

PETITIONER:
SAT PAL @ SADHU

Vs.

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT 19/08/1992

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
RAMASWAMY, K.

CITATION:
1993 AIR 1218 1992 SCR (3) 898
1992 SCC (4) 172 JT 1992 (4) 530
1992 SCALE (2) 203

ACT:

Indian Penal Code, 1860:

Sections 53-A, 55 and 302-Imprisonment for life-Nature of-Whether rigorous imprisonment-No formal order issued by appropriate Government commuting sentence under Section 55 IPC or Section 433 (b) of the Criminal Procedure Code for a term not exceeding 14 years- Whether a life convict entitled to be released before 14 years of actual imprisonment.

Criminal Procedure Code, 1973:

Sections 433 (b) and 433 (A)- Life convict-Completing 13 1/2 years actual imprisonment and total period of 17 years imprisonment, including remissions-Whether entitled to be released on the ground that Government must be deemed to have commuted his sentence to 14 years.

HEADNOTE:

The petitioner, a life convict, having been sentenced to undergo imprisonment for life, for the offence under Section 302 Indian Penal Code, filed a Writ Petition before this Court challenging his continued detention in jail, and sought an order in the nature of habeas corpus, claiming that he has served more than the maximum sentence of imprisonment prescribed under law and should, therefore, be released. According to the petitioner, he had undergone about 13 years and six months actual imprisonment and total period of imprisonment including remissions came to more than 17 years, and since he had undergone more than 14 years, sentence including remissions, and the said sentence was got executed in jail custody in the form of rigorous imprisonment, the Government must be deemed to have commuted his sentence to 14 years, either under Section 55, Indian Penal Code, 1860 or Section 433 (b), Code of Criminal Procedure, 1973, notwithstanding that no formal order in that behalf was made by the State Government and as such his continued detention in jail was illegal and he was entitled to be released forthwith. It was contended that the law laid down in Naib Singh v. State of Punjab &

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Ors., [1983] 2 SCC 454, needed reconsideration by a larger Bench.

Dismissing the Writ Petition, this Court.

HELD: 1.1. Admittedly, the petitioner's sentence has not been remitted fully nor commuted for imprisonment for a term not exceeding 14 years either under Section 55 of the Indian Penal Code, 1860 or under Section 433 (b) of the Code of Criminal Procedure, 1973 by the appropriate Government. Merely because the petitioner has undergone 13 1/2 years actual rigorous imprisonment and a total period of 17 years imprisonment, including remissions, the Government cannot be deemed to have commuted his sentence, either under Section 55 of the Indian Penal Code or Section 433 (b) of the Code of Criminal Procedure. In the absence of a specific order in this behalf by the appropriate Government, the petitioner is not entitled to be released. [900E-F, 901E]

1.2. It is the settled law that in view of Section 53-A, Indian Penal Code, 1860, inserted by the Amending Act of 1955, the sentence of imprisonment for life imposed on or after January 1, 1956 is executable in jails, that the nature of punishment required to be suffered under a sentence of 'imprisonment for life' is rigorous imprisonment; that since Section 53 A (2), transportation for a term has been equated to rigorous imprisonment for the same term, by necessary implication the sentence of 'transportation for life', now substituted by 'imprisonment for life' by Section 53-A(1) which is awardable for more serious, or more grave or more heinous crimes must mean rigorous imprisonment for life, that is to say, it cannot be anything but rigorous; and that it is not necessary that, while passing the sentence of imprisonment for life a criminal court should clarify the exact nature of punishment intended to be inflicted on the accused. [902F-H, 903A-B, 901E]

Naib Singh v. State of Punjab and others, [1983] 2 SCC 454, relied on.

Kishori Lal v. Emperor, AIR 1945 PC 64 and Gopal Vinayak Godse v. State of Maharashtra, [1961] 3 SCR 440, referred to.

1.3. The reasoning and conclusions given in Naib Singh's case are correct and there is no justification whatsoever to refer the points decided in that case to a larger Bench. [903F]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Writ Petition (CRL.) No.1385 of 1991.

(Under Article 32 of the Constitution of India)

B.S. Malik and Ashok Kumar Sharma for the petitioner.

Ms. Asha and Ms. Indu Malhotra for the respondents.

The Judgement of the Court was delivered by

KULDIP SINGH, J. Sat Pal alias Sadhu, the petitioner, has challenged his continued detention in jail and is seeking an order in the nature of habeas corpus claiming that he has served more than the maximum sentence of imprisonment prescribed under law and should, therefore, be released.

The petitioner was arrested on March 27, 1978 in a case registered under Section 302 Indian Penal Code. He was convicted on August 16, 1978 and was sentenced to undergo imprisonment for life. According to the petitioner he has undergone about 13 years and six months actual imprisonment and total period of imprisonment including remissions comes to more than 17 years. Admittedly his sentence has not been remitted fully nor commuted for imprisonment for a term not

exceeding 14 years either under Section 55 Indian Penal Code or under Section 433B Code of Criminal Procedure, 1973 by the appropriate government. However, the petitioner's case is that he has undergone more than 14 years sentence including remissions and since the said sentence was got executed in jail custody in the form of rigorous imprisonment, the government must be deemed to have commuted his sentence to 14 years either under Section 55 Indian Penal Code or Section 433(B) Code of Criminal Procedure, 1973 notwithstanding that no formal order in that behalf was made by the State Government and as such his continued detention in jail is illegal and he is entitled to be released forthwith. The argument has been advanced by Mr. Balwant Singh Malik, the learned counsel for the petitioner on the following grounds:-

