

(1959) 03 RAJ CK 0006

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 50 of 1959

Bag Ali, Ali Mohmmmed

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-03-1959

Acts Referred:

Penal Code, 1860 (IPC) — Section 57

Citation : AIR 1959 Raj 273 : (1959) CriLJ 1365 : (1959) RLW 417

Hon'ble Judges : Sarjoo Prosad, C.J;K.L. Bapna, J

Bench : Division Bench

Advocate : Ahmed Bux, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bapna, J.—This is a petition u/s 491 of the Code of Criminal Procedure by Bag Ali son of Ali Mohammed of Lal Garh, district Ganganagar (now confined in District Jail, Bikaner) on the ground that he was sentenced to undergo rigorous imprisonment for life u/s 302 of the Bikaner Penal Code (equal to Section 302 of the Indian Penal Code) by judgment of the Bikaner High Court dated 1st December, 1947 and had served out the sentence.

He was also sentenced to six months rigorous imprisonment u/s 323 B.P.C., one year rigorous imprisonment u/s 324 B.P.C. and three years rigorous imprisonment u/s 325 B.P.C. The sentences were to run concurrently, but a direction was given that the sentence served by the petitioner from 27-4-1946 to 4-7-1946 be counted towards the sentence of imprisonment for life awarded to the accused. He was admitted to jail on 1-12-1947.

2. The case of the petitioner is that he had earned 8 years and 21 days by way of remission and if the sentence of imprisonment for life be taken to be 20 years, the date of release worked out to be 22nd December, 1958. .He, therefore, prayed that he should be taken to have served the full term of his sentence and

an order for his release be issued.

The Superintendent of District Jail, Bikaner has verified the facts stated above, but it was submitted that although previously the sentence of imprisonment for life was taken to be equivalent to 20 years the Government by Order No. D 15846/ F.18 (248) Home (B) /57 dated December, 1957 directed that the duration of the period of imprisonment for life shall be governed and regulated in accordance with the rules contained in Chapter III of the Rajasthan Jail Manual under head "Remission System" on the basis of their classification as Class I Prisoner or Class II Prisoner as indicated in the said rules.

It was said that the accused was (thereafter placed in Class I and according to that classification, the sentence of imprisonment for life is to be calculated as equivalent to 25 years and in accordance with that calculation, the accused will have to undergo further rigorous imprisonment till 22nd December, 1963 subject to any further jail remission that may be given to him.

3. Learned counsel for the petitioner contended that u/s 57 of the B.P.C. it is laid down that

"in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years"

and that in a case decided under the Jaipur Penal Code, *Chhotia v. The State* RLW 1954 418 where Section 49 of the J.P.C. was similarly worded, it was held that the period of imprisonment for life shall be taken to be equivalent to an imprisonment for 20 years and the decision in AIR 1945 64 (Privy Council) was distinguished on the ground that in AIR 1945 64 (Privy Council) the observations were with respect to the sentence of transportation for life. The position so far as Jaipur was concerned, was clarified in *Narsia v. State* RLW 1954 666.

The Government of Jaipur had laid down prior to 1916 that a sentence of imprisonment for life shall mean 20 years and thereafter no order of the Government was available which may have altered the aforesaid direction. In a case coming from the old Udaipur State, this Court held in *Kajyana v. The State*, Cri Misc. Case No. 102 of 1954 D/- 11-12-1954 that imprisonment for life literally meant imprisonment for the rest of the life but it was intimated by the Government Advocate under the instructions of the Government that the Jail Department treated it as equivalent to 25 years" rigorous imprisonment.

It was held that the sentence of imprisonment for life could not be taken to be imprisonment for 20 years only. Sec. 57 of the Mewar Penal Code was in identical terms with the same section of the India Penal Code. Another case *Jyoti Prasad v. State of Rajasthan*, Cri. Misc case No. 42 of 1956 D/- 17-8-1956, also came up from Udaipur, where a similar view was taken. Reference was made to the case of AIR 1945 64 (Privy Council) where their Lordships observed that they must not be taken as meaning that a life sentence must in all cases be treated as one of not more than 20 years" imprisonment.

The language of Section 57 shows that it was only for purposes of calculation of fractions of terms of imprisonment that transportation for life was to be treated as equal to 20 years. It was observed by this Court that, the sentence of imprisonment for life meant imprisonment for the rest of life after the date of punishment and similarly transportation for life, after the date of sentence and that no distinction could be drawn in the term of the service of sentence, whether it was for imprisonment for life or for transportation for life.

Sec. 57 Mewar Penal Code which was in terms similar to Section 57 of the Indian Penal Code was held as having no relevance to the term of imprisonment, which the accused had to undergo in order to serve the sentence of imprisonment for life.

4. As the Government has now decided that the prisoners who are sentenced to imprisonment or transportation for life shall be classified and the term of sentence to be undergone by prisoners who are in class I shall be 25 years, the accused has not yet served his full term of sentence. He was placed in Class I and according to the rules, a prisoner who is placed in Class I has to undergo 25 years rigorous imprisonment.

5. There is no force in this petition and is dismissed. If the prisoner has grievance about his classification, he can approach the Government through proper channel.