Speedy Trial

SPEEDY TRIAL

Kadra Pahadiya And Others, Petitioners V. State Of Bihar, Respondent.
DATE OF DECISION: 06-05-1981

CITATION(S) : 1982-(069)-AIR -1167 –SC; 1983-(002)-SCC -0104 -SC
CONSTITUTION OF INDIA Arts. 21 & 32 — Speedy trial — is a fundamental right implicit in the guarantee of life and personal liberty enshrined in art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under art. 32 for the purpose of enforcing such right
The Supreme Court already held in Hussainara Khatoon case (1980) 1 SCC 8, that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under art. 32 for the purpose of enforcing such right and this Court in discharge of its constitutional obligation has the power to give necessary directions to the State Governments and other appropriate authorities for securing this right to the accused. Supreme Court, therefore, in order to exercise this power and make this fundamental right meaningful to the prisoners in the State of Bihar request the High Court to inform as to how many Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges are there in each district in State of Bihar and what is the number of cases yearwise pending before each of them. The High Court will also supply information to this Court as to whether having regard to the pending files before the Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges and the norms of disposal fixed by the High Court there is need for any Additional Courts in any of the districts and if there is such need whether steps have been taken by the High Court for establishing such Additional Courts. If no steps have been taken so far, the High Court may immediately address a communication to the State Government stressing the need for creation of Additional Courts and requesting the State Government to take necessary action for setting up such Courts and appointing Judges to man such Courts and the State Government, Court is sure, will take the necessary steps for this purpose. – Hussainara Khatoon vs. Home Secretary, State of Bihar, (1980) 1 SCC 81: 1980 SCC (Cri) 23: (1979) 3 SCR 160: AIR 1979 SC 1360 followed.
Speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under art. 32 for the purpose of enforcing such right.

Kadra Pahadiya And Others, Petitioners; V. State Of Bihar, Respondent
DATE OF DECISION: 19-03-1997

CITATION(S) : 1997-(004)-SCC -0287 –SC; 1997-(103)-CRLJ -2232 -SC
Secs. 13(1) & 18(1) — Appointment of Special Judicial Magistrates and Special Metropolitan Magistrates for speedy disposal of cases – In certain States, large numbers of such petty cases were withdrawn with a view towards reducing the burden on the regular Courts – Unless a machinery is set up to ensure that such cases will not pile up once again after the system is put on an even keel by the withdrawal of such cases, such a measure will not serve any purpose but will, instead, send a wrong signal to the offenders – Retired judicial officers, officers of the Registry of District Courts and High Courts, as well as other Govt. servants who have the specified experience and qualification, can be requested to accept appointments as part of social service – The High Court must be extremely careful in the conferment of power and should do so based on the qualification and experience of each appointee.
Criminal Procedure Code, 1973 – Secs. 13(1) and 18(1) – Constitution of India – Art. 14 – Constitutional validity of ss. 13(1) and 18(1) – Secs. 13(1) and 18(1) of the Code, insofar as they confined the appointment and conferment of powers of Special Judicial Magistrates and Special Metropolitan Magistrates to any person who holds or has held any post under the Govt., are not arbitrary and violative of art. 14 of the Constitution of India – The words “who holds or has held any post under the Govt.” do not exclude appointment of members belonging to the subordinate Judicial Services – The choice of power to be conferred on the appointees under these two provisions is left to the sole discretion of the High Court.
Secs. 13(1) and 18(1) confer power on the High Court to make the appointments and confer such of the powers as it deems proper from the whole bundle of powers conferrable by or under the Code on a Judicial Magistrate of the First or Second Class or conferrable on a Metropolitan Magistrate as the case may be. The choice of power to be conferred on the appointees under these two provisions is left to the sole discretion of the High Court. The proviso to each sub-section makes it clear that the appointee must possess such qualification and experience in relation to legal affairs as the High Court may by rules specify. Thirdly, the words “who holds or has held any post under the Govt.” do not necessarily exclude judicial officers belonging to the subordinate judiciary of a State/Union Territory. The sub- sections merely enable the High Court to appoint persons, other than judicial officers, who hold or have held any post under the Govt. and who possess the qualification and experience in relation to legal affairs as may be specified by the High Court. Parliament has taken care to leave the question of specifying the requirements for appointment to the High Court. There is, therefore, no warrant for placing a narrow construction on the words “who holds or has held any post under the Govt.” to confine them to appointments of Govt. servants, present or past only, and to exclude appointment of members belonging to the subordinate Judicial Services. Special provision in the nature of an enabling provision had to be made because without such a provision, appointment of Govt. servants, past or present, could not have been possible. Care has also been taken to ensure that the appointments are made of persons who have the necessary qualification and experience in relation to legal affairs which the High Court considers necessary for the exercise of power that may be conferred on the appointee. Furthermore, the duration of appointment has been restricted to one year at a time which would give the High Court an opportunity to observe the work of the appointee to enable it to decide whether or not to extend the appointment for a further period, if the workload justifies such