[1] "Imprisonment for life" as one of the punishments substituted for "transportation for life" in Section 53 of the Indian Penal Code by Amending Act 26 of 1955. No corresponding amendment has been made in the Code of Criminal

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Procedure, 1973 and there is no provision under the Code for the execution of the sentence of "imprisonment for life". In the absence of any provision for executing the sentence of "imprisonment for life" in the Code of Civil Procedure the detention of life convicts in prison is unlawful and illegal and as such the government, in order to legalise detention, has necessarily to commute life sentence under Section 55 Indian Penal Code or Section 433 (B) Code of Criminal Procedure, 1973 to one of the rigorous imprisonment, which under the said provisions cannot legally exceed a term of 14 years. The petitioner having completed 14 years, he is entitled to be released.

[II] The sentence of "life imprisonment" has not been defined either under the Indian Penal Code or under any other law. It is nowhere provided that a life convict has to undergo rigorous imprisonment. The Government by causing the life convicts to be dealt with as a prisoner sentence to rigorous imprisonment must be deemed to have commuted sentence of imprisonment for life to a sentence of rigorous imprisonment under Section 55 Indian Penal Code or Section 433 (B) Code of Criminal Procedure, 1973 for a term not exceeding 14 years.

The arguments advanced by the learned counsel stand concluded against him by the judgement of this court in Naib Singh v. State of Punjab and others, [1983] 2 SCC 454. In the said case Naib Singh challenged his continued detention in jail on the following grounds:-

"In regard to the sentence of life imprisonment the place where it has to be executed or carried out has to be appointed under Section 32 of the Prisoners Act, 1900, and since the sentence of 'imprisonment for life' like the sentence of 'transportation of life' could be executed only by way of banishment or exile by the convict being 'removed to the place or places' required to be appointed by the State Government under Section 32 of the Prisoners Act, the executing authorities were obliged to 'execute' or 'carry out' the said sentence in jail indirectly by way of commuting if for imprisonment of either description for a term

not exceeding 14 years under Section 55, IPC or Section 433(b), CrPC, 1973. In other words in the

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absence of any proper authority of law warranting the detention and execution of the sentence of such life convict in jail, his detention in such jail custody will have to be regarded as illegal and unlawful.

Nature of sentence of life imprisonment is undefined and it is not necessarily rigorous; but because the petitioner was made to undergo his sentence of life imprisonment in jail and that too in rigorous manner for more than 14 years (inclusive of remissions) his sentence should be deemed to have been commuted by the State Government either under Section 55, IPC or under Section 433 (b), CrPC, 1973 without a formal order in that behalf and he be released forthwith."

This Court rejected both the contentions and dismissed the petition. V.D. Tulzapurkar, J speaking for the Court held as under:-

Under Section 32 of the Prisoners Act a sentence of transportation either for a term or for life could be and a sentence of life imprisonment can be made executable in local jails by constituting such jails as the 'places' within the meaning of Section 32 under orders of the State Governments. Apart from Section 32 of the Prisoners Act, Section 383 of CrPC, 1898 and Section 418 of CrPC, 1973 also contain the necessary legal authority and power under which a criminal court can by issuing a warrant direct the execution or carrying out of a sentence of life imprisonment in local jails. Even since the sentence of transportation either for a term or for life became executable in jails within the country and the same position must obtain in regard to persons sentenced to imprisonment for life on and after January 1, 1956 in view of Section 53-A, IPC inserted by the Amending Act 26 of 1955.

The nature of punishment required to be suffered under a sentence of 'imprisonment for life' awardable on and after January 1, 1956 is rigorous imprisonment. Earlier the sentence of transportation either for life or for a term meant rigorous imprisonment in the sense of exaction of hard labour from the convict. Since under Section 53 A (2) transportation for a term has been equated to rigorous imprisonment for the same term,

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by necessary implication the sentence of 'transportation for life', now substituted by 'imprisonment for life' by Section 53-A(1), which is awardable for more serious, or more grave or more heinous crimes must mean rigorous imprisonment for life, that is to say it cannot be anything but rigorous.

It is not necessary that while passing the sentence of imprisonment for life a criminal court should keep in view the provisions of Section 60, IPC and choose one or the other form so as to clarify the exact nature of punishment intended to be inflicted on the accused. A distinction between 'imprisonment for life' and 'imprisonment for a term' has been maintained in the Penal Code in

several of its provisions. Moreover, whenever an offender is punishable with 'imprisonment which may be of either description' within the meaning of Section 60 and therefore, that section would be inapplicable".

It is not disputed by the learned counsel for the petitioner that the judgement in Naib Singh's case is a complete answer to his arguments but he has vehemently argued that the said judgement needs reconsideration by a larger Bench. The learned counsel also made an attempt to challenge the correctness of the privy counsel judgement in Kishori Lal v. Emperor, AIR 1945 PC 64 and of this Court in Gopal Vinayak Godse v. State of Maharashtra, [1961] 3 SCR 440. Both these judgements have been relied upon by this Court in Naib Singh's case.

We have carefully read the judgement of this Court in Naib Singh's case and have given our thoughtful consideration to the points dealt with and decided therein. We respectfully agree with the reasoning and the conclusions reached by this Court in the said judgement. We see no justification whatsoever to refer the points decided in Naib Singh's case to a larger Bench. We, therefore, dismiss the writ petition.

N.P.V.

Petition dismissed.

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