

**In Re: Vasu Pillai**

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**Court :** Kerala

**Decided On :** Feb-19-1957

**Reported in :** AIR1957Ker34

**Judge :** M.S. Menon, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 402

**Appeal No. :** O.P. No. 74 of 1957

**Appellant :** In Re: Vasu Pillai

**Advocate for Pet/Ap. :** T.C.N. Menon and; N. Gangadhara Menon, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**M.S. Menon, J.**

1. The prayer in the petition is that this Court should issue :

'a writ of Prohibition or any other writ, Order or direction restraining the 2nd respondent (Inspector General of Prisons, Trivandrum) from carrying out the sentence of death on the petitioner and also to issue a writ of certiorari or any other writ, Order or direction quashing the warrant issued by the 1st respondent

(Sessions Judge, Quilon) to carry out the sentence of death on the petitioner on 28-2-1957'.

2. The petitioner was sentenced to death by the Sessions Judge, Quilon, on 28-9-1955. He preferred an appeal to the High Court -- Criminal Appeal No. 139 of 1955 -- and the High Court set aside the conviction and sentence and ordered a trial de novo by a judgment dated 2-12-1955. The Additional Judge, Quilon, conducted the fresh trial and sentenced the petitioner to death on 21-2-1956. From the said judgment the petitioner preferred an appeal to the High Court -- Criminal Appeal No. 34 of 1956 -- and the High Court dismissed the appeal and confirmed the sentence of death.

3. A petition for a certificate to appeal to the Supreme Court was then filed before the High Court. That petition was dismissed. A petition before the Supreme Court for special leave to appeal also proved unsuccessful.

4. Thereafter the petitioner moved the President of India for commuting the sentence of death to one of life imprisonment. That petition was rejected and the execution was fixed for 31-12-1956. On 23-12-1956 the President issued an order staying the carrying out of the sentence until further orders. It is not alleged that 'further orders' were not received from the President and as a result the warrant issued by the 2nd respondent is not in order.

5. The contention is that the delay that has occurred and the various proceedings mentioned above entitle the petitioner to a commutation of the sentence of death to one of life imprisonment. He says :

'It is obvious from the above statement of facts that I was languishing in prison for the last one and half years with the hangman's noose hovering over my head. Since the day on which the sentence of death was pronounced for the first time, seventeen full months would be over on the day on which I would be hanged till I am dead. I may be permitted to submit that it would be inhuman and flagrant violation of all accepted canons of jurisprudence to hang a prisoner seventeen months after he had been told that he was sentenced to death.

'The guilt of a prisoner would certainly be mitigated and purged by the privation he undergoes during the long days on which he is kept in prison condemned to death and therefore I submit that long delay in executing the sentence of death of a prisoner itself vitiates the sentence of death passed. Moreover in my case the Honourable President of the Republic of India has stayed the execution of sentence of death twice and therefore in effect I have been sentenced to death four times altogether, twice by the Sessions Court and twice by the Honourable President of India.

Now at long last I have been informed that I would be hanged till I am dead at 5-30 A.M. on 28th February 1957. I also submit that the date of occurrence of the alleged incident is on 15-1-1954 and therefore it would be three years one month and thirteen days from the date of the occurrence of the alleged crime and the date of the execution of the sentence of death.'

(Paragraph 4 of the affidavit)

6. The petitioner has invoked in paragraph 5 of his affidavit two decisions of the Supreme Court in support of his contention that the sentence of death should be commuted to one of life imprisonment : Kalawati v. State of H. P., AIR 1953 SC 131 (A) and Nawab Singh v. State of Uttar, Pradesh, AIR 1954 SC 278 (B). All that the Supreme Court said in AIR 1953 SC 131 (A) was:

'The result is that Ranjit Singh's Appeal No. 74 of 1952 is dismissed, but we substitute for the sentence death the sentence of transportation for life, having regard to the time that has now elapsed since the occurrence and the probable motive of prevention of cruelty to a helpless woman.'

This case is no authority for the proposition that whenever there is delay the lesser punishment should follow.

7. In AIR 1954 SC 278 (B), the matter was dealt with as follows:

'Mr. Umrigar finally argued that as a good deal of time has elapsed since the death sentence was imposed upon the accused, the capital sentence should be commuted to one for transportation for 'life. It is true that in proper cases an

inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it, but we desire to point out that this is no rule of law and is a matter primarily for consideration of the local Government.

If the Court has to exercise a discretion in such 'matter, the other facts of each case would have to be taken into consideration. In the case before us,, we find that the murder was a cruel and a deliberate one and there was no extenuating circumstance whatsoever which would justify us in ordering a commutation of the death sentence. The result is that the appeal is dismissed.'

8. I have heard the counsel for the petitioner and perused the petition and affidavit carefully, I see no reason whatsoever to order 'notice' on this petition and it is hereby rejected.

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