continuance.
The idea underlying the provision for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates u/ss. 13(1) and 18(1) respectively, is to relieve the regular Courts of the burden of trying those cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Govt. by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates. The period for which such appointments may be made must not exceed one year at a time, which shows that these are not appointments by way of regular entry into service, and are meant to be short- duration appointments to reduce the burden of pendency in regular Courts. The appointees should view the call as a social obligation and not employment; indeed, as a social service to society. That is the spirit of ss. 13 and 18 and every appointee must take the call in that spirit and not expect payment as if they are in the service of the State/Union Territory concerned. That is the reason why the said two provisions expect persons who have retired or are about to retire from Govt. service to be appointed to help clear the pendency.
Secs. 13(1) and 18(1) of the Code, insofar as they confined the appointment and conferment of powers of Special Judicial Magistrates and Special Metropolitan Magistrates to any person who holds or has held any post under the Govt., are not arbitrary and violative of art. 14 of the Constitution of India.
There can be little doubt that when the calendars of Criminal Courts (magistracy) in most of the States, barring a few geographically small States, are clogged and as a result, trial of cases is delayed, there is no justification for not setting a part of the machinery envisioned by the Code into motion. The basic idea in providing for the appointment of Judicial Magistrates, 2nd Class, is to ensure that petty cases do not occupy the time of the regular magisterial Courts.
Retired judicial officers, officers of the Registry of District Courts and High Courts, as well as other Govt. servants who have the specified experience and qualification, can be requested to accept appointments as part of social service and they may be paid a fee to meet their out-of-pocket expenses and honorarium. The High Courts will find any number of public-spirited, retired persons available to extend a helping hand to the criminal justice system in the country. The High Court must be extremely careful in the conferment of power and should do so based on the qualification and experience of each appointee.
In certain States, large numbers of such petty cases were withdrawn with a view towards reducing the burden on the regular Courts. Unless a machinery is set up to ensure that such cases will not pile up once again after the system is put on an even keel by the withdrawal of such cases, such a measure will not serve any purpose but will, instead, send a wrong signal to the offenders that they can commit such infractions with impunity as nothing will happen to them, and ultimately the cases would be withdrawn. That will bring about more indiscipline in society rather than create a culture of discipline which is so vital for national growth. But, if an adequate machinery of the type envisioned by ss. 13 and 18 of the Code is placed in position to ensure that cases do not pile up in future and

