
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

- (1) **CWP No.6677 of 2018**
Date of decision:08.08.2018
- Partap Singh ...Petitioner
- Versus
- State of Haryana and others ...Respondents
- (2) **CWP No.6679 of 2018**
Date of decision:08.08.2018
- Dalbir Singh ...Petitioner
- Versus
- State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vijay K. Jindal, Advocate,
for the petitioner in CWP No.6677 of 2018.

Mr. Krishan Singh, Advocate,
for the petitioner in CWP No.6679 of 2018.

Mr. Saurabh Mohunta, DAG, Haryana.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing CWP Nos.6677 and 6679 of 2018 (hereinafter referred to as the “first” and “second” petitions respectively) as the issue involved in both the petitions is the same. However, for the sake of convenience, the facts are being extracted from CWP No.6677 of 2018.

The first petition has been filed by Partap Singh and the second petition by Dalbir Singh, who happened to be real brothers. Both the brothers were tried in a case registered vide FIR No.9 dated 16.01.2004, under Sections 302/34 IPC, at P.S. Ding, District Sirsa. The allegation against them was that

on 15.01.2004, at about 10.30 pm, when Satpal (since deceased) was on the way back home from his fields, along with his brother Rajinder Singh and his cousin, namely, Gopal Singh and reached near the house of accused Dalbir, the latter called Satpal inside the house on the pretext of some urgent work. Besides the petitioners, namely, Partap Singh and Dalbir Singh, there was another person, namely, Satish, who happened to be their brother. All the three accused attacked Satpal with different weapons. The allegation is that a danda, smeared with chilli powder, was inserted in the anus of Satpal. Rajinder Singh and Gopal Singh, who were allegedly present at the spot, ran away and narrated the occurrence to the other members of the family. They remained confined due to fear at night and in the morning, the FIR was registered on the statement of Rajinder Singh who disclosed that the accused had suspected that deceased Satpal had illicit relations with the wife of Dalbir Singh and the deceased also had monetary dealings with Dalbir Singh.

Deceased Satpal was stated to have suffered as many as 19 injuries, which are reproduced as under:-

- “1. Multiple red coloured contusions over fronto parietal region both sides varying shapes and sizes with a lacerated wound measuring 2 cms x 0.5 cms. In the mid frontal region. On dissection subcutaneous infiltration of blood was present.
2. Lacerated wound size 6 cms x 0.5 cms on right parietal-parietal region. On dissection subcutaneous infiltration of blood was present. On further dissection subdural haematoma was present in the fronto parietal region both sides of the parieto-occipital region, there was fracture of the skull in the right occipital region corresponding to injury no.2. On dissection of the skull, there was a large subdural haematoma fronto parietal region both sides.
3. A reddish contusion over bridge of the nose. On dissection subcutaneous infiltration of blood was present.

4. An ill defined reddish contusion over left side of face lateral to left orbit. On dissection subcutaneous infiltration of blood was present.
5. An ill defined reddish contusion over left side of face lateral to right orbit. On dissection s/c infiltration of blood was present.
6. A reddish contusion over left shoulder posteriorly size 3 cms. On dissection, there was s/c infiltration of blood was present.
7. An ill defined contusion over left arm, middle third, anteriolateral surface, on dissection s/c infiltration of blood was present.
8. A well defined contusion over left wrist lateral surface, size 3 x 3 cms. On dissection, s/c infiltration of blood was present.
9. A lacerated wound over base of left thumb. Palmer surface size 3 x 1 cms. On dissection s/c infiltration of blood was present.
10. Multiple contusions over dorsal surface of all the left hand fingers. On dissection, s/c infiltration of blood was present.
11. A contusion red in colour 3 x 1 cms over right shoulder anterior surface. On dissection s/c infiltration of blood was present.
12. Multiple contusions over right arm lower 1/3rd and whole forearm including elbow of varying sizes and shapes over postero-lateral surface. On dissection, s/c infiltration of blood was present.
13. Multiple contusions of varying shapes and sizes over back on both sides. On dissection, s/c infiltration of blood was present.
14. A contusion of 8 x 5 cms. Red in colour over right thigh. Lower half lateral surface. On dissection, s/c infiltration of blood was present.
15. Multiple contusions ill defined over right knee, red in colour. On dissection s/c infiltration of blood was present. On further dissection, there was multiple fractures of underlying patella bone.

