

Bhagirath

Vs

Delhi Administration

And

Rakesh Kaushik

Vs

Delhi Administration

Criminal Appeal No. 754 of 1983

(CJI Y. V. Chandrachud, D. A. Desai, O. Chinnappa Reddy, E. S. Venkataramiah, Ranganath Misra JJ)

16.04.1985

JUDGMENT

Y. V. CHANDRACHUD, C.J. -

1. We have before us an appeal and a writ petition, which are filed by two persons sentenced to life imprisonment for the offence of murder. They contend that they are entitled to the benefit of Section 428 of the Code of Criminal Procedure, that is to say, that the period of detention undergone by them prior to their conviction as undertrial prisoners must be set off against the sentence of life imprisonment imposed upon them.

2. The appellant, Bhagirath, filed a petition in the Delhi High Court asking that his case be referred for the orders of the Delhi Administration under paragraph 516-B of the Punjab Jail Manual since, though sentenced to life imprisonment, he had undergone a period of detention in jail amounting to 14 years together with the remissions earned by him. A learned Single Judge of the High Court rejected that petition on the ground that, in computing the period of 14 years, the period spent by the convict in the jail as an undertrial prisoner cannot be taken into account because, Section 428 of the Code which allows such a set off applies only when an accused has been sentenced to 'imprisonment for a term', and the sentence of life imprisonment is not an imprisonment 'for a term'. In coming to the conclusion that Section 428 has no application to cases in which an accused is sentenced to life imprisonment, the learned Judge relied upon a judgment of this Court in *Kartar Singh v. State of Haryana* ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772).

3. The petitioner in the companion writ petition, Rakesh Kaushik, has a somewhat similar grievance, though he has needlessly introduced extraneous matters in his pleadings. One of his contentions is that the remissions earned by him as a convict must be taken into account while computing the period of 14 years under paragraph 516-B of the Punjab Jail Manual. He contends also, that in any case, he ought to be given the benefit of Section 432 and 433 of the Code because,

his case merits a favorable consideration by the Delhi Administration. In support of his case, he relies upon an order dated March 3, 1983 passed by this Court in *Sukhlal Hansda v. State of W.B.* (Writ Petitions (Cri) 1128-29 of 1982, decided on March 3, 1983) According to the counter-affidavit filed by the Deputy Secretary (Home) of the Delhi Administration, the petitioner's case cannot be considered for premature release because he has not yet undergone 14 years of imprisonment, inclusive of remissions earned by him.

4. First, we would prefer to interpret Section 428 of the Code of Criminal Procedure on its own terms, that is, divorced from considerations arising under the Punjab Jail Manual or any other Jails Manual. The provisions of Jail Manuals vary from State to State. Therefore, questions arising under those Manuals cannot be mixed up with questions arising under the Code, which is the law of the land. Section 428 of the Code reads thus :

Period of detention undergone by the accused to be set off the against the sentence of imprisonment - where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

5. The neat and, we believe, the simple question for decision is whether imprisonment for life is imprisonment "For a term". The reason why it is urged that imprisonment for life is not imprisonment for a term is that the latter expression comprehends only imprisonments for a fixed, certain and ascertainable period of time like six months, two years, five years and so on. Since the sentence of life imprisonment, as held by this Court in *Gopal Vinayak Godse v. State of Maharashtra* ((1961) 3 SCR 440, 444 : AIR 1961 SC 600 : (1961) 1 Cri LJ 736), is a sentence for life and nothing less and since, the term of life is itself uncertain, the sentence of life imprisonment is for an uncertain term, that is to say, that it is not imprisonment for a term.

6. So goes the argument, So does it go but it fails to carry much conviction. Life is uncertain. In more ways than one. Who knows what goods may come tomorrow and how many goods tomorrows there are still to go ? But, philosophical digressions apart, especially optimistic, the fact that the term of life is of an uncertain duration does not justify the conclusion that the sentence of imprisonment for life is not for a term. The relevant question and, the only one, to ask under section 428 is : Has this person been sentenced to imprisonment for a term ? For the sake of convenience, the question may be split into two parts. One, has this person been sentenced to imprisonment ? And, two, is the imprisonment to which he has been sentenced an imprisonment for a term ? There can possibly be no dispute that person sentenced to life imprisonment is sentenced to imprisonment. Then, what is the term to which he is sentenced ? The obvious answer to that question is that the term to which he has been sentenced is the term of his life. Therefore, a person who is sentenced to life imprisonment is sentenced to imprisonment for a term.

