

CASE NO.:
Writ Petition (crl.) 45 of 1998

PETITIONER:
Md. Munna

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 16/09/2005

BENCH:
K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:
J U D G M E N T
WITH

WRIT PETITION [CRL.] NO. 50 OF 2003

Kartick Biswas .. Petitioner

Vs.
State of West Bengal & Ors. .. Respondents

K.G. BALAKRISHNAN, J.

The petitioner in this writ petition under Article 32 of the Constitution had been found guilty of the offence of murder under Section 302 read with Section 34 IPC by the Sessions Court and had been undergoing sentence of imprisonment for life. His conviction and sentence was affirmed by the High Court and later confirmed by this Court. The petitioner alleges that he has already undergone more than 21 years imprisonment at the time of filing of the writ petition and contended that his further detention is illegal and that he is liable to be set at liberty forthwith, for which he seeks a writ of habeas corpus and prays for payment of compensation for his alleged illegal detention beyond the period of fourteen years.

According to the petitioner, the length of the duration of the imprisonment for life is equivalent to 20 years imprisonment and that too subject to further remission admissible under law. He contends that on completion of this term he was liable to be released under rule 751(c) of the West Bengal Jail Code. He relies on the Explanation to Section 61 of the West Bengal Correctional Services Act, 1992 (West Bengal Act XXXII of 1992) whereunder the imprisonment for life is equated to a term of 20 years imprisonment.

Another contention raised by the petitioner is that the petitioner was sentenced to "imprisonment for life", a punishment introduced by the Code of Criminal Procedure (Amendment) Act 26 of 1955 as one form of punishment distinct from the punishment of rigorous or simple imprisonment shown in clause (4) of Section 53 of the Code of Criminal Procedure. According to the petitioner, the Executive authorities have converted it into "rigorous imprisonment for life" and this according to the petitioner was not warranted by the provisions of the law and the same can be done only by commutation of the punishment under Section 55 of the Indian Penal Code to rigorous imprisonment for a term not exceeding 14 years. In other words, the argument of the petitioner is that imprisonment for life shall not be treated as rigorous imprisonment and it would only be a simple

imprisonment till a proper commutation order is passed under Section 55 of the IPC.

The petitioner has also raised another contention that imprisonment for life has not been made legally executable in jail either under the Criminal Procedure Code 1898 or 1973 or any other law and the officer in charge of jail can be the person at the place envisaged under Section 32 of the Prisoners' Act (Act 3 of 1900) just for the intermediate custody and that he is bound to deliver the person over to the appropriate authority and custody for the purpose of removal to the places for carrying out or executing the sentence and in this behalf reliance was placed on the Forms of Warrant of Commitment prescribed under Section 383 and 386 of the Cr.P.C. 1898.

Lastly the petitioner contended that in any case the petitioner is liable to be released from detention on completion of twenty years imprisonment.

In order to deal with the contentions advanced by the petitioner, it is necessary to look into the provisions of Section 53 of the Indian Penal Code. Clause 'secondly' of Section 53 relating to "transportation" was deleted and in its place "imprisonment for life" was introduced by Act 26 of 1955 with effect from 1.1.1956. The amended Section 53 reads as follows :

"53. Punishment. \026The punishments to which offenders are liable under the provisions of this Code are \026

First -- Death;
Secondly.-- Imprisonment for life
\005\005\005\005\005\005..
Fourthly - Imprisonment, which is of two descriptions, namely\027
(i) Rigorous, that is, with hard labour;
(ii) Simple;
Fifthly \026 Forfeiture of property;
Sixthly - Fine."

Section 53 provides for distinct categories of punishments to which offenders are liable to be punished for the offences enumerated in the IPC. The punishment of "transportation" was deleted and was substituted by "imprisonment for life". Prior to the commencement of Act 26 of 1955, all prisoners sentenced to "transportation" for a fixed term or for life were not invariably deported to the overseas penal settlements in the island of Andaman. The prisoners were divided into two categories and those who were found eligible for deportation were alone sent to the penal settlements. The other prisoners were confined in one of the jails within the country under Section 32 of the Prisoners Act, 1900. Section 32 of the Prisoners Act, 1900 specifically deals with persons under sentence of "transportation" Section 32 reads as follows :

"32. Appointment of places for confinement of persons under sentence of transportation and removal thereto:-

(1) the State Government may appoint places within the State to which persons under sentence of transportation shall be sent, and the State Government or some officer duly authorized in this behalf by the State Government shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed

for another offence.

(2) In any case in which the State Government is competent under sub-section (1) to appoint places within the State and to order removal thereto of persons under sentence of transportation, the State Government may appoint such places in any other State by agreement with the State Government of that State and may by like agreement give orders or duly authorized some officers to give order for the removal thereto of such persons."

