



CASE COMMENT: MOHAMMED AJMAL MOHAMMAD AMIR KASAB VS STATE OF MAHARASHTRA

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INTRODUCTION

Citation: (2012) 9 SCC 1

Date of Judgement: 29 AUGUST 2012

Court: Supreme Court of India

Appellant: Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid

Respondent: State of Maharashtra

Bench: Aftab Alam & C.K. Prasad

BACKGROUND OF THE CASE

During the procedural history, important legal actions were taken against Kasab, a perpetrator in the Mumbai attack of 2008. “On February 19, 2010, the trial court delivered its verdict.” Kasab was convicted of multiple serious offences. He had been charged with 86 counts of murder, waging war against the country and terrorism, and was handed the death sentence on May 6, 2010. The Bombay High Court then examined the Trial Court’s judgment and, on 21 February 2011, confirmed it, thus sealing Kasab’s fate. After this, Kasab chose to challenge the verdict and moved to the Supreme Court, hoping his death sentence would be reduced or set aside by the Supreme Court. It was the Supreme Court that eventually had to hear the matter, examining in detail the complexities of the legal processes leading to Kasab’s conviction and death sentence. At last, the Court rendered its decision and rejected the petition filed to challenge Kasab’s conviction, though some efforts were made during the appeal to gain a

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degree of leniency. This landscape of different levels of the system revealed the nature of Kasab's grave charges as well as the entrenched mechanisms in place to deal with these unforgiving crimes, eventually leading to the irrevocable death sentence.

FACTS OF THE CASE

On 26th November 2008, ten terrorists from the Pakistan-based Lashkar-e-Taiba carried out coordinated attacks across Mumbai, killing 166 people and injuring over 300. The attacks targeted CST Railway Station, Taj Hotel, Oberoi Trident, Nariman House, Leopold Café, and Cama Hospital. Ajmal Kasab, the only terrorist captured alive, was arrested at Girgaum Chowpatty after firing on civilians and police officers, including ATS Chief Hemant Karkare, Vijay Salaskar, and Ashok Kamte. The only surviving Terrorist for the 26/11 (2008) terrorist attack on Mumbai at targeted places, Ajmal Kasab, was convicted under Sections 302, 120B, 121, and 121A of the Indian Penal Code, 1860 (IPC). Initially, no lawyer agreed to represent Ajmal Kasab as his client before the Court, and Kasab also denied all the services provided by India and demanded a lawyer from his Country. Pakistan did not even accept Kasab as its citizen, and Kasab then accepted a lawyer from India.

ISSUES RAISED

1. Whether Kasab's right to be defended by a legal practitioner arose only at the commencement of trial under Section 304 of CrPC, or at an earlier stage (during remand and investigation).
2. Whether Kasab's confession was obtained under duress or coercion, violating his fundamental right to self-incrimination under Article 20(3).

ARGUMENTS OF BOTH PARTIES

Arguments by the Appellant:

1. The appellant did not get a fair trial and added that the denial of a fair trial, for any reason, wittingly or unwittingly, would have the same result: it would render the trial a nullity, and no conviction or sentence based on such a trial would be legal or enforceable.
2. The learned Counsel submitted that the right to a fair trial is an integral part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India, and that the

fundamental right under Article 21 was inalienable, and there can be no question of any waiver of the right by any person.

3. Proceeding from the premise that a fair trial is an inalienable right of every person. The Constitutional guarantee remained unsatisfied because of the denial to him of two valuable Constitutional rights/protections:

- The right to counsel at the earliest, as provided under Article 22(1) of the Constitution; and
- The right to protection against self-incrimination as stipulated by Article 20 (3) of the Constitution
- That a mere offer of legal aid is not the same as being made aware that one has the Constitutional right to consult, and to be defended by, a legal practitioner, and that simply the offer of legal aid does not satisfy the Constitutional requirement.
- The omission to make the appellant aware of his Constitutional right to consult, and be defended by, a legal practitioner resulted in the denial of protection against self-incrimination guaranteed under Article 20(3) of the Constitution.

Arguments by the Respondents:

1. All Constitutional rights of the appellant, including the right to be defended by a lawyer and protection against self-incrimination, were fully secured and upheld, and it is incorrect to say that the trial of the appellant was vitiated by the denial of any Constitutional right or privilege to him.

2. The statutory scheme framed by Parliament, and the relevant provisions of the Criminal Procedure Code, 1973, and the Indian Evidence Act, 1872, were crafted in such a way as to ensure that the privileges and protections given to the accused are, in fact, available to him in actual practice.

3. The right to legal assistance under Article 22(1) is not a mandatory right upon arrest but an enablement to be exercised by the person arrested.

4. The right against self-incrimination under Article 20(3) does not proscribe voluntary statements made in the exercise of free will and volition.

