

RAJIV GANDHI MURDER CASE - A PLEA FOR CLEMENCY

K. Balagopal

To
His Excellency
Sri K.R. Narayanan
President
Rashtrapathi Bhavan
New Delhi

Sub: Requisition to His Excellency Sri K.R. Narayanan, President of India to grant clemency and commute the death sentence to one of life imprisonment in favour of the four convicted in the Rajiv Gandhi murder case.

Your Excellency,

This is a plea for the exercise of Your Excellency's power of clemency under Article 72 of our Constitution to commute the death sentence to one of life imprisonment in favour of (1) T. Suthenthiraraja @ Santhan, (2) S. Nalini, (3) Sriharan @ Murugan, (4) G. Perarivalan @ Arivu¹ whose death sentence in the Sriperumbudur bomb blast case, popularly known as the Rajiv Gandhi murder case was confirmed by the Supreme Court in Death Reference case no. 1 of 1998 on 11.05. 99. The Review petitions filed by the above four persons were dismissed by the Apex Court on 07.10.99.

We state below in brief the main grounds on which we seek Your Excellency's indulgence:

¹ Nalini's sentence has since been commuted to one of life on humanitarian grounds. However, the other three accused continue to be on death row. In the wake of their imminent hanging, there is a sustained campaign against the Death Penalty in Tamil Nadu with campaigners arguing on both legal and compassionate grounds. A case was filed in the Madras High Court seeking commutation of the death sentence on account of the time they had already spent in prison, and the inordinate delay in fixing the day of hanging. As we go to press, the three await their fate.

(1) Your Excellency will agree that in any civilized penal system, punishment must strictly be commensurate with the crime, but not equivalent to it.

The bomb blast at Sriperumbudur which was targeted at and which killed, among others the much loved and respected Sri Rajiv Gandhi, former Prime Minister of India, was unquestionably a dastardly and brutal act. Twelve of the accused who played a pivotal role in the offence are already dead. Except Dhanu and Haribabu who died in the bomb blast, all the others committed suicide, apprehending arrest and torture. Those who were apprehended and tried are minor players in the conspiracy. The evidence shows that all of them merely followed the dictates of Sivarasan, who planned and led the conspiracy and the actual offence. It is not that they are therefore innocent, but their culpability is less than that of the leaders who are no more. It is most likely that if Sivarasan, Subha and the other main perpetrators of the crime had been caught alive and prosecuted, those who are now sentenced to death would not have been sentenced to death along with them. In all probability, the court, either at the First or Appellate instance, would have found a lesser sentence sufficient for them. There is no reason to come to a different conclusion now merely because the main perpetrators of the crime did not wait to come before the court.

The penal principle of deterrence, we submit with respect, even if one were to subscribe to it, does not require that the minor players should be executed when the main players have evaded the gallows by killing themselves.

(2) Your Excellency will agree that the extreme penalty of death is inappropriate in a case where there is even a slight suspicion that the conviction is obtained by coerced confessions.

The case was charged and tried under the Terrorist and Disruptive Activities (Prevention) Act (TADA). Section 15 of TADA allows a confession made to a police officer admissible in evidence and this was used to extract

confessions from the accused. The case has been proved only on the basis of these confessions.

The nature of these confessions may be gauged from the fact that, barring one of them, all others who confessed did so only at the fag end of the 60 day period of police remand. Their mental state during that period may be gleaned from the fact that ten of their co-accused committed suicide, having decided to die, rather than fall into the hands of police.

All those who confessed have told the court that confessions were extracted from them. While that may not be reason enough for the court to disbelieve the confessions, it raises enough doubt to rule out the application of extreme punishment. Besides, the contents of the confessions extracted by the police contradicted each other and the evidence of the prosecution witnesses were not in many instances corroborative of the contents of the confessional statements -- facts which have been pointed out in the Judicial Review petition.

