

(1995) 04 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : H.C. (W) No. 66 of 1991

Ajay Sharma

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 31, 433A
Jammu and Kashmir Criminal Procedure Code, 1989 — Section 35, 35(2), 35(3)
Penal Code, 1860 (IPC) — Section 53A, 57
Ranbir Penal Code, 1989 — Section 45, 46, 53, 55, 57

Citation : (1995) CriLJ 3162 : (1995) 3 RCR(Criminal) 605

Hon'ble Judges : R.K. Nehru, J;B.A. Khan, J

Bench : Division Bench

Advocate : M.A. Goni, for the Appellant; R.C. Gandhi, AAG, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—A representation was addressed to Hon'ble the Chief Justice by a number of convicts lodged in Central Jail Jammu through

Superintendent Central Jail Jammu. The crux of the representation was that there was no compliance of the provisions of the Jail Manual nor the

convicts have been given remission in their sentence under the said Manual and that the convicts have been discriminated in the matter of remission.

It was treated as a habeas corpus petition.

2. The learned single Judge after hearing the concerned parties at length was of the view that the controversy in question which has arisen on

account of the insertion of Section 433A of the Central Criminal P.C. and the judgment of the Apex Court as reported in Gopal Vinayak Godse

Vs. The State of Maharashtra and Others, , needs consideraton for authoritative adjudication by a Larger Bench on the following questions of law

:-

1) What is the extent of sentence of life imprisonment in view of the provisions of Sections 55, 57 and 71 of the Ranbir Penal Code read with

SRO 56 of 1971 dated 24th January 1972 :

2) Any such other matter which may be raised and is found by the Division Bench to be connected with the pleas raised by the convicts filing these petitions.

That is how we are seized of this reference.

3. We have heard learned counsel for the parties and with their able assistance gone through the relevant provisions contained in various enactments.

4. Mr. Goni, learned counsel for the petitioner, has raised two contentions for consideration by this Court. We will take them one by one.

5. The first contention is as to under what provisions of Rules or law the life-convicts are to be dealt with in the matter of remission.

6. In this regard Mr. Gandhi, AAG, appearing for the respondents, made a statement at the bar that the State is dealing with the premature release of lifers in accordance with the provisions of Rule 516-b, as amended till date, of the Punjab Jail Manual, which was adopted by the State of Jammu and Kashmir on April 22nd. 1931.

7. The next contention which involves million dollar question before us is:

What is the extent of 'Life imprisonment'? Does it mean imprisonment for fourteen years or twenty years as is commonly believed or for the whole of convict's natural life"?"

8. Though the issue seems no more res integra in the face of the two judgments of the Supreme Court in Gopal Vinayak Godse Vs. The State of

Maharashtra and Others, and State of Madhya Pradesh Vs. Ratan Singh and Others, , it still appears surrounded by confusion because of differing

provisions in the Penal Code and the Central Criminal PC. on the one hand and the Ranbir Penal Code and the State Criminal P.C., on the other.

Cashing on this, Mr. Goni, learned counsel for petitioners, wanted us to hold that the judgments of the Apex Court provided no guide in the matter

and that the 'Life imprisonment'" be declared to mean imprisonment for 14 years or at best for 20 years. According to him, these judgments

proceeded on the interpretation of the provisions of Section 53-A of the Penal Code which was not applicable to the State leaving the question

wide open to be decided by this Court. He placed reliance on Section 35(2)(a) of the State Criminal P.C. (Cr.P.C) and Section 57 of the Ranbir

Penal Code and argued that the ""Life imprisonment"" could not exceed 14 years under the first provision and alternatively to 20 years under the

latter one. He also referred to Naib Singh Vs. State of Punjab and Others, which, according to him, interpreted the ""Life imprisonment"" to mean

imprisonment for whole of the life of the convict on the basis of Section 53-A of the Penal Code.

9. The edifice, thus, built by Mr. Goni looks both specious and attractive on the face of it calling for the closer comparative examination of the

relevant provisions of the two sets of Codes. It, therefore, becomes necessary to reproduce these provisions for proper appreciation of rival

submissions.

10. Section 35(2)(a) of the State Cr.P.C, which corresponds to Section 31 of the Central Cr.P.C, provides:

Maximum term of punishment-

(a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

Section 55 of the Ranbir Penal Code lays down :

Every case in which sentence of imprisonment for life shall have been passed, Government may, with the consent of the offender, commute the

punishment for imprisonment of either description for a term not exceeding fourteen years.

Section 57 of the Ranbir Penal Code which is in pari materia with Section 57 of the Indian Penal Code reads thus:

In calculating fraction of the terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years.

Section 53-A of the Indian Penal Code which is not applicable to the State and for which there is no corresponding provision in the Ranbir Penal

Code, provides:

Subject to provisions of sub-sections (2) and (3) in reference to ""transportation for life"" in any other law for the time being in force or in any

instrument or order having effect by virtue of any such law or of any enactment

repealed shall be construed as a reference to "imprisonment for life".