then the cases are withdrawn with a view to placing the system on an even keel, it will achieve the desired objective to bring about discipline in society and eradicate crime. Supreme Court issued following directions:
(1) The notices against the States of Nagaland, Mizoram, Jammu and Kashmir and Sikkim and the Union Territories of Daman and Diu and Dadra and Nagar Haveli are hereby discharged. (2) Out of the remaining States, those who have not addressed letters of request to their High Courts for appointment of Special Judicial Magistrates/Special Metropolitan Magistrates, are directed to do so within a month's time so that petty cases may be dealt with by them relieving the regular Judicial Magistrates/Metropolitan Magistrates of such petty cases to enable them to deal with more serious cases. (3) The High Courts of all such States, on receipt of the letter of request, shall determine the total number of such Special Magistrates required to deal with the pendency of petty cases and take immediate steps to appoint them. (4) In cases where the High Court(s) has already received such a letter and has initiated action to appoint such Special Magistrates, it will, within one month, determine the total number of such Special Magistrates needed to dispose of the pendency of petty cases and ensure appointments at an early date, and (5) The High Courts will also ensure that after the regular Magistrate are relieved of petty cases, they would dispose of a larger number of more serious cases so that the offenders are brought to book at an early date and the innocent are not unnecessarily vexed for long spells.

Common Cause" A Registered Society Through Its Director, Petitioner; V. Union Of India And Others, Respondents.
DATE : 01-05-1996
EQUIVALENT CITATION(S) :

1996-(004)-SCC -0033 -SC
1996-(083)-AIR -1619 -SC
1996-(102)-CRLJ -2380 -SC
ARTS. 21 AND 32 — Right to speedy trial– PIL filed by petitioner for issuing of direction with respect to cases pending in criminal Courts for long periods all over the country – The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression – In a majority of these cases, whether instituted by police or private complainants, the accused belong to the poorer sec. s of the society, who are unable to afford competent legal advice – Instances have also come before Courts where the accused, who are in jail, are not brought to the Court on every date of hearing and for that reason also the cases undergo several adjournments – Supreme Court issued necessary directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution.
Following directions are made which shall be valid not only for the States of Uttar Pradesh, Bihar and Delhi but for all the States and the Union Territories.
1. (a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal Court are punishable with imprisonment not exceeding

three years with or without fine and if trials for such offences are pending for one year or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal Court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of section 437 of the Criminal Procedure Code (CrPC).

(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal Court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal Court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of section 437 CrPC.

(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal Court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been realesed on bail but are in jail for a period of one year or more, the criminal Court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to imposing of suitable conditions, if any, in the light of section 437 CrPC.

2. (a) Where criminal proceedings are pending regarding traffic offences in any criminal Court for more than two years on account of non-serving summons to the accused or for any other reason whatsoever, the Court may discharge the accused and close the cases.

(b) Where the cases pending in criminal Courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the Court and if in such cases trials have still not commenced, the criminal Court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

(c) Where the cases pending in criminal Courts under IPC or any other law for the time being in force pertain to offences which are non cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

(d) Where the cases pending in criminal Courts under IPC or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

(e) Where the cases pending in criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to one year, with or without fine and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

(f) Where the cases pending in criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to three years, with or without fine, and if such pendency is for more than two years and if in such cases trials have still not commenced, the

criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.
3. For the purpose of directions contained in clauses (1) and (2) above, the period of pendency of criminal cases shall be calculated from the date the accused are summoned to appear in the Court.
4. Directions (1) and (2) made herinabove shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987 (E) offences relating to the Army, Navy and Air Force, (f) offences against public tranquillity, (g) offences relating to public servants, (h) offences relating to coins and government stamp, (i) offences against public tranquillity, (g) offences relating to public servants, (h) offences relating to coins and government stamp, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State,(l) offences under the taxing enactments and (m) offences of defamation as defined in section 499 IPC.
5. The criminal Courts shall try the offences mentioned in para (4) above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal Courts under their control and supervision.
6. The criminal Courts and all the Courts trying criminal cases shall take appropriate action in accordance with the above directions. These directions are applicable not only to the cases pending on this day but also to cases which may be instituted hereafter. As and when, a particular case gets covered by one or the other direction mentioned in Directions (1) and (2) read with Direction (4) above, appropriate orders shall be passed by the Court concerned without any delay.
Common Cause", A Registered Society Through Its Director, Petitioner; V. Union Of India And Others, Respondents.
DATE : 28-11-1996
CITATION(S) :

