated, issues raised, authorities cited & arguments advanced, may this Hon`ble Principal District and Sessions Court be pleased to *adjudge & declare that*:

1. Trial of Mr. X is not vitiated by illegality.
2. There is no violation of Article 14 & 21 of Constitution of India.
3. Delay in the execution of Mr. X is no ground to prevent execution.
4. Mr. X will be executed.
5. Petition is dismissed.

AND

Pass any other order that it may deem fit in the interest of justice, equity & good conscience.

All of which is most humbly prayed.

On behalf of

HUMAN RIGHTS ORGANISATION

Counsels for the Respondent

Sd/