11. We have extracted these provisions only to bring out the hallowness of Mr. Goni's submissions. A perusal of Section 35 of the State Cr.P.C,

would show that it deals with the sentence in cases of conviction for several offences at one trial and says that if a person is convicted for two or

more offences at one trial, the Court may sentence him for such offences to several punishments which shall run consecutively unless directed to run

concurrently. Sub-section (2) provides that it shall not be necessary for the Court to send the offender for trial before a higher Court where the

aggregate punishment for several offences exceeds the punishment which it is competent to inflict. It is in this context that sub- clause (a) of Clause

(2) provides that where the sentence is to run consecutively a person shall not be sentenced to imprisonment for more than fourteen years. This by

no logic can be interpreted to mean that a sentence awarded by the Court, including a life sentence, cannot exceed fourteen years.

12. The same holds true about Section 57 of the Ranabir Penal Code which corresponds to Section 57 of the Penal Code and deals with

calculation of "fraction of terms of punishment". This section also does not say that 'life imprisonment' is equivalent to 20 years. It only lays down

that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years in calculating fraction of terms of punishment and nothing

more.

13. It is also misleading to suggest that Section 53-A of the Penal Code makes all the difference in the matter or that Naib Singh Vs. State of

Punjab and Others, , proceeding on this premises rules that 'life imprisonment' means imprisonment for the whole life of a convict. Section 53-A

only provides that any reference to the expression "transportation of life" used in the old Code shall be construed as a reference to "imprisonment

for life". It does not lay down that life imprisonment means imprisonment for the whole of the remaining life of the convict. Nor does the Naib

Singh's case interpret the provision to mean so. In this case the Apex Court was only dealing with the issue whether 'imprisonment for life' means

rigorous imprisonment for life" or otherwise.

14. All this goes to show that Mr. Goni's case suffers from misappreciation of the

relevant provisions of the Penal Code and the Criminal P.C. This

is also fortified by the text and context of Sections 45 & 46 of the Ranbir Penal Code. While the first provision defines the word "life" to denote the

life of a human being, the second draws a clear distinction between "Imprisonment for life and a term of fourteen years.

15. It thus comes out loud and clear that the "life imprisonment" as prescribed in Section 53 of the Ranbir Penal Code must be treated to mean an

imprisonment for the whole of a convicted person's natural life. As on today there is no provision either in the Ranbir Penal Code or in the State

Criminal P.C, which treats such imprisonment for a definite period of fourteen years or twenty years. The result is that no convict sentenced to life

imprisonment can claim release as a matter of right after serving a sentence of 14 years or 20 years, any formal remission or commutation by the

Government under law notwithstanding. The support for this view is available from the judgments of the Supreme Court in both *Gopal Vinayak*

Godse Vs. The State of Maharashtra and Others, and *State of Madhya Pradesh Vs. Ratan Singh and Others*, cases. In the first case, the Apex

Court held as under:

...the next question is whether there is any provision of law where under a sentence for life imprisonment, without any formal remission by

appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Penal Code, Criminal P.C, or

the Prisons Act.

The Court further observed :

A sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death so any remissions

given under the Rules could not be regarded as a substitute for a sentence of transportation for life....

16. We would, therefore, answer the reference as follows :

(1) That the "life imprisonment" means an imprisonment for the whole of a convict's natural life and does not automatically expire on his serving a

sentence of fourteen years or twenty years unless, of course, the sentence is remitted or commuted by the Government in accordance with law.

There is no provision in the Ranbir Penal Code or the State Code of Criminal Procedure providing to the contrary or prescribing any definite period

for life imprisonment.

(2) That it falls within the exclusive domain of the Government to remit or commute the sentence in accordance with the relevant provisions of law and rules in force.

(3) That under para 516-B of the Punjab Jail Manual, it is obligatory for the jail Superintendents concerned to forward the cases of prisoners who fall within the bracket of this rule and who have completed the prescribed term of imprisonment inclusive of remissions, if any, for consideration and appropriate orders of the Government for their premature release.

In order to satisfy ourselves of the bona fides of the State government in adhering to the provisions of the Punjab Jail Manual, we direct the Jail

Superintendents throughout the State of Jammu and Kashmir to furnish the following information regarding the life-convicts lodged in various jails of

the State, to the two Additional Registrars at the respective wings of the High Court at Srinagar and Jammu:-

i) the date when the convict was lodged in the jail;

ii) the date when his case was forwarded by the Jail Superintendent to the Government for consideration of his release in terms of Rule 516-b of

the Punjab Jail Manual; and

iii) Lastly, the action taken by the Government thereon and when the convict was so released.

With the above observations, we dispose of this petition.