16. Multiple contusions over right leg over anterior surface with two incized wound size 2.5 cms x 0.5 cm and 1.5 cms x 0.5 cm, 2 cms apart over middle 1/3rd anterior surface.
17. Contusion over left thigh middle third lateral surface size 10 x 6 cms. On dissection s/c infiltration of blood was present.
18. Multiple contusions over left knee, leg and foot of varying sizes and shapes all over. On further dissection, there was s/c infiltration of blood was present. On further dissection there was fracture of left patella bone and fracture of 3rd and 4th of metatarsal bone.
19. There were small lacerations present on the mucocutaneous junction of anus dried blood was present.”

The learned Sessions Judge, Sirsa convicted all the three accused for the offence committed under Section 302 read with Section 34 IPC vide his order dated 15.06.2006 and by an order of even date, sentenced them for life imprisonment and to pay the fine of ₹5,000/- each and in default of payment of fine, to suffer further imprisonment of one year. The findings recorded by the learned Sessions Judge for the purpose of convicting the accused are in para 30 of the judgment dated 15.06.2006, which read as under:-

“30. According to the persecution story, injuries no.1 and 2 had been caused on the person of the deceased with a Kappa. Submission of learned Public prosecutor is that the evidence on the file goes to show that blunt side of the Kappa must have been used while causing these injuries and the deposition of PW-6 Dr. Gobind that these injuries were not possible by sharp side of the kappa by itself is not sufficient to affect the case materially. I am inclined to agree with the contention of learned Public Prosecutor. So far as motive part is concerned, learned Public prosecutor submitted that Smt. Savitri, wife of accused Dalbir, has herself appeared in the witness box as DW1 and has made clear that the deceased had come to her house at 10 P.M. on the relevant day though her version is that she was alone at that time. Even otherwise, according to learned Public Prosecutor, eye-witness

account is available and even if the story of illicit relations or dispute about money transaction is not fully proved, the case cannot be thrown out on this ground. I am again inclined to agree with the contention of learned Public Prosecutor. The law authority cited as 2004(1) RCR (Criminal) 156 State of Punjab vs. Karnail Singh relied upon by the learned Public Prosecutor is to the effect that merely because of the witnesses stated that he was unaware of the illicit relationship, that does not in any way dilute the evidentiary value of the evidence of other witnesses. No doubt, the mere fact that the dead body of Satpal was found lying in the house of one of the accused (Dalbir) is not sufficient to prove charge against them, this fact coupled with the other evidence produced by the prosecution including the testimony of eye-witnesses, in my view, is sufficient to prove the case. To repeat, the plea of the defense (statement of DW1 Smt. Savitri wife of accused Dalbir) is that the deceased first came to her house at about 8 PM while she was alone and he again came there at 10 PM and tried to outrage her modesty and when she raised alarm, many villagers collected there and attacked him and thereafter she went to the house of her sister. This statement of Smt. Savitri goes to show that assault was made on Satpal in the house of accused Dalbir and he succumbed to the injuries there. It cannot be believed that some other villagers would go to the extent of causing the murder of Satpal without the involvement of the family members. Regarding the plea of alibi of accused Satish, once again I am inclined to agree with the contention of learned Public Prosecutor that there is no cogent evidence on the file to prove that he was in fact present in village Ali Mohammad during the night intervening 15.01.2004 and 16.01.2014. The statement of DW2 Beer Singh, who is the father of father-in-law of accused Dalbir, and DW3 Khana Ram, who is also a resident of that village, are not sufficient to prove this plea. Learned Public Prosecutor relied upon 2005(4) Criminal Court Cases 6 Shivanna and another vs. State by Gubbi Police, Tamkur District to strengthen the argument that once an accused propounds a theory of alibi, he has to prove the same and if he does not any other place but in his house especially at night.”

Aggrieved against the order of conviction and sentence, the accused filed Criminal Appeal No.576-DB of 2006, which was dismissed on 30.05.2011 by this Court.