(3) Your Excellency will agree that when the case is tried under a law that is admittedly draconian, the extreme punishment is inappropriate, for error cannot be ruled out in the prosecution.

Your Excellency is aware that TADA was allowed by Parliament to lapse, because of the widespread criticism of its draconian character. While technically, it is not wrong that cases which were earlier booked under TADA are allowed to be tried under it, such a practice would be most improper, since the Act lapsed, not for any other reason, other than that it was extremely draconian.

But for the use of TADA, which allows confessions made to police officers admissible in evidence, unlike normal law, there would be nothing in this case. To put it frankly, the case has been proved only by using the facility provided by the draconian TADA to lock up the accused for 60 days in police custody, extract a confession from him/her and use it as evidence to prove his/her guilt.

The voluminous records submitted in this case cannot hide the fact that the Prosecution's case has been established and proved only in this manner. Your Excellency will agree that awarding the Death Penalty on the basis of an Act that lapsed because there was a national consensus on its draconian character is not only improper but also extremely unsuited to a democratic polity.

(4) Your Excellency will agree that death sentence should not be awarded when the proof of the case is based on an admittedly debatable view of the law, in this instance, Section 12 of TADA, which has been interpreted by the learned judges in such a way as to make confessions made under Section 15 of TADA admissible in evidence, even after the charges made under TADA had been struck down.

The Supreme Court has held, upon an elaborate consideration of the evidence in this case, that the Sriperumbudur bomb blast was not a terrorist or disruptive act, as defined in TADA, though it is without doubt a heinous act. That is, the offence does not attract the provisions of TADA. The learned judges of the Court have held that none of the four accused are guilty of terrorist or disruptive acts, thus implying that they are not a menace to our country and society.

Yet it is paradoxical that the Court has held that since the case was charged under TADA, the confessions extracted by police officers can be admitted in evidence under Section 15 of TADA. With all due respect to the learned judges, we submit that such a view is debatable.

We do not ask Your Excellency to sit in judgement over this view of the Supreme Court, nor can we reasonably make such a plea.

But we would like to point out that this is a view which is quite likely to be reversed by the Court at some point or other. But, if by that time, the accused are hanged, their lives cannot be resurrected.

(5) In this context, we would like to draw Your Excellency's attention to the nature of these young lives which were drawn into a conspiracy in which they were mere pawns.

We submit, Your Excellency, and it is clear from their social and economic backgrounds that they were persuaded to subscribe to a misguided idealism. This idealism, in turn, derived from an indoctrination they were powerless to criticise or resist, given their extremely humble social origins and also from more mundane, material considerations dictated by their economic situations.

All these four persons have had to endure 8 years of uncertain and painful incarceration, haunted by the ever present shadow of an impending death, which have left every one of them scarred in different ways. At a time of their lives when they should have been enterprising and lively, they were forced to endure prison life for their unwitting role in a heinous crime of which they knew almost nothing. Their imprisonment, trial in the designated court and the awarding of death sentence have already caused a great deal of anguish to them and their families.

(6) Leaving aside the considerations bordering on questions of a legal nature, Your Excellency will agree that the power of clemency takes into account considerations of a human and moral character which the law may consider as existing outside of its ken. Indeed it is precisely because of the relevance and value of these considerations that the power of executive clemency is provided for in our Constitution over and above the multiple tiers of appeal and review.

Here, Your Excellency may not stop where the Supreme Court has stopped in considering the human and moral side of the punishment. For instance, should the child of Nalini and Murugan be orphaned in the interests of justice? Would justice be defeated, if Nalini is allowed to live for the sake of the child? If so, that would be a very insecure justice indeed. We would like to draw

Your Excellency's attention to the fact that one of the learned judges, Justice K.T. Thomas, did approach the issue compassionately but had to agree with the majority decision that indeed justice would be defeated even if one of the two parents is allowed to live for the sake of the child. The explanation offered by the judges was: think of all those children orphaned by the Sriperumbudur blast. That is, to imply, that justice required taking revenge for the death of all those children. Compassion is a fundamental duty (Art. 51 A of our Constitution) and making even a single child motherless is merciless violation of justice in its humanist dimension.

