



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Shabnam Ali v Union of India - A Deadly Affair in Amroha: The Murder Uncovered

Shree Chithra Shajeev Nair^a

^aDY Patil Deemed to be University, School of Law, Navi Mumbai, India

Received 16 August 2023; *Accepted* 06 September 2023; *Published* 10 September 2023

INTRODUCTION

The final stage in capital punishment's convoluted and hotly contested process is the execution of a death warrant. These proceedings involve the issue of a formal document, known as a 'death warrant' or a 'black warrant' which signifies the final step before the execution of a person who has been given the death penalty. This crucial document, which specifies the execution's date, time and location, captures the seriousness and finality of the ultimate punishment levied by the criminal justice system.

The process leading to the issuance of a death warrant is characterized by a series of intricate legal and ethical considerations. It requires the exhaustion of all legal avenues of appeal, ensuring that the individual's conviction and sentence have undergone rigorous judicial scrutiny. The authority responsible for issuing the death warrant varies based on jurisdiction, ranging from courts to executive bodies. The formality of these death warrants, encapsulated in the ostensibly routine Form No. 42 of the Code of Criminal Procedure (Cr.P.C.), inadvertently fuels conjecture and speculation, which, in turn, exacerbates the mental anguish experienced by

the condemned. This situation persists despite constitutional safeguards and the existence of legal remedies.

The process of issuing death warrants remains veiled in ambiguity, raising substantial concerns about procedural fairness within the legal system. This issue was notably underscored in the landmark case of *PUDR v Union of India*¹, where the Allahabad High Court intervened to commute three 'open-ended' death warrants issued against Surendra Koli, a convict implicated in the notorious Nithari serial killings². The term 'open-ended' in this context alludes to death warrants that lack specifics, notably the absence of a definitive execution date. This uncertainty plunges the prisoner into a distressing limbo, enduring the looming specter of death without a clear timeline.

Moreover, the case of *Shabnam v Union of India*³, a judgment handed down by the Supreme Court on May 27, 2015, reinforces the significance of the concerns outlined in the passage. Although specific details about this case are not provided, its mention in this context suggests that it addresses similar apprehensions concerning the transparency, fairness and psychological impact of death warrant proceedings.

FACTS OF THE CASE

Seven members of one family were brutally murdered on April 14, 2008 and Shabnam was the only one to survive. They were home when the horrible incident occurred and it sparked a flurry of speculative research about the causes and perpetrators of this heinous act. Unconscious, Shabnam was discovered by Lateef Ullah, a neighbor. She described a terrifying incident, claiming that mysterious intruders had broken into their home and brutally murdered her family. Her mother Hashmi, father Shaukat Ali, brothers Anees and Rashid, sister-in-law Anjum, cousin Rabia and Arsh, her 10-month-old nephew, were among the victims. Shabnam

¹ *People's Union for Democratic v Union of India & Ors* AIR 1982 SC 1473

² *Surendra Koli v State of Uttar Pradesh & Ors* AIR 2011 SC 970

³ *Shabnam v Union of India & Ors* (2015) SCC OnLine SC 484

described how she was on the terrace when it started to rain and went inside to find the horrific crime scene.

Shabnam's account, however, didn't hold much weight with the investigating officer, Amroha SHO R P Gupta. Despite the bed sheets being crumpled, he found the victims' bedding to be in an odd state because they did not appear to have been subjected to any sort of struggle. The discovery of an empty Biopsy strip at the scene increased his level of suspicion. His concerns were further reinforced by the post-mortem study⁴, which revealed that all victims' bodies—aside from the infant Arsh—had been exposed to diazepam (Biopose).

The suspicion turned to Shabnam and Saleem, both of whom were in their twenties. Their relationship was contentious with Shabnam's relatives, which frequently resulted in arguments within the home. The night of the killings saw the horrific culmination of these conflicts. The investigation revealed a distressing series of events: Shabnam is accused of inducing unconsciousness in her family members by serving them sedative-laced tea and Saleem is accused of killing them with an axe. The prosecution based its case on the theory that the couple's connection was a result of the family's rejection, which finally resulted in this terrible deed and the deaths of innocent people.

As more information emerged, the inquiry into the horrifying family massacre took an even more unsettling turn. It was discovered that Shabnam, the only survivor of the horrific event, was seven weeks along with Saleem's child. This information connected interpersonal ties to the terrible act, adding yet another level of intricacy to the already complex case.