5. The right against self-incrimination under Article 20(3) has been statutorily incorporated in the provisions of CrPC (i.e., Sections 161, 162, 163 and 164) and the Evidence Act, 1872, as manifestations of enforceable due process, and thus compliance with statutory provisions is also compliance with Constitutional requirements.

6. The right to counsel as contemplated in the judgment of Miranda has not been followed in either the United States or in other jurisdictions, particularly due to the qualification of an intelligent and voluntary waiver.

JUDGEMENT

The appellant, Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid (hereinafter referred to as 'the appellant' or as 'Kasab'), who is a Pakistani national, has earned for himself five death penalties and an equal number of life terms in prison for committing multiple crimes of a horrendous kind in this country. Some of the major charges against him were: conspiracy to wage war against the Government of India; collecting arms with the intention of waging war against the Government of India; waging and abetting the waging of war against the Government of India; commission of terrorist acts; criminal conspiracy to commit murder; criminal conspiracy, common intention and abetment to commit murder; committing murder of several persons; attempt to murder with common intention; criminal conspiracy and abetment; abduction for murder; robbery/dacoity with an attempt to cause death or grievous hurt; and causing explosions punishable under the Explosive Substance Act, 1908. He was found guilty of all these charges besides many others. He was awarded the death sentence on five counts, a life sentence on five other counts, as well as several relatively lighter sentences of imprisonment for the other offences.

The judgment relied on the following provisions of law:

The crime of waging war against the state is defined under Section 121 of the Indian Penal Code. The court decided that because Kasab had entered India illegally, was carrying weapons and explosives, and had carried out a terrorist assault that resulted in the deaths and injuries of innocent people, his acts constituted waging war against the state.

The crime of murder is defined under Section 302 of the Indian Penal Code. The judge ruled that Kasab was guilty of murder for the attack's several fatalities.

The crime of attempted murder is defined under Section 307 of the Indian Penal Code. Due to the attack's attempted killing of numerous more victims, the court found Kasab guilty of attempted murder.

Unlawful Activities (Prevention) Act of 1967, Section 16: The act of belonging to a terrorist organisation is prohibited in this provision. The court ruled that Kasab belonged to the Pakistan-based terrorist group Lashkar-e-Taiba.

Unlawful Activities (Prevention) Act of 1967, Section 30: The crime of conspiring to conduct a terrorist act is described in this section. The court decided that Kasab had planned the Mumbai attacks with other Lashkar-e-Taiba members.

The court also considered the following provisions of law in its judgment:

Article 21 of the Indian Constitution protects everyone's right to life and individual freedom. The court determined that Kasab's case qualified as one of the extremely few instances in which the death sentence should be applied.

The right to equality before the law is guaranteed by Article 14 of the Indian Constitution. The death sentence cannot be applied in a discriminatory manner, the court said.

The right to protection of life and individual freedom is guaranteed under Article 22 of the Indian Constitution. The court ruled that the accused's basic rights cannot be violated in the execution of a death sentence. Kasab was found guilty of all accusations brought against him, and the Supreme Court determined that the only just punishment was the death penalty. The court determined that Kasab had perpetrated horrific acts and had no remorse for his actions. The court also determined that Kasab's execution was required to protect the public from him and to discourage such terrorist acts. A significant development in Indian law is the Supreme Court's ruling in the Kasab case. The Supreme Court has never affirmed the death penalty for a terrorist attack. The verdict is probably going to have a big influence on how future terrorism cases are prosecuted in India.

CRITICAL ANALYSIS

The court held by the majority that Kasab, considering all the factors that the attack on Mumbai killing and wounding scores of innocent people was a wicked act, and the conversation between the terrorist and their collaborators while the attack was underway appeared to be. Further, it

indicates that killing innocent people for no reason but to become “Fidayeen” creates a larger impact on the Indian citizens and foreigners and also causes a cleavage of distrust and suspicion between the communities.

Wherein, though a few lawyers refused to take up the case of Kasab, the Supreme Court held that even a detenu who is statutorily denied legal representation is entitled to a common law right of representation through a friend. Legal aid facet of human rights; considering all the mitigating factors, the state is bound to and has a constitutional obligation to provide a lawyer.

The right against self-incrimination under Article 20(3) does not exclude any voluntary statements made in the exercise of free will and volition. We also accept that the right against self-incrimination under Article 20(3) is fully incorporated in the provisions of the CrPC (Sections 161, 162, 163 and 164) and the Evidence Act, 1872, as manifestations of enforceable due process, and thus compliance with these statutory provisions is also equal compliance with the Constitutional guarantees. However, certain cases have proved otherwise, like *Miranda v. Arizona*; it was discussed that although the rules are not present in Indian law, its commentary already has those rules to expand the accused's self-incrimination rights.

The court held that a criminal suspect who has been told of his right to remain silent must invoke that right until it is appropriate for the police to stop questioning him; it is not enough to simply remain silent. Thus, after a prolonged period of silence, police can use incriminating comments made by a suspect. The obligation to provide him with a lawyer at the start of the trial is absolute unless the defendant voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, and failure to do so would vitiate the trial and the resulting conviction and sentence, if any, given to him at the beginning of the trial.

