

Naib Singh vs State Of Punjab & Ors on 19 April, 1983

Equivalent citations: 1983 AIR 855, 1983 SCR (2) 770, AIR 1983 SUPREME COURT 855, 1982 (2) SCC 454, 1983 CRILR(SC MAH GUJ) 348, 1983 2 SCWR 244, 1983 2 SCC 454, 1983 CRIAPPR(SC) 293, 1983 SCC(CRI) 536

Author: V.D. Tulzapurkar

Bench: V.D. Tulzapurkar, R.B. Misra

PETITIONER:

NAIB SINGH

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 19/04/1983

BENCH:

TULZAPURKAR, V.D.

BENCH:

TULZAPURKAR, V.D.

MISRA, R.B. (J)

CITATION:

1983 AIR 855	1983 SCR (2) 770
1983 SCC (2) 454	1983 SCALE (1) 425

ACT:

Indian Penal Code, 1860-s. 302 and 'Secondly' of s. 53 - Prisoner sentenced to 'imprisonment for life' not entitled to be set free after undergoing 14 years' rigorous imprisonment unless specific order commuting sentence is passed under s. 55 I.P.C. or s. 433 (b), Cr. P.C., 1973.

Indian Penal Code, 1860-s. 302 read with 'Secondly' of s. 53 and s. 32 of Prisoners Act, 1900-Sentence of 'imprisonment for life' is executable in jails within the country.

Prisoners Act, 1900 -s. 32-State Governments could appoint jails as 'places' for confinement of prisoners sentenced to transportation for a term or for life.

Code of Criminal Procedure, 1898-s. 383-and Code of Criminal Procedure, 1973-s. 418-These Provisions also empower Criminal Court to direct execution of sentence of 'imprisonment for life' in local jails.

Indian Penal Code, 1860-s. 302 and 'Secondly' of s. 53 read with sub-ss. (1) and (2) of s. 53 A-'Imprisonment for

life' means 'rigorous imprisonment for life'-Criminal Court not obliged to keep in view Provisions of s. 60 I.P.C. while passing sentence of 'imprisonment for life'.

HEADNOTE:

The petitioner had been originally sentenced to death under s. 302, I.P.C. but on a mercy petition preferred by him, the sentence had been commuted to 'imprisonment for life'. He had undergone actual rigorous imprisonment of 11 years, 5 months and 10 days but, inclusive of remissions, the total imprisonment worked out to 22 years, 2 months and 17 days.

In support of the claim that the petitioner should be released forthwith it was contended: (i) The detention 'in jail' of a person under 'imprisonment for life' is unlawful because, after the enactment of s. 117 of the Cr. P.C. (Amendment) Act (26 of 1955), though persons who commit murder have been made liable to the newly substituted punishment of 'imprisonment for life' instead of the earlier sentence of 'transportation for life' under s. 302, I.P.C. read with 'Secondly' of s. 53, I.P.C., this new sentence has not been made legally executable in jail; and like the sentence of 'transportation for life', it remains executable by way of banishment or exile to the 'places' envisaged

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under s. 32 of the Prisoners Act, 1900; (ii) The Amending Act (26 of 1955) did not change the nature of punishment formerly known as 'transportation for life' by calling it 'imprisonment for life' and the latter, like the former, remains distinct from the punishment of 'rigorous or simple imprisonment' enlisted at item 'Fourthly' in s. 53, I.P.C. and, it is only the punishment enlisted at item 'Fourthly' (which must mean 'imprisonment for a term') that can be executed in jail either in rigorous manner or simple; (iii) Since the sentence of 'imprisonment for life' can be executed only by the convict being 'removed to the place or places' required to be appointed under s. 32 of the Prisoners Act, 1900 and since no such 'place or places' have been appointed under the aforesaid provision by the State Government, the executing authorities are obliged by the present state of the law to 'execute' or 'carry out' the said sentence in jail indirectly by way of commuting it for imprisonment of either description for a term not exceeding 14 years under s. 55, I.P.C. or s. 433 (b), Cr. P.C., 1973; and (iv) Although no such formal order of commutation had been passed in the case, the petitioner having been subjected to rigorous imprisonment for a period of 14 years, the State Government should be deemed to have passed such an order.

Counsel for respondents contended: (1) that on both the aspects touching the punishment of 'imprisonment for life',

namely, the place of its executability as well as its nature, the contentions urged on behalf of the petitioners have been concluded by Pandit Kishori Lal's and Gopal Godse's cases; (ii) that since the sentence of 'imprisonment for life' can be legally executed in jails within the country there is no question of releasing the petitioner forthwith, in the absence of an order of commutation passed by the State Government either under s. 55, I.P.C. or s. 433 (b), Cr. P.C., 1973, simply because he has served 14 years' of rigorous imprisonment.

