

Supreme Court of India

Ramraj @ Nanhoo @ Bihnun vs State Of Chhattisgarh on 10 December, 2009

Author: A Kabir

Bench: Altamas Kabir, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.)NO.4614 OF 2006

RAMRAJ @ NANHOO @ BIHNU

... Petitioner

Vs.

STATE OF CHHATTISGARH

... Respondent

J U D G M E N T

ALTAMAS KABIR, J.

1. This Jail Petition at the instance of Ramraj @ Nanhoo @ Bihnu, since numbered as SLP(Crl.)No.4614 of 2006, is directed against the judgment and order dated 8th December, 2005, passed by the Division Bench of the Chhattisgarh High Court at Bilaspur in Criminal Appeal No.361 of 1995, affirming the judgment of conviction and sentence under Sections 302 and 201 of the Indian Penal Code of the Second Additional Sessions Judge, Ambikapur, in Sessions Trial No.27 of 1994.

2. From the judgment impugned in the Special Leave Petition, it appears that Bigani Bai was married to the accused/petitioner Ramraj from 6-7 years prior to the date of the incident, namely, the intervening night of 28th and 29th October, 1993. According to the prosecution, Bigani Bai (the victim) and the accused-petitioner had quarrelled in the evening and in the night on hearing the cries of the child, when Ramraj tried to wake up Bigani Bai and she did not wake up, Ramraj assaulted Bigani Bai with a stick causing severe internal and external injuries as a result of which Bigani Bai died. It was also the prosecution case that the petitioner informed the villagers that Bigani Bai had died on account of pain in her stomach. Information was accordingly sent to the parents of the deceased and on receiving the same, the father of the deceased, Somarsai (PW-1), came and saw that the face of the deceased was in swollen condition and clotted blood was present on her mouth. Somarsai is alleged to have asked the petitioner to report the matter to the police before burying the dead body. However, in disregard of such direction, the petitioner buried the body of the deceased. Since this gave rise to suspicion, the body of the deceased was exhumed on the report of Somarsai and on post-mortem examination thereof, it was found that the mandible bone

was fractured and on opening the body, the liver was also found ruptured. According to the doctor, the cause of death was internal haemorrhage due to rupture of the liver which is homicidal in nature. Incidentally, the weapon of assault is also said to have been recovered at the instance of the petitioner.

3. The High Court noted the fact that there was no direct and ocular evidence in the case, but the fact that the deceased was found dead and the petitioner informed the villagers that she had died of pain in her stomach, confirms the fact that he was with her at the time of her death. Furthermore, the conduct of the petitioner in not reporting the matter to the petitioner and, on the other hand, burying the body of the victim in an attempt to shield himself of the offence, does enure to the benefit of the petitioner. Had it not been for the insistence of PW-1 Somarsai, such evidence may have gone completely unnoticed. It is only on account of his insistence that the body of the victim was exhumed, and, thereafter, subjected to post mortem examination which, ultimately, revealed the fact that it was not simply a stomach pain which caused the death of the victim but the several injuries which had been caused to her. The very fact that he tried to hide the evidence, resulted in his conviction also under Section 201 IPC.

4. In such circumstances, we see no reason to interfere with the judgment and order of the High Court as far as conviction and sentence is concerned. However, during the hearing of the Special Leave Petition, learned counsel for the State very fairly pointed out that the petitioner had already undergone 14 years of actual imprisonment, which with remission would amount to about 17 years. This information has caused us to consider the petitioner's release on the basis of the period of sentence already undergone by him, despite having confirmed the conviction and sentence of the petitioner, on the basis of the view taken by this Court in interpreting the meaning of the expression "life imprisonment" and "imprisonment for life" used both in the Criminal Procedure Code and in the Indian Penal Code in various cases.