1996-(006)-SCC -0775 -SC
1997-(084)-AIR -1539 -SC
1997-(103)-CRLJ -0195 -SC
Constitution of India – Arts. 21 & 32 – Speedy trial – Directions of Supreme Court in A registered society vs. Union of India for discharge or acquittal of accused concerned – Direction of the Court in the said common cause case, when apply – Phrase "pendency of trials" as employed in paras 1(a) to 1(c) and the phrase "non-commencement of trial" as employed in paras 2(b) to 2(f) explained.
The time-limit mentioned regarding the pendency of criminal cases in paras 2(a) to 2(f) in the said case shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the accused concerned or on account of any other action of the accused which results in prolonging the trial. In other words it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid

clauses of para 2 despite full cooperation by the accused concerned to get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the accused concerned, nor is such delay caused on account of such accused getting stay of criminal proceedings from higher Courts. Accused concerned are not entitled to earn any discharge or acquittal as per paras 2(a) to 2(f) if it is demonstrated that the accused concerned seek to take advantage of their own wrong or any other action of their own resulting in protraction of trials against them.

In cases of trials before the Sessions Court the trials shall be treated to have commenced when charges are framed u/s. 228 of the CrPC, 1973 in the cases concerned. In cases of trials of warrant cases by magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed u/s. 240 of the CrPC, 1973 while in trials of warrant cases by magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the accused concerned u/s. 246 of the CrPC, 1973. The list of offences to which directions contained in paras 1 and 2 shall not apply, the following additions shall be made :

(n) matrimonial offences under Indian Penal Code including s. 498-A or under any other law for the time being in force; (o) offences under the Negotiable Instruments Act including offences u/s. 138 thereof; (p) offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under the Indian Penal Code or under any other law for the time being in force; (q) offences u/s. 304-A of the Indian Penal Code or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time being in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time being in force.

It is further directed that in criminal cases pertaining to offences mentioned under the additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant to the said case and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the criminal Court concerned shall suo motu or on application by the aggrieved parties concerned shall issue within three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law. Wherein the accused concerned are already acquitted or discharged pursuant to the said order, such acquitted or discharged accused shall not be liable to be recalled for facing such trials pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order.

Conclusion

The time-limit mentioned regarding the pendency of criminal cases in paras 2(a) to 2(f) in the said case shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the accused concerned or on account of any other action of the accused which results in prolonging the trial.

SCOPE OF SENTENCING

Nadella Venkatakrishna Rao, Appellant V. State Of Andhra Pradesh, Respondent.
DATE OF DECISION: 15-12-1977
CITATION(S) :

1978-(001)-SCC -0208 -SC
1978-(065)-AIR -0480 -SC
1978-(084)-CRLJ -0641 -SC
Sentence — Accused acquitted of counterfeiting but have been convicted of possession of materials for counterfeiting – Sentence of 10 years' rigorous imprisonment awarded and that has been affirmed by the High Court – Supreme Court opined that harsh and prolonged incarceration may sometimes be self-defeating – The most hurtful part of imprisonment is the initial stage when a person is confined in prison – Thereafter he gets sufficiently hardened and callous with the result that by the time he is processed through the years inside the prison he becomes more dehumanised – The whole goal of punishment being curative is thereby defeated – The accent must therefore be more and more on rehabilitation, rather than retributive punitivity inside the prison – In this context, it is helpful to remember Items 58 and 59 in the rules applicable to prisoners under sentence framed as the Standard Minimum Rules for the Treatment of Prisoners (U.N. Document)
Accused acquitted of counterfeiting but have been convicted of possession of materials for counterfeiting. Sentence of 10 years' rigorous imprisonment awarded and that has been affirmed by the High Court. Giving anxious consideration to the need for rehabilitation and deterrence Court consider that the prisoner in this case, who is the appellant may serve a sentence of five years which may be long enough for correctional treatment, at the same time not unduly long to be regarded as repugnantly harsh. Court directed that during this period the State jail authorities will take care to subject the appellant to humanising treatment so that when he comes out he will desist from criminality and turn a new leaf.
The accent must therefore be more and more on rehabilitation, rather than retributive punitivity inside the prison. In this context, it is helpful to remember Items 58 and 59 in the rules applicable to prisoners under sentence framed as the Standard Minimum Rules for the Treatment of Prisoners (U.N. Document A/COF/6/1, Annex. 1. A.) :
(58) The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure. So far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.
(59) To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.
3. Giving anxious consideration to the need for rehabilitation and deterrence we consider that the