The controversy started in this case when the petitioner in the first petition applied for premature release in terms of the policy of the State of Haryana dated 12.04.2002 on the ground that he had already suffered the actual sentence of 10 years and total sentence of 14 years with remissions. The Additional Chief Secretary, Department of Jail, Government of Haryana, passed the impugned order on 03.04.2017, in which he has mentioned that the case of the petitioner was considered by the State Level Committee on 27.02.2017 and it was found that the petitioner along with two co-accused had committed the murder of Satpal on 15.01.2004 by inserting danda, smeared with chilli powder, in his anus and have also caused injuries to him, because of which he ultimately died. It is also observed in the impugned order that since the petitioner has committed a heinous offence, his case would fall within the definition of Clause 2(a)(xiv) of the said policy which says that “*any other crime that the State Level Committee considers to be heinous for reasons to be recorded in writing*”. However, it is not disputed that the State Level Committee had found that the petitioner had completed 10 years of actual sentence and 14 years of total sentence with remissions, after deducting the parole period, but the case of the petitioner was put in the category of heinous offence and, therefore, it was decided that he is not eligible for premature release at this stage and his case will be reconsidered after completion of 14 years of actual sentence and 20 years of total sentence. Not only this, in the said impugned order, it was also mentioned that the brother of the petitioner,

namely, Dalbir Singh (petitioner in the second petition) who had been released prematurely, would be recalled separately to undergo the remaining sentence as his case also falls within the definition of heinous offence in terms of Clause 2(a)(xiv) of the policy.

It is pertinent to mention that in the second petition, the petitioner Dalbir Singh has challenged the order dated 25.05.2017 because he has been taken into custody to suffer the remaining sentence though he was earlier released prematurely on 02.05.2016 by the concerned Superintendent of Jail.

Be that as it may, the only issue involved in this case is as to whether the case of the petitioner is to be considered in the category of “heinous” offence as provided under Clause 2(a)(xiv) of the policy or not?

Learned counsel for the petitioner has submitted that the policy for premature release of the life convicts is framed by the State Government in terms of its constitutional duty under Article 161 of the Constitution of India and in that process, it keeps on improving its policy by superseding the earlier policy(ies). It is submitted that the latest policy, on which the reliance has been placed, is of 2002, which deals with several categories of life convicts or the prisoners. Clause 2(aa) deals with the convicts whose death sentence has been commuted to life imprisonment and the convicts who have been imprisoned for life having committed a heinous crime and in those cases, the prisoners have to complete 20 years of actual sentence and 25 years of total sentence for being eligible for premature release. Clause 2(a) deals with the convicts who have been imprisoned for life having committed a heinous crime and they are supposed to complete 14 years of actual sentence and 20 years of total sentence including remissions for being eligible for premature release and

to remove any kind of doubt as to what would be the meaning of heinous crime, the same is further clarified under 14 heads including Clause 2(a)(xiv), which is left to the State Level Committee to decide, in the given facts and circumstances of each case, as to whether the offence committed by the prisoner is a heinous offence or not but for that, reasons have to be recorded by the State Level Committee. Clause 2(b) deals with the adult life convicts who have been imprisoned for life but whose cases are not covered under Clause 2 (aa) and Clause 2(a) of the policy and in those cases, the convicts are entitled to premature release after completion of 10 years of actual sentence and 14 years of total sentence with remissions. Then comes Clause 2(c) dealing with the juvenile life convicts and Clause 2(d) dealing with the persons sentenced to life imprisonment inclusive of those convicted of crimes under Clause 2(aa) and Clause 2(a) and in whose cases death sentence has been commuted to life imprisonment but who suffer from a terminal disease life cancer or AIDS and 3rd stage of TB which would result in death in the near future. Lastly, Clause 2 (e) deals with the physically handicapped prisoners.

It is pertinent to mention that all the cases for premature release are to be placed before the State Level Committee, which comprises of the Minister of Jails, Haryana as Chairman, Financial Commissioner & Principal Member Secretary to Govt., Haryana, Jails Department and the Legal Remembrancer, Haryana as Members and Director General of Prisons, Haryana as Secretary. It is provided that the Superintendent of Jails concerned shall have to submit premature release cases of life convicts two months before they complete the sentence mentioned in regard to their respective categories along with their comments to the Director General of Prisons, Haryana, who

shall further put up all such premature release cases to the State Level Committee for consideration. It is also provided in the policy that the State Level Committee would meet once in three months at least depending upon the convenience of the Minister for Jails, Haryana so that the cases for review under the policy are not delayed. Further, the Director General of Prisons, Haryana will have to forward a copy of the decision taken by the Committee along with the role of each of the life convict to the State Government within one week for further action and such cases will have to be put up to the Government through the Minister for Jails, Haryana and the Chief Minister, Haryana, with full background of the prisoner and recommendations of the Committee along with the copy of judgment etc., for orders under Article 161 of the Constitution of India.