5. The aforesaid question came up for consideration before this Court as far back as in 1960 in a writ petition filed by one Gopal Vinayak Godse under Article 32 of the Constitution, Gopal Vinayak Godse vs. State of Maharashtra & Ors. [1961 (3) SCR 440], wherein while considering the question as to whether the petitioner, who had been convicted in 1949 and sentenced to transportation for life, would, having earned remission of 2893 days and adding the same to the term of imprisonment actually served by him, so as to exceed 20 years, be entitled to be released immediately. According to the petitioner therein, his further detention in jail was illegal and he was entitled to be set at liberty immediately. Rejecting the petitioner's contention, Subba Rao, J. (as His Lordship then was) speaking for the Constitution Bench, observed that the petitioner had not yet acquired any right to be released since a sentence of transportation for life had to be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. It was further observed that Section 53A IPC, introduced by the Code of Criminal Procedure (Amendment) Act, 1955, provided that any person sentenced to transportation for life before the Amendment Act, would be treated as sentenced to rigorous imprisonment for life. The prisoner sentenced to life imprisonment was bound to serve the remainder of sentence in prison unless the sentence was commuted or remitted by the appropriate authority. Such a sentence could not be equated with any fixed term. Regarding remissions which a person was entitled to earn in accordance with the Rules framed under the

Prison Act, it was observed that the same could normally be taken into account only towards the end of the term and the said question was exclusively within the province of the appropriate Government. In the said case, although certain remissions were made, the entire sentence had not been remitted.

6. In *Dalbir Singh and others vs. State of Punjab* [(1979) 3 SCC 745], three Judges of this Court had occasion to consider the awarding of death penalty. Following the decision in the case of *Rajendra Prasad vs. State of U.P.* [(1979) 3 SCC 646], V.R. Krishna Iyer and D.A. Desai, JJ, observed that life imprisonment strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years which may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large.

7. In *State of Punjab and others vs. Joginder Singh and others* [(1990) 2 SCC 661], which was heard along with three other matters, this Court was called upon to consider the relevant provisions of the Manual for Superintendence and Management of Jails in Punjab. Considering the grant of remissions and commutations granted in exercise of power under Sections 432 and 433 Cr.P.C., this Court held that such schemes have been introduced to ensure prison discipline and good behaviour and not to upset sentences. If the sentence is of imprisonment for life, ordinarily the convict has to pass the remainder of his life in person, but for remission and commutations granted in exercise of the aforesaid powers. Even in such cases, Section 433-A of the Code or the executive instructions of 1976 do not insist that the convict pass the remainder of his life in prison but merely insists that he shall have served time for at least 14 years.

8. The next decision to which we may refer in this regard is that of the Constitution Bench in the celebrated case of *Maru Ram vs. Union of India & Ors.* {(1981) 1 SCC 107}, which was a writ petition under Article 32 of the Constitution and was heard along with several other writ petitions on the same issue, namely, the length of imprisonment of a convict in respect of an offence carrying a life sentence, in view of the amended provisions of Section 433-A Cr.P.C., which was introduced into the Code by the Amendment Act of 1978. By the said Amendment, a full 14 year term of imprisonment was made mandatory for prisoners sentenced to life imprisonment and those who were sentenced to death, but the sentence was commuted to life imprisonment under Section 433 Cr.P.C. The Constitution Bench held that Section 302 IPC or other like offence fixes the sentence to be life imprisonment and 14 years' imprisonment under Section 433A is never heavier than the life term. Remission vests no right to release when sentence is life imprisonment. No greater punishment is inflicted by Section 433A than the law applicable to the crime. Nor is there any vested right to remission cancelled by compulsory 14 year jail life since a life sentence is a sentence for life. The Constitution Bench repelled the challenge to the vires of Section 433A and, inter alia, affirmed its supremacy over the remission rules and short sentencing statement made by the various States. Following *Godse's case* (supra), the Constitution Bench held that imprisonment for life lasts until the last breath and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by the Government. One other important observation that was made is that Section 433A does not forbid parole or other release within the 14 year span.