Dismissing the Petition,

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HELD 1. Since the petitioner's sentence has not been commuted for imprisonment for a term not exceeding 14 years either under s. 55, I.P.C. or s. 433 (b), Cr. P.C. 1973 by the appropriate Government, he is liable to serve his sentence until the remainder of his life in prison under the ruling of this Court in Gopal Godse's case. [790 D]

Gopal Godse's case, [1961] 3 SCR 440, referred to.

2. The sentence of 'transportation' either for a term or for life was executable in jails within the country. The same position must obtain in regard to persons sentenced to 'imprisonment for life' on or after January 1, 1956. [784 F]

(1) The law on the point has been clearly enunciated in Pandit Kishori Lal's case where the Privy Council held that "a prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India appointed for transportation prisoners". There is no force in the contention that the provisions of law referred to by the Privy Council for basing this conclusion did not warrant the said conclusion.[778 H-779G]

Pandit Kishori Lal's case, A.I.R. 1945 P.C. 64 referred to.

(ii) Even prior to the coming into force of the Amending Act 26 of 1955 (i.e., prior to January 1, 1956) all prisoners sentenced to transportation for a
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term of years or for life were not invariably deported to the overseas penal settlement in the Andamans. Transportation prisoners were divided into two categories, namely, those who were eligible for deportation and those who were not (who generally included convicts suffering from specified diseases or infirmities) and only the former were deported to Andamans while the latter were transferred to and confined in one or the other jails within the country under s. 32 of the Prisoners Act of 1900 and in course of time their cases were referred to State Government for passing an order s. 55, I.P.C. or s. 402, Cr. P.C., 1898. [780 F-H]

(iii) Under s. 32 of the Prisoners Act, 1900 the State Government has been empowered to appoint places within the State, and places in other States with their consent, where transportation prisoners could be lodged for undergoing

their sentences. It is obvious that the expression 'confinement' occurring in the marginal note of the section means the prisoners' detention in the place for the purpose of executing or carrying out their sentence. 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. A sentence of 'transportation' either for a term or for life could be, and a sentence of "imprisonment for life" can be, made executable in local jails by constituting such jails as the 'places' within the meaning of s. 32 under orders of the State Governments. [781 F-782 F]

Kundan Lal & Ors. v. Emperor, A.I.R. 1931 Lahore 353; and Re: Khairati Ram, A.I.R. 1931 Lahore 476 distinguished.

(iv) Paragraph 719 of the Punjab Jail Manual as published in 1916 provided that every prisoner sentenced to transportation for a term or for life, if ineligible for deportation to the Andamans, shall be transferred to and confined in one or other of the jails specified therein which were constituted 'places' for the detention of transportation prisoners within the Punjab under s. 32 of the Prisoners Act, 1900. This paragraph was amended some time later and the words "if ineligible for deportation to the Andamans" were deleted as is evident from the amended Para 719 appearing in the Punjab Jail Manual published in 1975. It is therefore clear that since then, so far as Punjab is concerned, no transportation prisoner was deported overseas and all transportation prisoners were detained and confined in local jails. [783 F-784 E]

(v) Section 383, Cr. P.C., 1898 and s. 418, 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. It is obvious that the 'confinement' of the convict in jail pursuant to the Court's warrant issued under the sections is for the purpose of executing or carrying out the sentence. The proviso to sub-s. (1) of s. 418 and sub-s. (2) of s. 418 make the position abundantly clear that the expression 'confinement' has been used in the sense of execution or carrying out of the sentence.

[782 G-783 C]

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3. The position in law as regards the nature of punishment involved in a sentence of 'imprisonment for life' is well settled. The sentence of imprisonment for life has to be equated with rigorous imprisonment for life. [790 B]

(i) Transportation to overseas penal settlement always implied hard labour for the concerned convicts. Sub-s. (3) of s. 17 of the 'Andaman and Nicobar Manual', a Government of India publication of the year 1908, states that

transportation means hard labour under strict discipline. Section 146 says that the hours of work are regulated by the Superintendent and they shall ordinarily consist of 9 hours daily. These provisions clearly bring out the fact that the sentence of transportation either for life or for a term inexorably meant rigorous imprisonment in the sense of exaction of hard labour from the convict. This position has been judicially noticed in Pandit Kishori Lal's case. Therefore, on Counsel's own argument, the sentences of 'transportation for life' and 'imprisonment for life' being similar in nature, the sentence of 'imprisonment for life' must mean 'rigorous imprisonment for life'. [786 E-H]

Pandit Kishori Lal's case, A.I.R. 1945 P.C. 64 referred to.