Shabnam and Saleem were captured and imprisoned in Moradabad Jail five days after the horrifying killings. Saleem was afterward moved to Agra Central Jail. Shabnam and Saleem began to argue with one another as the court case progressed, giving divergent stories of the terrible incident. Shabnam stated that Saleem had entered their home through the roof and carried out the murders while she was asleep in her section 313 statement during the trial. On

⁴ *Ibid*

the other hand, Saleem's account suggested that Shabnam had admitted to him her involvement in the crime and asked for his participation in the heinous deed. The pair was given a death sentence by the Amroha Session Court in 2010 for the murder of seven people, including the 10-month-old baby. The Allahabad High Court upheld this judgment in 2013. The Supreme Court's three-judge panel later revisited the case in May 2015 and upheld the death penalty, emphasizing the seriousness of the defendant's actions.

LEGAL ISSUES

1. Whether the death warrant that was issued within six days of the appeal being rejected was unlawful and stands in contravention of Article 21 of the Indian Constitution.
2. What are the elements that must be fulfilled for the death penalty to be upheld?

OBSERVATIONS OF THE SUPREME COURT

According to the Supreme Court, inmates on death row also have a right to life under Article 21 of the Indian Constitution⁵. The order issued by the Session Court was essentially a rushed order that was issued without first allowing the offenders to exhaust their available legal procedures.

The Supreme Court referenced the *Mohd. Arif v Supreme Court of India*⁶ decision, in which the court ruled that each petition for a review of a death row convict's execution must be heard in public by a three-judge bench. The conventional practice that the review petition shall be determined by circulation in the judges' chambers is broken by this Supreme Court decision.

In addition, Order VI, Rule 3 of the Supreme Court Rules, 2013⁷, provides that a bench of at least three judges must consider cases in which the death sentence has been upheld by the High Courts and an appeal has been filed with the top court.

⁵ Constitution of India 1950, art 21

⁶ *Mohd. Arif @ Ashfaq v The Reg. Supreme Court of India* WP No 77/2014

⁷ Supreme Court Rules 2013, Or VI r 3

The Court further listed five conditions that must be met in a case involving the death penalty⁸:

- The accused must be given advance notice of the proceedings for them to take place in the presence of the accused and their attorney.
- Instead of a range of dates, the execution day and hour must be specified on the death warrant for the criminal.
- Between the time the warrant is issued and the time the sentence is carried out, there must be a reasonable amount of time to allow the condemned to seek legal counsel and visit with family.
- The convict must receive a copy of the warrant.
- Throughout these proceedings, the criminal must get legal representation.

DECISION

The vacation bench of Justices A.K. Sikri and Justice Uday Umesh Lalit unanimously decided to rescind the death warrants that the learned Sessions Judge quickly wrote without waiting for the requisite 30-day timeframe for filing the Review Petition. The Hon. Apex court ordered that the five steps for carrying out the death sentence, specifically those taken from the case of PUDR v Union of India & Ors., which was decided by the Hon. High Court of Allahabad, be followed. This was done in consideration of the fact that the prisoners had not exhausted all of their remaining options.

According to the Apex court, because offenders on death row also have a right to life, the PUDR procedure complies with the goals of Article 21 of the Indian Constitution. The court decided that every case involving a death sentence must have a brief oral hearing at the review stage by Art. 21. The Hon'ble Court additionally maintains that a person who has been sentenced to death has a 'right to dignity' hence such a rare judgment cannot be carried out in a random, hasty, or covert manner without first allowing the guilty party to exhaust all available legal remedies.

⁸ 'THE LEGITIMACY OF CAPITAL PUNISHMENT: THE SHABNAM ALI CASE' (*Symbiosis Law School Hyderabad*, 17 April 2021) <<https://blog.slsh.edu.in/2021/04/17/the-legitimacy-of-capital-punishment-the-shabnam-ali-case/>> accessed 13 August 2023

The Amroha death row inmates then submitted a mercy appeal in response to the writ suit, which the then-president Pranab Mukherjee rejected. Following that, the attorneys for the convicts submitted a petition for review on the basis that both of the convicts had shown signs of reform via their good behavior. As the court must punish the crime and not the perpetrator, the attorneys contended that it should also consider if the offender has the capacity for the case was heard in open court by the three-judge panel, which was made up of Chief Justice S.A. Bobde, Justice SA Nazeer and Sanjiv Khanna.

The bench emphasized the convict's death of the infant when the convict's attorney brought up the topic of good behavior, stating that true deeds should not be overlooked in showing sympathy for the criminals. The crime that was committed and must also be taken into account by the court, even if each offender has a good heart. The court's primary objective is to serve society with justice. The pre-planned murder clearly shows the prisoner's criminal intent. The court, which exhibited no pity and carried out justice for the seven lives lost, affirmed the death penalty. Initially incarcerated in Rampur prison, she was transferred there for security reasons after male prison staff uploaded images of her online. In Mathura Prison, she will now be hanged. While Saleem is now being held in the Agra Jail, Shabnam Ali's lawyer, Shreya Rastogi, believes that she is a victim of patriarchal culture and intends to submit a curative plea on Shabnam Ali's behalf notwithstanding the decision.