7. We see but the warrant for qualifying the word 'term' by the adjective 'fixed' which is not to be found in section 428. The assumption that the word 'term' implied a concept of ascertainability or conveys a sense of certainty is contrary to the letter of the law, as we find it in that section. Even the marginal note to the section does not bear out that the assumption. It rather belies it. And, marginal notes are now legislative and not editorial exercises. The marginal note of Section 428 shows that

the object of the Legislature in enacting the particular provision was to provide that 'the period of detention undergone by the accused' should 'be set off the against the sentence of imprisonment imposed upon him. There are no words of limitation either in the section or in its marginal note which would justify restricting the plain and natural meaning of the word 'term' so as to comprehended only sentences which are imposed for a fixed or ascertainable period.

8. To say that a sentence of life imprisonment imposed upon an accused is a sentence for term of his life does offence neither to grammar nor to the common understanding of the word 'term'. to say otherwise would offend not only against the language of the statute but against the spirit of the law, that is to say the object with which the law was passed. A large number of cases in which the accused suffer long undertrial detentions are cases punishable with the imprisonment for life. Usually, those who are liable to be sentenced to imprisonment for life are not enlarged on bail. To deny the benefit of section 428 to them is to withdraw the application of a benevolent provision from a large majority of cases in which such benefit would be needed and justified.

9. Arguments and counter-arguments were advanced before us on the basis of the provisions contained in Section 53, 53-A (4)(a) and (b), 57, 65 and 511 of the Penal Code. The provision contained in section 57 that imprisonment for life has to be reckoned as equivalent to imprisonment for twenty years is for the purpose of calculating fractions of terms of punishment. We cannot press that provision into service for a wider purpose. Nor, indeed, can we draw sustenance to our conclusion from the provision contained in Section 511 to the effect that whoever attempts to commit an offence punishable with imprisonment for life shall be punished with imprisonment. "For a term which may extended to one-half of the imprisonment for life". The argument of Shri Mukul Mudgal that if one-half of life imprisonment is "a term" ex hypothesis, life imprisonment would be "a term of imprisonment" is attractive but slender. But, equally, we do not consider that anything contained in the rest of the sections above noted, militates against the view which we have taken.

10. The modalities for working out the provisions contained in Section 428 in cases of persons sentenced to imprisonment for life should not present any serious difficult in practice. In the first place, by reason of section 433-A of the Code of Criminal Procedure, where a sentence of imprisonment for life is imposed on a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 to one of imprisonments for life, such person cannot be released from the prison unless he has served at least fourteen years of imprisonments. The only point to note is that while upholding the constitutional validity of section 433-A, it was held by this Court in *Maru Ram v. Union of India* ((1981) 1 SCR 1196 : (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : AIR 1980 SC 2147 : 1980 Cri LJ 1440), that the section is prospective in operation, with the result that it cannot apply to cases which were decided by the trial court before December 18, 1978 being the date on which the section came into force.

11. The second aspect of the matter which has to be borne in mind is the one arising out of the judgment of this Court in *Gopal Vinayak Godse* ((1961) 3 SCR 440, 444 : AIR 1961 SC 600 : (1961) 1 Cri LJ 736). It was held by a Constitution Bench in that case that a prisoner sentenced of life imprisonment is bound to serve the remainder of his life in prison unless the sentence imposed upon him is commuted or remitted by the appropriate authority. It was further held that since such a sentence could not be equated with any fixed term, the Rules framed under the Provision Act entitled such a person to earn remissions but that, such remissions were to be taken into account only towards the end of the term. Under section 432 of the Code of Criminal Procedure, the appropriate Government has the power to remit the whole or any part of the punishment to which a

person has been sentenced. Under Section 433 of the Code, the appropriate Government has the power, inter alia, to commute the sentence of imprisonment for life to imprisonment for a term not exceeding fourteen years or to fine. The question of setting off the period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under section 432 or Section 433 of the Code. In the absence of such order, passed generally or specially, and apart from the provisions, if any, of the relevant Jail Manual, imprisonment for life would mean, according to the rule in *Gopal Vinayak Godse* ((1961) 3 SCR 440, 444 : AIR 1961 SC 600 : (1961) 1 Cri LJ 736), imprisonment for the remainder of life.