Under sub clause (2) of Section 32, the State Govt. is empowered to appoint places within the State and in other States with their consent where prisoners punished for transportation could be lodged for undergoing their sentences. These convicted persons were kept in detention for the purpose of carrying out the execution of their sentences. The contention of the petitioner is that it is only 'place' or 'places' within or outside the State in India for temporary custody of the person sentenced to transportation and it shall not be jails and under Section 32 of the Prisoners Act they cannot be kept in jail. The further argument of the petitioner's counsel is that when the transportation was replaced by the sentence of imprisonment for life, the same provision would apply and there cannot be detention of the convicted persons in jails pursuant to the sentence of imprisonment imposed on him. The counsel for the petitioner would further argue that sentence of imprisonment for life is impossible to be carried out in view of the provisions of Section 32 of the Prisoners Act 1900 and therefore the conviction is illegal.

The above contention of the petitioner's counsel is only to be rejected. The imprisonment of the life convicts are being carried out on the strength of the order passed by the court. The provisions contained in the Prisoners Act are only procedural in nature. The preamble to the Act itself states the Act is meant to consolidate the law relating to prisoners confined by order of a court and Section 32 of the Prisoners Act 1900 specifically says about the persons under sentence of transportation and when the punishment of transportation itself was deleted, the provisions of Section 32 regarding the temporary custody of the prisoners, there is no relevance for the appointed places within the State or outside the State for a person under sentence of transportation. The prison authorities are bound to keep the persons who are sentenced to imprisonment for life in jails. Of course, some of the provisions in the Prisoners Act, 1900 were not suitably amended so as to be in conformity with the sentence of life imprisonment introduced by Act NO. 26 of 1955. That does not make the detention illegal. A similar plea was raised in Naib Singh vs. State of Punjab & Ors. (1983) 2 SCC 454 and this Court held:

"9. \005\005\005\005\005\005In other words, the contention was that under the power for confinement of transportation prisoners the State Government cannot appoint jails as the 'places' for their confinement. We fail to appreciate as to why such a qualification or limitation on the power of the State Government under Section 32 should be read into with section. Having regard to the unqualified and clear language of the section there is no reason why the State Governments cannot appoint jails as the "places" for confinement of transportation prisoners. Counsel relied upon two decisions of Lahore High Court in Kundal Lal v. Emperor and in the matter of Khairati Ram to support his contention but in our view neither of these decisions lays down anything as suggested by counsel\005\005\005"

"10. Apart from Section 32 of the Prisoners Act, Section 383 of Cr.P.C., 1898 and Section 418 of Cr.P.C. 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. Both the sections appear in a chapter dealing with 'Execution of Sentences' under the respective Codes and are identically worded and each one provides that "where the accused is sentenced to imprisonment for life the Court passing the sentence shall forthwith forward the warrant to the Jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place with the warrant." It is obvious that the 'confinement' of the convict in the jail pursuant to the court's warrant issued under the sections is for the purpose of executing or carrying out of the sentence. The proviso to sub-section (1) of Section 418 and sub-section (2) of Section 418 make the position abundantly clear that the expression 'confinement' has been used in the sense of execution or carrying out of the sentence. Some argument based on the concerned Forms of Warrant of Commitment prescribed under both the Codes (of 1898 and 1973) was made by counsel for the petitioner but it is obvious that non-prescription of appropriate Forms of Warrant of Commitment would not affect the legality of the detention in local jails so long as the requisite legal authority and power in that behalf is vested in the criminal court. Moreover, the Forms prescribed under the codes cannot be regarded as exhaustive and an appropriate warrant of commitment directing the execution or carrying out of sentence of life imprisonment in jail could be adopted and issued by the court so long as in law the requisite authority and power in that behalf is vested in the court."

Another contention of the petitioner's counsel is regarding the nature of the sentence of imprisonment for life and according to the petitioner's counsel it cannot be equated with rigorous imprisonment for life. The petitioner contends that the rigorous imprisonment is a separate punishment under clause 4(1) of "fourthly" of Section 53 IPC. The petitioner's contention is that the R.I. could be imposed only under clause "fourthly" of Section 53 in respect of imprisonment for a term. The counsel would further contend that a person sentenced to imprisonment for life could be subjected to R.I. for life only under an order of detention passed under Section 55 of the IPC. This contention also is without any merit. The sentence of imprisonment for life as noticed earlier was substituted for "transportation". There are ample materials to show that a person who was sentenced to transportation had always been subjected to hard labour. Transportation to overseas penal settlements implied hard labour for the concerned convicts and the punishment of deportation beyond seas was considered to be the most dreaded punishment and there were series of rules and regulations governing management and control of penal settlements in the Port Blair and Nicobar islands. The Andaman & Nicobar Jail Manual, a Govt. of India publication of 1908 contains several rules and regulations and chapter 2 thereof deals with classification of convicts and clause (3) of Section 17 specifically says that transportation entails hard labour and strict discipline with only such food as is necessary for health and mitigation of the above is an indulgence which at any time could be withdrawn in whole or in part. It is difficult to understand how

such a punishment could be deemed to have been substituted by simple imprisonment for life. Moreover Section 53A of the IPC makes the position clear. Clause 2 of Section 53A reads as follows :

"53A. Construction of reference to transportation. \026

(1)\005\005\005\005

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term."