prisoner in this case, who is the appellant before us, may serve a sentence of five years which may be long enough for correctional treatment, at the same time not unduly long to be regarded as repugnantly harsh. We dare say that during this period the State jail authorities will take care to subject the appellant to humanising treatment so that when he comes out he will desist from criminality and turn a new leaf.

4. We reduce the sentence awarded by the Courts below to five years rigorous imprisonment on both counts which are run concurrently Subject to the above, the appeal is dismissed.

Ediga Anamma, Appellant V. State Of Andhra Pradesh, Respondent.

DATE OF DECISION: 11-02-1974

CITATION(S) : 1974-(080)-CRLJ -0683 -SC

Guilt once established, the punitive dilemma begins. The choice between death penalty and life term has to be made in a situation which is not altogether satisfactory. Modern penology regards crime and criminal as equally material when the right sentence has to be picked out, although in our processual system there is neither comprehensive provision not adequate machinery for collection and presentation of the social and personal data of the culprit to the extent required in the verdict on sentence. However, in the Criminal Procedure Code, 1973, about to come into force, Parliament has wisely written into the law a post-conviction stage when the Judges shall “hear the accused on the question of sentence and then pass sentence on him according to law.” (Section 235 and Section 248).

The Apex Court held that “The case in hand has to be disposed of under present Code and we have to fall back upon the method of judicial hunch in imposing or avoiding capital sentence, aided by such circumstances as are present on the record introduced for the purpose of proving guilt. We are aware that in Jagmohan Singh v. State of U.P., (1973) 1 SCC 20 = (AIR 1973 SC 947 = 1973 Cri LJ 370), there was an argument about the absence of procedure laid down by the law for determining whether the sentence of death or something less is appropriate in the case. The Court viewed this criticism from the constitutional angle and observed :

“The Court is primarily concerned with all the facts and circumstances in so far as they are relevant to the crime and how it was committed and since at the end of the trial he is liable to be sentenced, all the facts and circumstances bearing upon the crime are legitimately brought to the notice of the court. Apart from the cross-examination of the witnesses, the Criminal Procedure Code requires that the accused must be questioned with regard to the circumstances appearing against him in the evidence. He is also questioned generally on the case and there is an opportunity for him to say whatever he wants to say. He has a right to examine himself as a witness, thereafter, and give evidence on the material facts. Again he and his counsel are at liberty to address the court not merely on the question of guilt but also on the question of sentence. In important cases like murder the court always gives a chance to the accused to address the court on the question of sentence.”

“The sentence follows the conviction, and it is true that no formal procedure for producing evidence with reference to the sentence is specifically provided. The reason is that relevant facts and circumstances impinging on the nature and circumstances of the crime are already before the Court.”

In any scientific system which turns the focus, at the sentencing stage, not only on the crime but also the criminal, and seeks to personalise the punishment so that the reformatory component is as

much operative as the deterrent element, it is essential that facts of a social and personal nature, sometimes altogether irrelevant if not injurious at the stage of fixing the guilt, may have to be brought to the notice of the Court when the actual sentence is determined.