CONCLUSION

The case of *Mohammed Ajmal Kasab v State of Maharashtra* reaffirmed India's commitment to the rule of law and due process, even in cases involving grave acts of terrorism. The Supreme Court's ruling reinforced the constitutional guarantee of free legal aid and fair trial principles, while also sending a strong message against terrorism. Despite the heinousness of his crimes, Kasab was granted all rights under the Indian legal system, ultimately leading to his execution after exhaustive judicial scrutiny.

REFERENCES

- Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1 (India).
- Constitution of India, art. 14.
- Constitution of India, art. 20(3).
- Constitution of India, art. 21.
- Constitution of India, art. 22(1).
- Constitution of India, art. 39A.
- Indian Penal Code, 1860, §§ 120B, 121, 302, 307.
- Unlawful Activities (Prevention) Act, 1967, §§ 16, 30.
- Explosive Substances Act, 1908.
- Criminal Procedure Code, 1973, §§ 161–164, 207.
- Indian Evidence Act, 1872.
- Advocates Act, 1961, rule 46.
- Law Comm. of India, Report No. 262, The Death Penalty (2015).
- Law Comm. of India, Report No. 262, The Death Penalty (WCADP 2020), <https://worldcoalition.org/document/report-no-262-the-death-penalty/>.
- Jayanta Boruah, *Kasab's Death Penalty: A Review of Its Validity*, in NLUA Law Review Vol. 2, No. II, 35 (July–Dec. 2018), <https://nluassam.ac.in/docs/Journals/NLUALR/NLUALR-Vol-2-no-II.pdf>
- Kuldeep Yadav, *Death Penalty and Its Impact on Crime Deterrence in India*, Int'l J. Law, Vol. 8, No. 6, 228 (2022), <https://www.lawjournals.org/assets/archives/2022/vol8issue6/8-5-112-280.pdf>
- Anup Surendranath, Neetika Vishwanath & P. Dash, *Penological Justifications as Sentencing Factors in Death Penalty Sentencing*, J. Nat'l Law Univ. Delhi, Jan. 20, 2021, <https://www.nls.ac.in/publications/penological-justifications-as-sentencing-factors-in-death-penalty-sentencing/>
- Yesh Khanna, *26/11 Mumbai Attacks*, Penn Political Review, Fall 2022, 10.
- Aditya Kumar & Dr Anand K. Singh, *An Analysis of Some High-Profile Terrorist Attacks in India during 2008 and What Legislative and Institutional Developments Were Taken by the Indian Government after the 26/11 Mumbai Attack (A Case of Cyberterrorism)*, Int'l J. Social Sciences Arts & Humanities, Vol. 12, No. 1, 42

(2025), <http://www.crdeepjournal.org/wp-content/uploads/2025/01/Vol-12-1-7-IJSSAH-1.pdf>

- Aaskha Zaveri, *[Title of Article on Kasab / Death Penalty / Terrorism]*, Jus Corpus Law J., Vol. 3, Issue 2, 18 (Dec.–Feb. 2023), <https://www.juscorpus.com/wp-content/uploads/2022/12/14.-Aaskha-Zaveri.pdf>
- Variya Gulati et al., *Cross-Border Terrorism And Pakistan's International Liability After The 26/11 Mumbai Attacks: Media, Information War And Politics Of ...*, Int'l J. Legal & Law Rev. (IJLLR), May 25, 2026, <https://www.ijllr.com/post/cross-border-terrorism-and-pakistan-s-international-liability-after-the-26-11-mumbai-attacks-media>
- Justice A.P. Shah (chair), Law Comm. of India, *262nd Report on Death Penalty* (Aug. 31, 2015), <https://www.scconline.com/blog/post/2015/09/01/262-law-commission-report-on-death-penalty/>
- Project 39A, NLU Delhi, *Issues in Death Penalty Litigation* (2021), <https://www.project39a.com/resources-issues-in-death-penalty-litigation>
- *Miranda v. Arizona*, 384 U.S. 436 (1966).
- *Time*, *Kasab's Sentence: After Mumbai Terrorist, Should India Abolish the Death Penalty?* Aug. 28, 2012, <https://time.com/archive/7152902/ajmal-kasabs-death-sentence-will-the-mumbai-terrorist-finally-face-justice/>
- *Business Standard*, *Supreme Court Upholds Death Sentence to Kasab*, Aug. 29, 2012, https://www.business-standard.com/article/economy-policy/supreme-court-upholds-death-sentence-to-kasab-112082903002_1.html
- *Times of India*, *Kasab Can't Be Denied Legal Aid, Say Experts*, <https://timesofindia.indiatimes.com/india/kasab-cant-be-denied-legal-aid-say-experts/articleshow/3836854.cms>.