(ii) Sub-s. (1) of s. 53-A provides that any reference to 'transportation for life' in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed, shall be construed as a reference to 'imprisonment for life'. Under sub-s. (2) of s. 53-A, I.P.C. Parliament has expressly stated that a sentence of transportation for a term has to be executed or carried out as if it were a sentence of rigorous imprisonment for the same term. If transportation for a term, has been equated to rigorous imprisonment for the same term, by necessary implication, the sentence of 'transportation for life', now substituted by 'imprisonment for life', which is awardable for more serious, or more grave or more heinous crimes must mean rigorous imprisonment for life. [787 A-F]

Gopal Godse's case, [1961] 3 S.C.R. 440; State of Madhya Pradesh v. Ahmadulla, A.I.R. 1961 S.C. 998; and K.M. Nanavati v. State of Maharashtra, A.I.R. 1962 S.C. 605 referred to.

4. It is not possible to sustain the view that while passing the sentence of imprisonment for life a criminal court should keep in view the provisions of s.60, I.P.C. and choose one or the other form so as to clarify the exact nature of punishment intended to be inflicted on the accused. 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, s. 60 is applicable to a case where "an offender is punishable with imprisonment which may be of either description". 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, s. 60 would be inapplicable. [789 D-H]

Mathammal Saraswathi v. The State, A.I.R. 1957 Kerala 102, overruled.

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JUDGMENT :

ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 850 of (Under article 32 of the Constitution of India.) S.B. Malik and K.B. Rohtagi for the Petitioner. Harbans Singh and D.D. Sharma for the Respondents. The Judgment of the Court was delivered by TULZAPURKAR, J. By this writ petition under Art. 32 of the Constitution the petitioner Naib Singh is challenging his continued detention in jail and is seeking an order in the nature of habeas corpus claiming that he has justly served more than the maximum sentence of imprisonment prescribed under law and should, therefore, be released.

The petitioner was originally sentenced to death on 18.1.1969 by the learned Sessions Judge, Ferozepore, for committing an offence of murder under s. 302 Indian Penal Code. Later, on a mercy petition preferred by him, his death sentence was commuted by the Governor of Punjab to imprisonment for life, which he has been undergoing in the Central Jail at Bhatinda. Excluding the period spent by him as an under-trial prisoner (in respect whereof no life- convict is entitled to the benefit of a set-off under s. 428 Cr. P.C. 1973 as interpreted by this Court in Kartar Singh's (1) case), the petitioner appears to have undergone a total imprisonment of 22 years 2 months and 17 days inclusive of remissions as under:

Y r s . m o n t h s d a y s

(a) actual rigorous imprisonment after conviction. 11 5 10

(b) Jail remissions 2 3 6

(c) Govt. remissions 8 6 1 _____ Total: 22 2 17

_____ Admittedly, neither his sentence has been remitted fully nor commuted for imprisonment for a term not exceeding 14 years either under s. 55 I.P.C. or s. 433(b) Cr. P.C. 1973 by the appropriate Government, with the result that he is liable to serve his sentence until the remainder of his life in prison under the ruling of this Court in Gopal Godse's(1) case. However, on the basis of the aforesaid particulars, which are not disputed, the petitioner's case is that he has positively undergone more than 14 years of sentence including remissions and since through the Officer-in-Charge of jail the Government got executed his sentence in jail custody in the form of rigorous imprisonment, that is by subjecting him to hard labour and also by awarding him remissions the Government must be deemed to have commuted his sentence to 14 years either under s. 55 I.P.C. or s. 433(b) Cr. P.C. 1973, notwithstanding that no formal order in that behalf was made by the State Government and as such his continued detention in jail is illegal and he is entitled to be released forthwith.