Although the petitioners' grievance is that the respondents have not followed the later part of the policy which deals with the placing on record the recommendations of the State Level Committee before the State Government through the Minister of Jails, Haryana or the Chief Minister but presently, he is confining his argument only to the extent that there is a fallacy in the approach of the Government in putting his case in the category of heinous offence only on the basis of the allegations in regard to which no particular findings have been recorded either by the trial Court or by the Appellate Court.

Learned counsel for the petitioner has submitted that by virtue of the policy, a right has been vested in the petitioner to seek premature release and there is an obligation on the part of the respondents to consider his case in terms of the policy and not beyond that. It is submitted that in the entire

judgment of the trial Court as well as of the Appellate Court, there is not even a whisper that a danda, smeared with chilli powder, was inserted in the anus of Satpal.

I have heard learned counsel for the parties and perused the record with their able assistance.

The petitioner is denied the benefit of Clause 2(b) of the Policy to seek premature release after competing 10 years of actual sentence and 14 years of sentence including the period of remission on the ground that his case falls in Clause 2(a)(xiv) of the Policy which says that if the State Level Committee is of the opinion that the offence committed by the convict is of a heinous nature then he has to suffer 14 years of actual sentence and 20 years of total sentence with remission. In the impugned order, it is categorically mentioned that the deceased was given injuries to which he ultimately died but a danda, smeared with chilli powder, was also inserted in his anus which was found to be brutal and was considered to be a heinous offence.

Learned counsel for the petitioner has vehemently argued that the death of the deceased was not caused because of the insertion of the danda, smeared with chilly powder, in his anus and has also submitted that it was not actually done. It is further submitted that the trial court has not opined that the death of deceased Satpal has occurred because of the insertion of danda, smeared with chilli powder in his anus rather he died because of injuries No.1 & 2 which were caused on the mid frontal region and right parietal region with Kappa.

There is an error in the argument of learned counsel for the petitioner because the death was caused due to shock and haemorrhage which

could have been a cumulative effect of various injuries inflicted upon him including insertion of danda in his anus. In the inquest report, it has been observed that the blood was oozing out of the anus. Gopal Singh, who happened to be the eye witness, has stated at the time of enquiry that danda was inserted into the anus of the deceased. The FSL report also says that chilli powder was detected in Exhibit-2a (Pant), Exhibit-2b (Shirt), Exhibit-2c (Kachha), Exhibit-2d (shoes & socks of the deceased) and Exhibit-4 (danda). The statement of Gopal Singh was referred to by the trial Court while making the following observations:-

“As per the evidence of the prosecution deceased Satpal alone was taken in the house of Dalbir and Rajinder Singh and Gopal Singh entered the house only after hearing noise and saw that the accused were fully armed and were causing injuries to the to the deceased and also thrusting a Danda, smeared with Chilly, in his anus and then the accused proclaimed that the victim had died and the other (eye-witnesses) should also be taken care of and on this Rajinder Singh and Gopal Singh ran towards their houses. It is also the prosecution case that complainant Rajinder Singh had raised alarm before leaving the place of incident but none was attracted to the spot. It being odd hour and winter season it is not unnatural that no other person was attracted to the spot and as such the fact that the statements of Rajinder Singh and Gopal Singh are not corroborated by the testimony of any other villager cannot be attached much importance.”

Merely because the Doctor, in his statement, has stated that the presence of blood on the anus of the deceased could have been present due to piles effect or no opinion was sought from him by the investigating agency regarding pushing of danda is of no consequence when the Court has believed the statement of eye witnesses, who had categorically stated that the accused

had caused injuries to the deceased and also inserted a danda, smeared with chilly powder, in his anus.

Learned counsel for the petitioner has not argued that the act on the part of the accused of inserting danda, smeared with chilli powder, in the anus of the deceased is not a heinous offence but all that has been argued is that the death of the deceased was not caused because of the insertion of the danda, smeared with chilly powder, in his anus and has also submitted that it was not actually done.

Thus in view thereof, I am of the considered opinion that there is no error in the impugned order dated 03.4.2017 and as such both the writ petitions are hereby dismissed though without any order as to costs.

August 08, 2018
vinod*/vivek

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No