

Abul Azad Vs. the State

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Court : Kolkata

Decided On : Sep-29-1975

Reported in : 1976CriLJ315

Judge : P.K. Chandra and; Sudhamay Basu, JJ.

Appellant : Abul Azad

Respondent : The State

Judgement :

Sudhamay Basu, J.

1. This is a petition from jail by one Abul Azad who was sentenced to imprisonment for life under Section 302 I. P, C. on the 10th of January 1968. It is for setting off the period of detention undergone by him during investigation and trial in accordance with the Section 428 of the Code of Criminal Procedure. 1973,

2. The Supreme Court in the case of B. P, Andre v. The Superintendent, Central Jail, Bihar, New Delhi reported in : 1975 CriLJ182 held that where the accused has been convicted and is still serving his sentence, at the date when the new Code of Criminal Procedure came into force, Section 428 could apply and the connected person would be entitled to claim set off in terms thereof. In another decision, Hardev Singh v. The State of Punjab reported in : 1975 CriLJ243 the Supreme Court allowed the appeal in part and at the same time held that the appellant was

entitled to get a set off or adjustment under Section 428 Criminal P.C. of the period if any, during which he remained in jail as an under-trial prisoner. Those two cases clearly decided that even in case of convictions made before the new Criminal Procedure Code came into existence the set off in terms of Section 428 would be available. In the case of *Suprovat Bose v. The State* reported in (1975) 2 Cal LJ 83 : 1976 Ori LT 313) this Court held that such relief could be given by the Court on a petition from Jail in the exercise of its inherent powers in appropriate cases.

3. In the instant case the principal question to be decided is whether the benefit of Section 428 Criminal P.C. may be available to a person sentenced to imprisonment for life inasmuch as the section mentions set off against 'term of imprisonment' imposed on a convicted person. Mr, Doy appeared for the State and Mr. Debu Chowdhury assisted the Court as amicus curiae. The matter was discussed at some length at the Bar.

Section 428 of the Code of Criminal Procedure, 1973 is as follows:

Where an accused person has, on conviction, been sentenced to imprisonment for a term, 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.

4. It may be noted that unlike remission which occurs in the case of a 'sentence' what is mentioned in the section is a set off against 'the term of imprisonment'. Perusal of the Criminal Procedure Code would indicate that a distinction has been made between 'imprisonment for life' and 'a term of imprisonment'. Section 418(1) mentions 'where the accused is sentenced to imprisonment for life or to imprisonment for a term....' Section 426 again makes provisions separately as to escaped convict in the case of imprisonment for life and when a sentence of imprisonment is for a term. Again, Section 433 which confers power upon appropriate government to commute sentence separately mentions in Sub-clause (B) 'a sentence of imprisonment for life, imprisonment for a term not exceeding 14 years or fine'.

5. Now, Section 57 I, P.C. provides that in calculating fractions of terms of imprisonment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. Does Section 428 Criminal P.C. involve calculations contemplated by Section 57 I. P. C? Can Section 57 of the Indian Penal Code be so construed that it would make possible a reading of Section 428 of the Code of Criminal Procedure so that for all practical purposes an imprisonment for life can be equated to imprisonment for 20 years? In this connection one would recall the case of *G. V. Godse v. The State of Maharashtra* reported in : 1961 CriLJ736a in which it was specifically held by the Supreme Court that there is no provision of law where under a sentence for life imprisonment, without any formal remission by appropriate government, can be automatically treated as one for a definite period. Section 57 does not say that transportation for life shall be deemed to be transportation for 20 years for all purposes nor does the amended section which substitutes the words 'Imprisonment for life' for 'transportation for life' enables drawing of any such all embracing fiction. Sentence of transportation for life or imprisonment for life must, prima facie, be treated as a transportation or imprisonment for whole of the remaining period of the convicted person's natural life. In the case of *Pandit Kishori Lai v. The King Emperor* reported in 72 Ind App 1 (10) : AIR 1945 PC 64 it was so held by the Privy Council that a life sentence must not in all cases be treated as one of not more than 20 years or that the convict was necessarily entitled to remission. Several other decisions of different courts also hold the same view.

6. To the face of the uniform distinction maintained between a term of imprisonment and a sentence for imprisonment for life it would be obviously impermissible to include life imprisonment within the expression 'terms of imprisonment mentioned in Section 428'. There is no doubt that under the old Code that matter was concluded by the decision in Godse's case, (1961-1 Cri LJ 736) (SC). A point was mooted at the Bar that in spite of the clear provisions in the Criminal Procedure Code and the Penal Code since the Supreme Court searched for other provisions in the jail code of Maharashtra etc, should this Court not look into the statutory rules framed under the Prisons Act and the Jail Code in West Bengal and see if in the local context a life sentence can be taken to be equivalent to an imprisonment for 20 years. Mr. De appearing for the State placed different

provisions of the jail code and pointed out how the cases of the prisoners suffering imprisonment for life are to be reviewed at the end of 10, 14th and 20th year. Mr. De pointed out that under Rule 591 Sub-rule 29 of the West Bengal Jail Code even at the end of the 20 years the prisoner without the order from the government could not claim to be set free. The Rule 591 (29) is as follows:

Every case in which a convict, who has not received the benefit of any of the foregoing rules, is about to complete a period of 20 years of continued detention including remission earned, if any, shall be submitted three months before such completion by the Superintendent of the Jail in which the convict is for the time being detained, through the Inspector-General, for orders of the State Government, If the convict's jail records during the last three years of his detentions are found to be satisfactory the State Government may remit the remainder of his sentence.

There seems to be no warrant for thinking that in terms of the Prisons Act or the Jail Code life imprisonment may be considered to be equivalent to a sentence of imprisonment for 20 years under the laws of this State. For the purpose of remission and for certain other calculations for fraction of term of punishment, such as, in Section 111 I. P. C, and Section 116, life imprisonment should be reckoned as equivalent to 20 years. Section 55 of the Penal Code, of course, empowers the appropriate government to commute sentence or imprisonment for life for a term not exceeding 14 years.

7. It, therefore, emerges that in spite of a distinction being maintained between 'imprisonment for life' and 'imprisonment for a term' the Parliament has not chosen to include imprisonment for life within the ambit of Section 428 Criminal Procedure Code. Section 57 of the Indian Penal Code is limited in its scope and cannot be held to make life imprisonment equivalent to imprisonment for 20 years for all purposes. In that view of the matter there seems to be nothing which would entitle a person convicted and sentenced to life imprisonment to be entitled to the benefit of set off in terms of the provisions of Section 428.

8. At the same time, the Court takes into consideration the fact that in most cases of imprisonment for life, if not in all cases, the Government either commutes a

sentence of imprisonment for life and/or confers remissions of sentence, In such cases imprisonment of life is reduced to imprisonment for a term. There is no reason why in such cases those convicted with a sentence of life imprisonment should not be entitled to the benefit of the set off mentioned in Section 428.

In the circumstances, the application is rejected but the Court holds the view that the prisoner would be entitled to set off the period of detention undergone by him during investigation, enquiry or trial before the date of conviction against the term of imprisonment to which it may be reduced if he is conferred any remission by the government and/or if the sentence of imprisonment for life is commuted.

The prisoner may be informed through the Superintendent of jail where he is detained.

Chanda J.

9. I agree.

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