The prisoner is a young woman of 24 flogged out of her husband's house by the father-in-law, living with her parents with her only child, sex-starved and single. The ethos of the rural area where the episode occurred does not appear to have been too strict on inhibitive in matters of sex, for the deceased and the accused were both married and still philandered out of wedlock with P.W. 16, a middle-aged widower who made no bones about playing the free-lance romancer simultaneously with them. Therefore, the accused incautiously slipped down into the sex net spread by P.W. 16, and while entangled and infatuated, discovered in the deceased a nascent rival, with the reckless passion of a jealous mistress she planned to liquidate her competitor and crudely performed the double murder, most foul. Perhaps it may be a feeble extenuation to remember that the accused is a young woman who attended routinely to the chores of domestic drudgery and allowed her flesh to assert itself salaciously when invited by uncensured opportunity for lonely meetings with P.W. 16. It may also be worth mentioning that, apart from her youth and womanhood, she has a young boy to look after. What may perhaps be an extrinsic factor but recognised by the court as of human 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 is February 1974. This prolonged agony has ameliorative impact according to the rulings of this Court. The leading case in Piare Dusadh v. Emperor, AIR 1944 FC 1 = (45 Cri LJ 413) was relied upon by this Court in N. Sreeramulu v. State of Andhra Pradesh, 1973 Cri LJ 1775 = (AIR 1973 SC 2551). The following passage from the Federal Court decision is telling :

"In committing the offence the appellant must have actuated by jealousy or by indignation either of which would tend further to disturb the balance of his mind. He has besides been awaiting the execution of his death sentence for over a year. We think that in this case a sentence of transportation for life would be more appropriate than the sentence of death."

The decision in State of Bihar v. Pashupati Singh, AIR 1973 SC 2699 = (1973 Cri LJ 1832) strikes a similar note. Although this consideration is vulnerable to the criticism made by counsel for the State that as between two capital sentence cases that which is delayed in its ultimate disposal by the courts receives the less terrible punishment while the other heard with quick despatch, for that very reason, fails to relieve the victim from condemnation to death.

In this unclear situation it is unfortunate that there are no penological guidelines in the statute for preferring the lesser sentence, it being left to ad hoc forensic impressionism to decide for life or for death. Even so, such sentencing materials as we have been able to salvage from the guilt material in the paper book persuades us to award life imprisonment to the prisoner and modify to that extent the death sentence imposed by the courts below.

It behaves us to indicate why we have chosen this course. In the twilight of law in this area, we have been influenced by the seminal trends present in the current sociological thinking and penal strategy in regard to murder. We have also given thought to the legal changes wrought into the penal code in free India. We confess to the impact made on us by legislative and judicial approaches made in other countries although we have warned ourselves against transplanting into

our country concepts and experiences valid in the west.
It cannot be emphasized too often that crime and punishment are functionally related to the society in which they occur, and Indian conditions and stages of progress must dominate the exercise of judicial discretion in this case.
In India the subject of capital punishment has abortively come before Parliament earlier, although our social scientists have not made any sociological or statistical study in depth yet. On the statutory side there has been a significant change since India became free. Under Section 367(5) of the Criminal Procedure Code, as it stood before its amendment by Act 26 of 1955, the normal rule was to sentence to death a person convicted for murder and to impose the lesser sentence for reasons to be recorded in writing. By amendment, this provision was deleted with the result that the court is now free to award either death sentence or life imprisonment, unlike formerly when death was the rule and life term the exception, for recorded reasons. In the new Criminal Procedure Code, 1973 a great change has overtaken the law. Section 354(3) reads :
“354(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.”
The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated. In this context it may not be out of place to indicate – not that it is conclusive since it is now tentative – that under the Indian Penal Code (Amendment) Bill, 1972, Section 302 of the Penal Code has been substituted by a less harsh provision limiting death penalty to a few special cases (vide Section 122 of the new bill).
It is obvious that the disturbed conscience of the State on the vexed question of legal threat to life by way of death sentence has sought to express itself legislatively, the stream of tendency being towards cautions, partial abolition and a retreat from total retention.
Jagmohan Singh (1973) 1 SCC 20 = (AIR 1973 SC 947 = 1973 Cri LJ 370) has adjudged capital sentence constitutional and whatever our view of the social invalidity of the death penalty, personal predilections must bow to the law as by this Court declared, adopting the noble words of Justice Stanley Mosk of California uttered in a death sentence case : “As a Judge, I am bound to the law as I find it to be and not as I fervently wish it to be”. (The Yale Law Journal, Vol. 82, No. 6, p. 1138). Even so, when a wise discretion vests in the Court, what are the guidelines in this life and death choice ? The humanism of our Constitution, echoing the concern of the Universal Declaration of Human Rights, is deeply concerned about the worth of the human person. Ignoring the constitutional content of Anderson, 100 California Reporter 152 and Furman, (1972) 408 US 238 the humanist thrust of the judicial vote against cruel or unusual punishment cannot be lost on the Indian judiciary. The deterrence strategists argue that social defence is served only by its retention, – Thanks to the strong association between murder and capital punishment in the public imagination. – while the correctional therapists urge the reform of even murderers and not to extinguish them by execution. History hopefully reflects the march of civilization from terrorism to humanism and the geography of death penalty depicts retreat from country after country. The U.K. and the U.S.A. are notable instances. Among the socialist nations it has been restricted to very aggravated forms of murder. The lex talionis principle of life for life services in some States still,