Counsel for the petitioner elaborated the petitioner's case thus: Section 53 I.P.C. prescribes five or six distinct categories of punishment to which offenders are liable under the Indian Penal Code. Prior to its amendment by s. 117 of the Code of Criminal Procedure (Amendment) Act (26 of 1955) that section prescribed the punishment of 'Transportation' at item 'Secondly' but that was

substituted by 'Imprisonment for life' by the said Amending Act (26 of 1955) with effect from January 1, 1956. According to counsel though persons who commit the offence of murder have been made liable to the newly substituted punishment of 'Imprisonment for life' instead of the earlier sentence of 'transportation for life' under s. 302 I.P.C., read with 'secondly' of s. 53 I.P.C., this new sentence of 'Imprisonment for life' (either awarded originally by the Sessions Court or by way of commutation of death sentence by the appellate Court or the appropriate Government or authority) has not been made legally 'executable' in jail under either the Code of Criminal Procedure 1898 or 1973 or any other law or under any writ, order, or warrant of the Court, by the Officer-in-Charge of jail and like 'sentence of transportation for life':

imprisonment for life' remains executable by way of banishment or exile to the 'places' envisaged under s. 32 of the Prisoners Act (3 of 1900) and the Officer-in-Charge of the jail is merely mandated to keep this convict person in intermediate custody only and is required to 'deliver him over' to appropriate authority and custody for the purpose of 'removal to the places' aforesaid, for executing or carrying out the sentence and in this behalf reliance was placed on the prescribed Forms of Warrant of Commitment under ss. 383 and 386 of the Cr. P.C. 1898 as also under s. 418 of the Cr. P.C. 1973 and, therefore, the detention in jail of a person under 'Imprisonment for life' is unlawful. Counsel, further urged that the Amending Act (26 of 1955) did not change the nature of punishment formerly known as 'transportation for life' by calling it 'imprisonment for life' and the latter like the former remains distinct from the punishment of 'rigorous or simple imprisonment' enlisted at item 'Fourthly' in s. 53 I.P.C. and it is only the punishment enlisted at item 'Fourthly' (which must mean imprisonment for a term) that can be executed in a jail either in rigorous manner or simple depending upon the Court's direction contained in the Warrant of commitment, in other words, the two punishments, namely, imprisonment for life' and 'imprisonment (for a term) rigorous or simple' are distinct punishments as regards their nature, the place and the mode of their execution and the Officers executing them. In substance, counsel's contention has been that in regard to the sentence of life imprisonment the place where it has to be executed or carried out has not been appointed under s. 32 of the Prisoners Act, 1900 nor has its nature been prescribed, that is to say, it is not necessarily rigorous. In support of the latter aspect regarding the nature of the punishment counsel relied upon the fact that even the Law commission in its 39th Report dated 4th July, 1968 on "The Punishment of Imprisonment for Life under the I.P.C." had recommended a suitable amendment in the I.P.C. by inserting a specific provision to the effect: "Imprisonment for life shall be rigorous" and that the said recommendation was reiterated by it in its 42nd Report which suggests that the existing Law on this aspect is not clear. Counsel, therefore, urged that since the sentence of 'imprisonment for life', like the sentence of 'transportation for life' can be executed only by the convict being 'removed to the place or places' required to be appointed by the State Government under s. 32 of the Prisoners Act 1900 and since no 'such place or places' have been appointed under the aforesaid provision by the State Government, the executing authorities are obliged by the present State of law to 'execute' or 'carry out'

the said sentence in jail indirectly by way of commuting it for imprisonment of either description for a term not exceeding 14 years under s. 55 I.P.C. or s. 433(b) Cr. P.C. 1973. In other words, according to counsel, in the absence of any proper authority of law warranting the detention and execution of the sentence of such life convict in jail custody, his detention in such jail custody will have to be regarded as illegal and unlawful or alternatively it should be held that on his being made to undergo rigorous imprisonment in jail for a period of 14 years (inclusive of remissions) he would be entitled to be released from jail as on the expiry of the aforesaid period his continued detention would be illegal. It was on the basis of the aforesaid reasoning that counsel contended that although no formal order of commutation either under s. 55 I.P.C. or s. 433 (b) Cr. P.C. has been passed in the case of the petitioner, the petitioner having been subjected to rigorous imprisonment for a period of more than 14 years (inclusive of remissions) the State Government should be deemed to have passed such an order and the petitioner was entitled to be released forthwith.