9. In the case of Ashok Kumar vs. Union of India [(1991) 3 SCC 498], together with the interpretation of Section 433-A of the Code, a Three Judge Bench of this Court also had occasion to consider the provisions of Sections 45 and 57 of the Indian Penal Code. The Hon'ble Judges were of the view that the provisions of Section 57 were to be reckoned as 20 years only for the purpose of working out the fraction of the terms of imprisonment the convict had already undergone. Their Lordships also held that the expression "imprisonment for life" would have to be read in the context of Section 45 IPC. Read in the light of Section 45, the aforesaid expression would ordinarily mean imprisonment for the full or complete span of life. In that context it was mentioned in Godse's case (supra) that Section 57 of the Indian Penal Code has no real bearing on the question raised and only for the purpose of calculating fractions of terms of punishment, the Section provides that transportation for life shall be for 20 years for all purposes.

10. The question of premature release cropped up in the case of Laxman Naskar vs. Union of India [(2000) 2 SCC 595], which was heard with several other writ petitions. It was held that although there was no right of premature release in the convict when rules or guidelines have been framed in that behalf, the convict has a right to have his case put up before the prison authorities for considering the same in exercise of powers under Article 161 in accordance with those rules, schemes or guidelines. In that case, Their Lordships were dealing with a situation where all the "life convicts" were claiming premature release under the relevant provisions of the West Bengal Jail Code. Their Lordships were not only dealing with Articles 161, 21 and 32 of the Constitution, but even the provisions of paragraphs 591(4) and 591(2) of the West Bengal Jail Code. Applying the provisions of the West Bengal Jail Code relating to grant of premature release, this Court was of the view that all the life convicts in the said case had completed continued detention of 20 years including remission earned. On receipt of the said report, it was observed that life sentence is nothing less than life-long imprisonment and by earning remissions a life convict could not pray for premature release before completing 20 years of imprisonment, including remission earned. Having held as above, this Court went on further to hold that if according to the Government policy/instructions in force at the relevant time the life convict had already undergone the sentence for the period mentioned in the policy/instructions, then the only right which a life convict could be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for exercise of power under Article 161 of the Constitution. That will have to be done consistent with the legal position and the Government policies/instructions prevalent at that time.

11. In the case of Subash Chander vs. Krishan Lal and others [(2001) 4 SCC 458], along with the awarding of the death sentence, the period of imprisonment in case of a life sentence or a death sentence commuted to a life sentence also came to be considered. It was observed that when two views were possible about the quantum of sentence, the view which favoured the grant of life in comparison with death is generally accepted for the exercise of the powers by the High Court in commuting the death sentence. It was further observed that a "life imprisonment" means imprisonment for whole of the remaining period of the convicted person's natural life, unless the appropriate Government chose to exercise its discretion to remit either the whole or a part of the sentence under Section 401 Cr.P.C.

12. A slightly different view was expressed by this Court in the case of *Shri Bhagwan vs. State of Rajasthan* [(2001) 6 SCC 296]. This Court, after considering the facts and circumstances of the case, reiterated that ordinarily "imprisonment for life" means sentence of imprisonment for whole of the remaining period of the convicted person's natural life and that the rules framed under the Prisons Rules do not substitute a lesser sentence for a sentence for life.

13. The debate as to what would constitute "life imprisonment" once again surfaced in the case in the case of *Mohd. Munna vs. Union of India* [(2005) 7 SCC 417], which was disposed of along with another writ petition filed by one Kartick Biswas, where it was reiterated that life imprisonment was not equivalent to imprisonment for 14 years or 20 years. Life imprisonment means imprisonment for the whole of the remaining period of the convicted person's natural life. This Court observed that there was no provision either in the Indian Penal Code or in the Criminal Procedure Code, whereby life imprisonment could be treated as either 14 years or 20 years without there being a formal remission by the appropriate Government. The contention that having regard to the provisions of Section 57 of the Code of Criminal Procedure a prisoner was entitled to be released on completing 20 years of imprisonment under the West Bengal Correctional Services Act, 1992, and the West Bengal Jail Code, was rejected following the decision in *Godse's case* (supra).