Therefore, it is clear that if a person is sentenced to transportation for a term, the same is converted to rigorous imprisonment for the same duration. Naturally, the transportation for life will only be treated as rigorous imprisonment for life.

If a portion of the period of transportation for life is to be treated as sentence of rigorous imprisonment for the same term, naturally, the entire transportation period is to be treated as 'rigorous imprisonment for life.' Imprisonment for life is a class of punishment different from ordinary imprisonment which could be of two descriptions, namely, "rigorous" or "simple". It was unnecessary for the Legislature to specifically mention that the imprisonment for life would be rigorous imprisonment for life as it is imposed as punishment for grave offences.

In K.M. Nanavati vs. State of Maharashtra AIR 1962 SC 605 the High Court of Bombay had sentenced the offender to undergo rigorous imprisonment for life. The appeal was dismissed by this Court with the observation that the High Court rightly passed the sentence of imprisonment for life. Therefore, we are of the view that "imprisonment for life" is to be treated as "rigorous imprisonment for life".

In Naib Singh's case (supra), it was further held as under :

"17. \005\005\005\005. In the first place, a distinction between 'imprisonment for life' and "imprisonment for a term" has been maintained in the Penal Code in several of its provisions. Secondly, by its very terms Section 60 is applicable to a case where "an offender is punishable with imprisonment which may be of either description" and it is only in such case that it is competent for the court to direct that "such imprisonment shall be either wholly rigorous or wholly simple or that any part of such imprisonment shall be rigorous and the rest simple." And it is clear that whenever an offender is punishable with "imprisonment for life" he is not punishable with "imprisonment which may be of either description", in other words Section 60 would be inapplicable.

18. However, for the reasons discussed above and in view of the authoritative pronouncements made by the Privy Council and this Court in Kishori Lal case and Gopal Godse case respectively, it will have to be held that the position in law as regards nature of punishment involved in a sentence of imprisonment for life is well settled and the sentence of imprisonment for life has to be equated to rigorous imprisonment for life\005\005\005\005\005\005.."

The counsel contended that by virtue of Rule 751(C) of the West

Bengal Jail Code, the petitioner was liable to be released from jail on completion of twenty years. He also relied on the Explanation to Section 61 of the West Bengal Correctional Services Act 1992 (W.B. Act No. XXXII of 1992) wherein the imprisonment for life is equated to a term of twenty years simple imprisonment for the purpose of remission. But there is no provision either in the Indian Penal Code or in the Code of Criminal Procedure whereby life imprisonment could be treated as fourteen years or twenty years without there being a formal remission by the appropriate government. Section 57 of Indian Penal Code reads as follows :

"57. Fractions of terms of punishment. --- In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years."

The above Section is applicable for the purpose of remission when the matter is considered by the government under the appropriate provisions. This very plea was placed before the Judicial Committee of the Privy Council in *Kishori Lal vs. Emperor* AIR (32) 1945 PC 64 and the Privy Council held as under :

"Assuming that the sentence is to be regarded as one of 20 years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application and it was therefore rightly dismissed but, in saying this, their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than 20 years or that the convict is necessarily entitled to remission."

The Prisons' Rules are made under the Prisons Act and the Prisons Act by itself does not confer any authority or power to commute or remit sentence. It only provides for the regulation of the prisons and for the terms of the prisoners confined therein. Therefore, the West Bengal Correctional Services Act or the West Bengal Jail Code do not confer any special right on the petitioner herein.

In *Godse's case* (supra), the Constitution Bench of this Court held that the sentence of imprisonment for life is not for any definite period and the imprisonment for life must, *prima facie*, be treated as imprisonment for the whole of the remaining period of the convict person's natural life. It was also held in paragraph 5 as follows :

"\005\005\005\005..It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must *prime facie* be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

Summarising the decision, it was held in para 8 as under:

"Briefly stated the legal position is this : Before Act XXVI of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as

one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions \026 ordinary, special and State \026 and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under S. 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under S. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

We are bound by the above dicta laid down by the Constitution Bench and we hold that life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years as contended by the petitioner.

Thus, all the contentions raised by the petitioner fail and the petitioner is not entitled to be released on any of the grounds urged in the writ petition so long as there is no order of remission passed by the appropriate government in his favour. We make it clear that our decision need not be taken as expression of our view that petitioner is not entitled to any remission at all. The appropriate government would be at liberty to pass any appropriate order of remission in accordance with law.

Petitioner was released on bail by an order passed by this Court on 27.11.1998. We vacate that order. The respondents would be at liberty to take the petitioner into custody and as regards remission the State Government may pass any appropriate order in accordance with law.

The writ petition is dismissed.

The connected Writ Petition No. 50 of 2003 is also dismissed in terms of the judgment in the main writ petition.