On the other hand counsel for the respondents seriously disputed that either the old sentence of 'transportation for life' or the new sentence of 'imprisonment for life' substituted by the Amending Act 26 of 1955 was or is executable only by way of banishment or exile of the convicts to overseas penal settlements or that the Officers-in-Charge of jails could not or cannot confine them in the jails within the country for executing or carrying out the sentences imposed upon them. Counsel emphatically denied that either the old sentence of 'transportation for life' or the newly substituted sentence of 'imprisonment for life' (either awarded originally or by way of commutation of death sentence) had not been or has not been made legally executable in jails in the country and contended that there was and is ample legal authority warranting the execution or carrying out of such sentences in the jails through the Officers-in-Charge thereof and in that behalf reliance was placed on ss. 383-384 of the old Cr. P.C. 1898 as well as ss. 418-419 of the present Cr. P.C. 1973 read with ss. 3, 7, 15, 16, 29 and 32 of the Prisoners Act No. 3 of 1900 and certain executive or administrative orders or directions issued from time to time by State Governments; in particular reference was made to Paragraphs 719 and 726A of the Punjab Jail Manual whereunder transportation prisoners (who would include life convicts) could be made to undergo their sentences in certain jails in the country-such jails being constituted the 'place' for their confinement under s. 32 of Act 3 of 1900, and counsel urged that accordingly the petitioner herein has been undergoing his sentence of life imprisonment in the Central Jail, Bhatinda. Further, on the aspect of the nature of the punishment counsel contended that having regard to the insertion of a new section, s. 53- A in the Indian Penal Code by the Amending Act 26 of 1955, which is in the nature of an Interpretation Clause it would be clear that Parliament intended that a sentence of 'imprisonment for life' should be equivalent to rigorous imprisonment for life. It was pointed out that on both the aspects touching the punishment of 'imprisonment for life' (namely, the place of its executability as well as its nature) the contentions urged on behalf of the petitioner have been concluded by two well-known judicial pronouncements, one of the Privy

Council in Pandit Kishori Lal's (1) case and the other of this Court in Gopal Godse's case (supra) and the position in law on both the aspects having been settled by those decisions the recommendation made by the Law Commission in its 39th Report as well as 42nd report will be of no avail to the petitioner and will have to be regarded as having been made only for the purpose of removal of doubts and clarifying or declaring the existing legal position. If, therefore, the sentence of 'imprisonment for life' is nothing but 'rigorous imprisonment for life' and can be and is being legally executed or carried out in one of the jails in the country in the case of the petitioner there will be no question of releasing him forthwith simply because he has served 14 years of rigorous imprisonment (inclusive of remissions) in the absence of an order of commutation passed by the State Government either under s. 55 of the I.P.C. or s. 433 (b) of the Cr. P.C. 1973. The petitioner is, therefore not entitled to the relief sought by him.

From the rival contentions urged by counsel on either side as summarised above it will appear clear that the entire edifice of the petitioner's claim for immediate release from jail custody is based on two premises : (a) inexcusability of the sentence of life imprisonment (formerly called transportation for life) in jail through the Officer-in-Charge thereof under the existing law and (b) undefined nature of punishment to be suffered under the sentence of life imprisonment which is not necessarily rigorous; but because he was made to undergo his sentence of life imprisonment in jail and that too in rigorous manner for more than 14 years (inclusive of remissions) his sentence should be deemed to have been commuted by the State Government either under s. 55 I.P.C. or under s. 433 (b) Cr. P.C. 1973 without a formal order in that behalf and he be released forthwith. The question is whether the two premises on which his claim to immediate release rests are valid ?

On the question whether a sentence of transportation for life could be executed in jails within the country or the same was executable only beyond the seas, the position, in our view, has been clearly enunciated by the Privy Council in Pt. Kishori Lal's case (supra). After considering the history of the sentence of transportation, the relevant provisions of the Indian Penal Code, the Code of Criminal Procedure and the Prisoners Act, the Privy Council came to the conclusion that the said provisions clearly showed that a sentence of transportation was not necessarily executable beyond the seas. It observed at Page 66 of the Report thus :

"These sections make it plain that when a sentence of transportation has been passed it is no longer necessarily a sentence of transportation beyond the seas. Nowhere is any obligation imposed on the Government either of India or of the Provinces to provide any places overseas for the reception of prisoners. It appears that for many years the only place to which they have been sent is the Andaman Islands are now in Japanese occupation. Their Lordships have been referred to various orders and directions of an administrative and not a legislative character showing what prisoners are, and are not, regarded as fit subjects for transportation thereto, and showing also

that nowadays only such of those prisoners sentenced to transportation as may volunteer to undergo transportation overseas are sent to those islands..... But at the present day transportation is in truth but a name given in India to a sentence for life and, in a few special cases, for a lesser period, just as in England the term imprisonment is applied to all sentences which do not exceed two years and penal servitude to those of three years and upwards..... So, in India, a prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India appointed for transportation prisoners....."

However, Counsel for the petitioner, made a brave attempt, of course in all humility to submit that the provisions of law referred to by the Privy Council for basing its aforesaid conclusion do not warrant the said conclusion and with a view to canvas his submission he elaborately dealt with and took us through the various provisions of the Penal Code, Criminal Procedure Code and the Prisoners Act. On giving our careful and anxious consideration to the matter we have come to the conclusion that it is difficult to accept counsel's submission.