12. The two cases before us were referred to a large Bench because of the doubt entertained as regards the correctness of the decision in *Kartar Singh* ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772), especially because of the apparently conflicting view taken by another Bench of this Court in *Sukhlal Hansda v. State of W. B.* (Writ Petitions (Cri) 1128-29 of 1982, decided on March 3, 1983) Both of those decisions were rendered by a three Judges Bench. In *Kartar Singh* ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772), persons who were sentenced to life imprisonment challenged an order passed by the Government of Haryana, denying to them the benefit of the period of undertrial detention under section 428 of the Code. It was held this Court that the Penal Code and the Criminal Procedure Code make a clear distinction between 'imprisonment for life' and 'imprisonment for a term' and, in fact, the two expressions are used in contradiction with each other in one and the same section, the former meaning imprisonment for the remainder of the natural life of the convict and the latter meaning imprisonment for a definite or fixed period. The court proceeded to hold that an order of remission passed by the appropriate authority merely affects the execution of the sentence passed by the Court, without interfering with the sentence passed or recorded by the Court. Therefore, Section 428 which opens with the words "where an accused person has, on conviction, been sentenced to imprisonment for a term", would come into play only in cases where 'imprisonment for a term' is awarded on conviction by a court and not where the sentence imposed upon an accused becomes a sentence for a term by the reason of the remission granted by the appropriate authority. Finally, according to the Court, "the question is not whether the beneficent provision should be extended to life convicts on an a priori reasoning or equitable consideration but whether on true construction, the section comprises life convicts within the purview". The Court found support to its view in the Objects and Reasons for introducing Section 428 in the Code, as set out in the Report of the Joint Committee.

13. We have considered with the great care the reasoning upon which the decision in *Kartar Singh* ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772) proceeds. With respect, we are unable to agree with the decision. We have already discussed why, imprisonment for life is imprisonment for a term, within the meaning of section 428. We would like to add that we find it difficult to agree that the expressions 'imprisonment for life' and 'imprisonment for a term' are used either in the Penal Code or in the Criminal Procedure Code in contradistinction with, each other. Section 304, 305, 307, and 394 of the Penal Code undoubtedly provide that persons guilty of the respective offences, shall be punished with imprisonment for life or with imprisonment for a term not exceeding a certain number of years. But, that is the only manner in which the Legislature could have expressed its intention that persons who are guilty of those offences shall be punished with either of the sentences mentioned in the respective sections. The circumstances on which the learned Judges have placed reliance in *Kartar Singh* ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772), do not afford any evidence, intrinsic or otherwise of the use of the expressions in contradistinction with each

other. Two or more expressions are often used in the same section in order to exhaust the alternatives which are available to the Legislature. That does not mean that there is, necessarily, an antithesis between those expressions.

14. The reasoning in Kartar Singh ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772) that an order of remission does not with the sentence recorded by the court but merely affects the execution of the sentence, stands answered by the interpretation which we have put upon the language of Section 428 that persons sentenced to imprisonment for life are sentenced to imprisonment for a term. It is not because of remission that a sentence of life imprisonment becomes an imprisonment for a term.

15. We have also already answer the last of the reasons given in Kartar Singh ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772) that the question is not whether the beneficent provision contained in Section 428 should be extended to life convicts on equitable considerations. We enter a most respectful caveat. Equity sustains law and the twain must meet. They cannot run in parallel streams. Equitable considerations must have an important place in construction of beneficent provisions, particularly in the field of criminal law. To exclude such considerations is to denude law's benevolence of its true and lasting content. Lastly, the view expressed by the joint Committee in its Report does not yield to the inference that the "mischief sought to be remedied has no relevance where gravity of offence requires the imposition of imprisonment for life". As we have indicated earlier, graver the crime, longer the sentence and, longer the sentence, greater the need for set-offs and remissions. Punishment are no longer retributory. They are reformative.

16. The order passed by this Court in Sukhlal Hansda (Writ Petitions (Cri) 1128-29 of 1982, decided on March 3, 1983) related to the cases of 24 prisoners who were sentenced to life imprisonment. Most of those prisoners had undergone imprisonment for a period which, after taking into account the remissions earned by them, exceeded fourteen years. It was held the by this Court that for the purpose of the considering whether the cases of those prisoners should be examined for premature release under the relevant provisions of the West Bengal Jail Manual, there was no reason why the period of imprisonment undergone by them as undertrial prisoners should not be taken into account. The Court directed that the cases of the prisoners should be considered by the State Government, both for purpose of setting off the period of detention undergone by them as undertrial prisoners and for taking into account the remissions earned by them. The order passed by the court does not discuss the point which arises before the us though, the observations made therein are consistent more with the view which we have taken than the view taken in Kartar Singh ((1983) 1 SCR 445 : (1982) 3 SCC 1 : 1982 SCC (Cri) 522 : AIR 1982 SC 1439 : 1982 Cri LJ 1772).

17. For these reasons, we allow the appeal and the writ petition and dire that, the period of detention undergone by the two accused before us as undertrial prisoners, shall be set off against the sentence of life imprisonment imposed upon them, subject to the provision contained in section 433-A and, provided that orders have been passed by the appropriate authority under Section 432 of Section 433 of the Code of Criminal Procedure.

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