14. In a more recent case, *Swamy Shraddananda vs. State of Karnataka* [(2008) 13 SCC 767], this Court was called upon to consider as to what would constitute "life imprisonment" in a case where death sentence was commuted to life sentence. Swamy Shraddananda was convicted under Section 302 and 201 IPC and was sentenced to death for the offence under Section 302 IPC. In appeal the High Court affirmed the conviction and the death sentence awarded to the appellant by the learned 25th City Sessions Judge, Bangalore City and accepted the reference made by the trial Court without any modification in the conviction or sentence. The matter then travelled to this Court and again came up for disposal before a Bench of three Judges. While one of the learned Judges took the view that the appellant deserved nothing but death, the others made it clear that life imprisonment, rather than death, would serve the ends of justice. But the Hon'ble Judges also made it clear that the appellant would not be released from prison till the end of his life. Having examined various decisions on the point which have also been referred to hereinabove, the Hon'ble Judges substituted the death sentence given to the appellant by the Trial Court and confirmed by the High Court with imprisonment for life with a direction that the convict would not be released from prison for the rest of his life.

15. What ultimately emerges from all the aforesaid decisions is that life imprisonment is not to be interpreted as being imprisonment for the whole of a convict's natural life within the scope of Section 45 of the aforesaid Code. The decision in *Swamy Shraddananda's case* (supra) was taken in the special facts of that case where on account of a very brutal murder, the appellant had been sentenced to death by the Trial Court and the reference had been accepted by the High Court. However, while agreeing with the conviction and confirming the same, the Hon'ble Judges were of the view that however heinous the crime may have been, it did not come within the definition of "rarest of rare cases" so as to merit a death sentence. Nevertheless, having regard to the nature of the offence, Their Lordships were of the view that in the facts of the case the claim of the petitioner for premature release after a minimum incarceration for a period of 14 years, as envisaged under

Section 433-A Cr.P.C., could not be acceded to, since the sentence of death had been stepped down to that of life imprisonment, which was a lesser punishment.

16. On a conjoint reading of Sections 45 and 47 of the Indian Penal Code and Sections 432, 433 and 433A Cr.P.C., it is now well established that a convict awarded life sentence has to undergo imprisonment for at least 14 years. While Sections 432 and 433 empowers the appropriate Government to suspend, remit or commute sentences, including a sentence of death and life imprisonment, a fetter has been imposed by the legislature on such powers by the introduction of Section 433A into the Code of Criminal Procedure by the Amending Act of 1978, which came into effect on and from 18th December, 1978. By virtue of the non-obstante clause used in Section 433A, the minimum term of imprisonment in respect of an offence where death is one of the punishments provided by laws or where a death sentence has been commuted to life sentence, has been prescribed as 14 years. In the various decisions rendered after the decision in Godse's case (supra), "imprisonment for life" has been repeatedly held to mean imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned. But in no case, with the possible exception of the powers vested in the President under Article 72 of the Constitution and the power vested in the Governor under Article 161 of the Constitution, even with remissions earned, can a sentence of imprisonment for life be reduced to below 14 years. It is thereafter left to the discretion of the concerned authorities to determine the actual length of imprisonment having regard to the gravity and intensity of the offence. Section 433A Cr.P.C., which is relevant for the purpose of this case, reads as follows :-

"433A. Restriction on powers of remission or commutation in certain cases.-
Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by laws or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

17. In the present case, the facts are such that the petitioner is fortunate to have escaped the death penalty. We do not think that this is a fit case where the petitioner should be released on completion of 14 years imprisonment. The petitioner's case for premature release may be taken up by the concerned authorities after he completes 20 years imprisonment, including remissions earned.

18. The Special Leave Petition is, accordingly, dismissed.

.....J.

(ALTAMAS KABIR)J.

(B.S. CHAUHAN) New Delhi Dated: December 10, 2009.