Counsel pointed out that great reliance was placed by the Privy council on s. 58 of the Indian Penal Code, which was in force then (since repealed by Amending Act 26 of 1955), but urged that that section merely provided for the temporary or transitory detention and treatment of the offender in local jail pending his deportation beyond the seas and therefore that provision could not be relied upon for coming to the conclusion that transportation prisoners could be confined in local jails for undergoing their entire sentences. It must, however, be pointed out that the Privy Council has not solely relied upon s. 58 I.P.C. for reaching its aforesaid conclusion. In fact, in that behalf, it has observed : "Were these (ss. 53, 55 and 58 I.P.C.) the only statutory provisions dealing with the matter, there would be much force in the argument that s. 58 should be read as providing merely for the temporary or transitory detention and treatment of an offender while arrangements were being made for his transportation beyond the seas" and has not merely gone into the history of the sentence but also indicated the other provisions of Criminal Procedure Code 1898 and the Prisoners Act 1900 which supported its conclusion. In other words, it realised the fact that s. 58 I.P.C. made provision for a transitory period but taken along with other statutory provisions it helped to reach the conclusion that transportation prisoners were not necessarily required to be sent beyond the seas and in that behalf it relied upon s. 368 (2) Cr. P.C. 1898 and particularly certain provisions like ss. 29, 31 and 32 of the Prisoners Act, 1900 as amended in 1903, which, in its opinion, were decisive on the point. As we shall point out presently, the other statutory provisions read with the orders of administrative character issued from time to time by the State Governments to which a reference has also been made in the judgment, do support the conclusion reached by it.

It may be pointed out-and this was not even disputed by the counsel for the petitioner-that even prior to the coming into force of the Amending Act 26 of 1955 (i.e. prior to 1.1.1956) all prisoners sentenced to transportation for a term of years or for life were not invariably deported to the overseas penal settlement in the Andamans but transportation prisoners were divided into two categories, namely those who were eligible for deportation and those who were not (who generally included convicts suffering from specified diseases or infirmities) and only the former were deported to Andamans while the latter were transferred to and confined in one or the other jails

within the country under sec. 32 of the Prisoners Act of 1900 and in course of time their cases were referred to State Government for passing an order under sec. 55 I.P.C. or sec. 402 Cr. P.C. 1898 which was within the discretion of the State Government. Reference in this behalf may be made to sec. 32 of the Prisoners Act 1900 and Paragraph 719 of Punjab Jail Manual. Section 32 of Act III of 1900, which specifically deals with 'Persons Under Sentence of Transportation (now applicable to persons sentenced to imprisonment for life) runs thus :-

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 authorised 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-s. (1) to appoint places within the States and to order the 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 be like agreement give orders or duly authorise some officer to give orders for the removal thereto of such person." Under this provision the State Government has been empowered to appoint places within the State, and places in other States with their consent, where transportation prisoners could be lodged for undergoing their sentences. It is obvious that the expression 'confinement' occurring in the marginal note of the section means the prisoners' detention in the places for the purpose of executing or carrying out their sentence.

Counsel for the petitioner strenuously urged that the 'places' envisaged for confinement of transportation prisoners under sec. 32 of the Prisoners Act 1900 could not be the places in the jails but must be some place or places outside the jails. In 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 sec. 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 Kundan Lal and others v. Emperor(1) and in Re. Khairati Ram (2) to support his contention but in our view neither of these decisions lays down anything as suggested by Counsel. In both the cases the court was concerned with the question as to where should an approver to whom dardon has been tendered under sec. 337 of Cr. P.C. 1898 should be kept during an inquiry or trial and all that the Lahore High Court has held is that he must be detained in judicial custody in prison which includes a judicial lock-up and not in custody of the police and in both the cases a direction issued by the local Government under sec. 514 (1) of Cr. P.C. 1898 for keeping such approvers in Lahore Fort under police control was declared illegal and ultra vires. Neither of these decisions is an authority for the proposition that in the exercise of the power conferred under sec. 32 of Prisoners Act 1900 the State Government cannot constitute or appoint jails within its territory as the "places" for confinement for transportation prisoners. Moreover, as

we shall point out later Paragraph 719 of the Punjab Jail Manual clearly shows that by several Notifications or Orders issued by the Punjab Government certain local jails within the Province have been constituted the "places" under sec. 32 of the Act for confinement of transportation prisoners. It is thus clear that under sec. 32 of Act III of 1900 a sentence of transportation either for a term or for life could be and a sentence of life imprisonment can be made executable in local jails by constituting such jails as the 'places' within the meaning of sec. 32 under orders of the State Governments.