ANALYSIS

The decision of the Supreme Court to involve at least three minds trained in the judiciary during the last stage of a convict being punished with the Death Penalty is commendable. It gives a sense of seriousness and consideration to the complex process involved in Capital sentences. This highlighted the necessity of taking these directives with the utmost care and acknowledged the inherent ambiguities that can surround such sentencing judgments. The addition of an oral hearing held in open court during this vital stage supports the values of fairness and transparency while also reiterating the importance of different viewpoints in preserving justice.

The judge in Amroha's frightening haste, which subtly accelerated the execution procedure, displays a disturbing propensity for vengeance rather than a dedication to dispensing fair justice. Concerns about a lack of respect for fairness and due process are raised by the haste with which inmates are being secretly put to death. This action also shows a wish to avoid giving the condemned people legal and constitutional options. Such actions highlight the unsettling notion that inmates might not use their legal means of reprieve. These activities undermine constitutional protections against hasty, capricious and covert executions by undermining the concepts of justice and setting up a troubling precedent. Article 21 of the Constitution is a part of the Golden Triangle for a reason. It is to uphold Emperor Ashoka's well-known maxim that the 'state should not punish with vengeance'⁹. This highlights how important and significant the right to life is and how protected it is under the Indian Constitution.

Human dignity has been at the forefront of both the Supreme Court's decision-making and that of the document's authors¹⁰. The importance of prisoners' rights to human dignity has been amply illustrated in the instances of *D.K. Basu v State of West Bengal*¹¹ and *Sunil Batra v Delhi Administration*¹². Therefore, a convict's right to life is violated if that dignity is taken away from him or her during the process of approving the death penalty until the execution.

CONCLUSION

The unfolding of previous events demonstrates the difficult balance that must be upheld in the pursuit of justice. The lengthy execution procedure for four defendants in the Nirbhaya rape case¹³ as a result of several applications highlights the need for a sophisticated strategy. While giving the convicted access to remedies, this delay unintentionally raises concerns about victim

⁹ Varun Kumar, 'DHANANJOY CHATTERJEE ALIAS DHANA V. STATE OF WEST BENGAL: CHANGING PARADIGM OF DEATH PENALTY' (2018) 1(2) Law Audience <<https://www.lawaudience.com/dhananjoy-chatterjee-alias-dhana-v-state-of-west-bengal-changing-paradigm-of-death-penalty/>> accessed 13 August 2023

¹⁰ Aharon Barak, 'Human Dignity: The Constitutional Value and the Constitutional Right' in McCrudden Christopher (ed), *Understanding Human Dignity* (British Academy Scholarship 2015)

¹¹ *Shri Dilip K. Basu v State of West Bengal & Ors* (2015) CrI MP No 16086/1997

¹² *Sunil Batra v Delhi Administration* (1978) 4 SCC 409

¹³ 'Mukesh and Anrs. Vs NCT Delhi (Nirbhaya Case) (2017) 6 SCC 1' (*Legal Desire*, 1 September 2020)

<<https://legaldesire.com/mukesh-and-anrs-v-nct-delhi-nirbhaya-case2017-6-scc-1-case-comment/>> accessed 13 August 2023

rights and the prompt administration of justice. The Shatrughan Chauhan ruling¹⁴ from 2014 further highlighted the need for clarity in instances involving the death penalty. This decision's vagueness produced a void that might eventually result in the denial of justice. These incidents demonstrate how critical it is to uphold the fundamental concept of justice while balancing the rights of the accused and victims.

In summary, while punishing offenders remains essential, it must be done with strict adherence to the rules of procedural fairness. The focus placed by the Supreme Court on cooperative judicial deliberation and the holding of open hearings on review petitions demonstrates the thorough approach required in instances involving the death penalty. The execution orders' haste, which reveals a retributive attitude, emphasizes how urgent it is to put justice above expediency.

Careful consideration is required to strike the right balance between facilitating the legal remedies for criminal defendants and ensuring the victims receive justice. The main goal should be to balance fairness, justice and finality within the bounds of the law, protecting the rights of all parties involved. The balance of justice must be maintained in this complex tapestry to uphold both due process and the pursuit of justice.

¹⁴ *Shatrughan Chauhan & Anr v Union of India & Ors* CrI WP No 55/2013