only to highlight that in punitive practice, as in other matters, we do not live in ‘one world’, but do move zigzag forward to the view that the uniquely deterrent effect of death penalty is, in part, challenged by jurists, commissions and statistics. But as a counterweight we have what an outstanding justice of the Ontario appeal court said some years ago (Capital Punishment – Thorsten Sellin p. 83) :

“The irrevocable character of the death penalty is a reason why all possible measures should be taken against injustice – not for its abolition. Nowadays, with the advent of armed criminals and the substantial increases in armed robberies, criminals of long standing if arrested, must except long sentences. However, if they run no risk of hanging, when found guilty of murder, they will kill policeman and witnesses with the prospect of a future no more unhappy, as one of them put it, than being fed, lodged, and clothed for the rest of their lives.”

The final position, as we see it, is neither with the absolute abolitionist not with the Mosaic retributionist. It is relativist, and humanist, conditioned by the sense of justice and prevailing situation of the given society. In England, men once believed it to be just that a thief should lose, his life (as some Arab Chieftains do today) but the British have gone abolitionist now without regrets. In contemporary Indian, the via media of legal deprivation of life being the exception and long deprivation of liberty the rule fits the social mood and realities and the direction of the penal and processual laws.

While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, to accept composite factors of penal strategy and not to put all the punitive eggs in the ‘hanging’ basket but hopefully to try the humane mix.

We assume that a better world is one without legal knifing of life, given propitious social changes. Even so, to sublimate savagery in individual or society is a long experiment in spiritual chemistry where moral values, socio-economic conditions and legislative judgment have a role. Judicial activism can only be a signpose, a weather-vane no more. We think the penal direction in this jurisprudential journey points to life prison normally, as against guillotine, gas chamber, electric chair, firing squad or hangman’s rope. “Thou shalt not kill’ is a slow commandment in law as in life, addressed to citizens as well as to States, in peace as in war. We make this survey to justify our general preference where Sec. 302 keeps two options open and the question is of great moment.

Let us crystallise the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the Court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Section 302 read with Section 149, or again the accused has acted suddenly under another’s instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real

suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectively to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accepting the trend against the extreme and irrevocable penalty of putting out life.

Here, the criminal's social and personal factors are less harsh, her femininity and youth, her unbalanced sex and expulsion from the conjugal home and being the mother of a young boy – these individually inconclusive and cumulatively marginal facts and circumstances – tend towards award of life imprisonment. We realise the speculative nature of the correlation between crime and punishment in this case, as in many others, and conscious of fallibility dilute the death penalty. The larger thought that quick punishment, though only a life term, is more deterrent than leisurely judicial death award with liberal interposition of executive clemency, and that stricter checking on illicit weapons by the police deters better as social defence against murderous violence than a distant death sentence, is not an extraneous component in a court verdict on form of punishment. We have indicated enough to hold that, marginal vaccilation notwithstanding, the death sentence must be dissolved and life sentence substituted. To this extent the appeal is allowed, but otherwise the conviction is confirmed.