Apart from sec. 32 of the Prisoners Act, sec. 383 of Cr. P.C. 1898 and sec. 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-sec. (1) of sec. 418 and sub- sec. (2) of sec. 418 make this 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 nonprescription 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.

Paragraph 719 of the Punjab Jail Manual as published in 1916 ran thus:-

719. "Places of confinement for transportation prisoners-Every prisoner sentenced to transportation for a term or for life, if ineligible for deportation to the Andamans, shall be transferred to and confined in one or other of the following jails which are constituted places for the detention of transportation prisoners within the Punjab, under section 32 of Act III of 1900, namely:-The Lahore Borstal Central Jail and the Central Jails and Lahore, Montgomery and Multan; the District Jails at Ambala, and Multan and the Lahore Female Jail."

In the margin reference has been given to several Notifications of Punjab Government specifying the jails named in the Paragraph. It appears that Paragraph 719 itself was amended some time later (when it was done Counsel was unable to state but presumably before 'transportation for life' was substituted by 'imprisonment for life') and the words "if ineligible for deportation to the Andamans" were deleted for the amended Para 719 as appearing in Punjab Jail Manual published in 1975 runs

thus :

719. Places of Confinement for transportation Prisoners-Every prisoner sentenced to transportation for a term of years or for life, shall be transferred to and confined in one or other of the following jails which are constituted places for the detention of transportation prisoners within the Punjab, under section 32 of Act III of 1900, namely:-The Central Jails at Ambala and Ferozepur, the Borstal Institution and Juvenile Jail, Faridkot, women's section, District Jail, Ludhiana, in the case of women prisoners and District Jail, Delhi.

Here also in the margin reference is given to various Government Notifications specifying the Jails named in the Paragraph. It will thus appear clear that since after the deletion of the words "if ineligible for deportation to Andamans" in the Paragraph 719 so far as the Punjab is concerned no transportation prisoner was deported overseas and all transportation prisoners were detained and confined in local jails which were the appointed places envisaged under sec. 32 of Act III of 1900. It is thus clear that in course of time the sentence of transportation either for a term or for life became executable in jails within the country and the same position must obtain in regard to persons sentenced to imprisonment for life on and after 1-1- 1956 in view of sec. 53A I.P.C inserted by the Amending Act 26 of 1955. The first premise on which the petitioner's claim to immediate release rests is thus not valid.

As regards the nature of punishment required to be suffered under the sentence of 'imprisonment for life' (substituted for 'transportation' by the Amending Act 26 of 1955) Counsel for the petitioner urged that, its nature not having been defined anywhere, it cannot be equated to, rigorous imprisonment for life'. The argument was that the Amending Act (26 of 1955) did not change the nature of the punishment required to be suffered under either and like the sentence of 'transportation for life'. the sentence of imprisonment for life' remains distinct from the punishment of "rigorous or simple imprisonment" enlisted at item 'Fourthly' in s. 53, IPC. Counsel pointed out that both in the Indian Penal Code as well as the Criminal Procedure Codes (of 1898 as well as of 1973) a distinction has been maintained between 'imprisonment for life' and 'imprisonment for a term' and it is only the latter which can be either 'rigorous' or 'simple' depending upon the Court's direction given at the time of sentencing the accused under s. 60, IPC and there is nothing either in the Penal Code or Procedure Codes which indicates that 'imprisonment for life' is or would be necessarily rigorous. It is not possible to accept this contention for the reasons which we shall presently indicate.

In the first place, implicit in the argument so advanced by counsel for the petitioner is the acceptance of the position that the earlier sentence of 'transportation for life' and the substituted sentence of 'imprisonment for life' are similar as regards the nature of punishment required to be suffered by the convict under either. If therefore, there is sufficient statutory material or material having the force of law to show that the sentence of transportation either for life or for a term involved exaction of hard labour from the convict while undergoing the sentence the contention must obviously fail. It is well- known that transportation to overseas penal settlement always implied hard labour for the concerned convicts and hence deportation beyond the seas popularly