Whatever the legal propriety of the thinking of the judges of the Supreme Court on those lines, Your Excellency is not bound to interpret justice in a like manner. The one who kills seeks revenge for some wrong, real or perceived. But the justice done by society cannot seek revenge. Then society and its civilisation would be as weak as the weakest individual. Would India like to put itself on par with a Sivarasan?

(7) Finally, we would like Your Excellency to consider the merit of Death Penalty as such. The right to life is the most fundamental right enshrined in the Universal Declaration of Human Rights and is guaranteed as such in our Constitution.

The Death Penalty is a premeditated and cold blooded killing of a human being by the State which can exercise no greater power over a person than that of deliberately depriving him or her of life. Article 51 of our Constitution urges compassion and humanism as fundamental duties. The Supreme Court of India has held that the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of the past and regressive times (AIR 1977 S.C 1926 at page 1929). Though the Death Penalty has not been eliminated from our penal system, the history of the judicial process in our Apex Court has set it as an exception rather than the rule. It is only in the rarest of rare cases that even courts should use death sentence. And in mercy petitions life sentence is the Gandhian

rule.

Your Excellency will agree that more and more countries are responding to the United Nations' call to abolish Capital Punishment from the statute books of the member countries and that India finds herself only amongst the handful of nations which either opposed or abstained from voting when the UN Human Rights Commission recently voted in favour of a general moratorium on Capital Punishment. It is apt to quote a part of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the Death Penalty. It runs thus:

"The State Parties to the present Protocol, believing that abolition of the Death Penalty contributes to enhancement of human dignity and progressive development of human rights, recalling Article 3 of the Universal Declaration of Human Rights, adopted on 10.12.1948 and Article 6 of the International Covenant on Civil and Political Rights, adopted on 16.12.1966, noting that Article 6 of the International Covenant on Civil and Political Rights refers to abolition of the Death Penalty in terms that strongly suggest that abolition is desirable, convinced that all measures of abolition of the Death Penalty should be considered as progress in the enjoyment of the right to life, desirous to undertake hereby an international commitment to abolish the Death Penalty, have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the Death Penalty within its jurisdiction."

(8) The general arguments of deterrence and retribution in favour of awarding Death Penalty are equally applicable to the Rajiv Gandhi case.

However, the onus of establishing the deterrent value of Capital Punishment is on those who are seeking to retain it. The hanging of Satwant Singh and Kehar Singh for the assassination of Indira Gandhi did not seem to have deterred the murder of Rajiv Gandhi. Recurrences of such political murders are not likely to disappear from the face of the earth.

The attraction that terrorism holds to bitter minds can only be countered by the offer of generosity. If what we seek is to win over embittered minds, we must first give up the embittered mode of thought which argues that those who did not care how many children are orphaned do not deserve greater consideration. The gift of life to those who killed our former Prime Minister out of political spite is the best signal Your Excellency can send out to the world to signify that India is generous. The courageous Gladys Staines,² when told of the death of her husband and two children at the hands of the bigots said: "May God forgive them." Cannot India learn from her and display the same sort of nobility?

We therefore plead with Your Excellency to exercise the greatest possible compassion and return to these young persons the life they are on the verge of losing. All of them then will in the future have the time and opportunity to re-examine their lives and orient it to useful purposes and enjoy the profound compassion and the spiritual values nurtured by our society.

Yours

truly,

K. Balagopal

(Date of writing not known)

² Her husband Graham Staines was an Australian missionary who was burnt to death along with their two sons Philip (9) and Timothy (7) while they were asleep in their station wagon at Manoharpur village in Keonjhar district, Orissa on the night of January 22, 1999.