called 'Black water' was the most dreaded punishment in India not without reason. Section 59 of the Prisons Act 9 of 1894-an enactment made for amending the law relating to prisons with a view to prescribe uniform system of prison management in India, initially conferred power on the Governor-General in Council and later since 1937 confers power on the State Governments to make rules, consistent with the Act, in regard to the various matters; inter alia under cl. (14) thereof rules could be made "for classifying and prescribing the forms of labour and regulating the periods of rest from labour" and it appears that requisite rules in that behalf have been made by the authorities on whom the power had been or has been conferred. Counsel for the respondent has referred us to 'Andaman and Nicobar Manual' a Government of India Publication of the year 1908 which contains several rules, regulations and orders governing the Management and Control of the Penal Settlement at Port Blair and Nicobar Islands. Section 1 (2) of the Manual states that the Penal Settlements of Port Blair and Nicobar Islands have been specially appointed as the 'places' within the meaning of s.33 of Prisoners Act 5 of 1871 which is equivalent to s. 32 of Prisoners Act 3 of 1900 and "term as well as life convicts are permitted to be transported to them", while s. 1 (3) states that "the barracks and other places used for the confinement of prisoners at Port Blair have also been declared prisons for the confinement of convicts sentenced to penal servitude". Chapter II deals with classification of convicts and s. 17 is very important which runs thus:

17. "(1) By section 34, Act V of 1871, the Governor General in Council may, from time to time, prescribe rules as to the classification of transported convicts.

(2) The rules so sanctioned by the Government of India for the classification of convicts are comprised in the following orders.....

(3) Transportation entails hard labour under strict discipline, with only such food as is necessary for health. Any mitigation of the above is an indulgence which may, at any time, be withdrawn in whole or in parts".

Sub-cl. (3) of s. 17 in substance gives the interpretation of the expression 'transportation' and in terms states that transportation means hard labour under strict discipline, subject to such indulgence as may be granted or withdrawn from time to time. Sections 24 and 25 provide for classification and grades of prisoners on their arrival in the penal Settlement. Section 146 which prescribes hours of labour says that the hours of work are regulated by the Superintendent and they shall ordinarily consist of 9 hours daily, including the time of going to and returning from work (as far as practicable). These provisions of the Andaman and Nicobar Jail Manual clearly bring out the fact that the sentence of transportation either for life or for a term inexorably mean rigorous imprisonment in the sense of exaction of hard labour from the convict. This position has been judicially noticed and accepted by the Privy Council in Pandit Kishori Lal's case (supra) where while elaborately dealing with the history of the sentence of transportation the Privy council has clearly observed that both in England and in India transportation prisoners when deported beyond the seas were subjected to conditions of hard labour under strict discipline. Relying on s. 58, I.P.C. and other statutory provisions the Privy Council also concluded that even when it was made to suffer inside a local jail within the country transportations meant rigorous imprisonment. Therefore on counsel's own argument the two being similar in nature the sentence of imprisonment for life must mean

rigorous imprisonment for life.

Secondly by the Amending Act 26 of 1955 a new s. 53 A has been added to the I.P.C. which in our view clinches the matter beyond any doubt, because sub-s. (2) read with sub-s. (1) thereof affords a clear indication by necessary implication that a sentence of 'imprisonment for life' must be regarded as equivalent to 'rigorous imprisonment for life'. It is obvious that s. 53A is in the nature of an 'Interpretation Clause', for in terms it deals with how 'a sentence of transportation for life or for a term' should be construed in penal jurisprudence. Sub-s. (1) provides that any reference to 'transportation for life' in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed, shall be construed as a reference to 'imprisonment for life'. Sub-s. (2) runs thus:-

(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, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term".

Under this provision Parliament has expressly stated that a sentence of transportation for a term has to be executed or carried out as if it were a sentence of rigorous imprisonment for the same term. If transportation for a term has been equated to rigorous imprisonment for the same term, by necessary implication the sentence of 'transportation for life', now substituted by 'imprisonment for life', which is awardable for more serious, or more grave or more heinous crimes must mean rigorous imprisonment for life, that is to say it cannot be anything but rigorous. Counsel for the petitioner, however, pointed out that sub-s. (2) only deals with a sentence of transportation for a term and not with transportation or imprisonment for life and that the provision is applicable to only sentences of transportation for a term awarded prior to 1.1.1956. This is undoubtedly true but that would not affect the question whether the provision gives the requisite guidance on the nature of punishment intended to be inflicted on the convicts sentenced to imprisonment for life and such guidance is clear by necessary implication. In our view the legislative intent has been clearly spelt out and expressed that the nature of punishment required to be suffered under a sentence of 'imprisonment for life' awardable on and after 1.1.1956 is rigorous imprisonment.

That this is how s. 53 A (2) of I.P.C. was construed by this Court is clear from the decision in Gopal Godse's case (supra). Facts of that case shortly stated were these: Gopal Godse was sentenced to transportation for life by a Judge of the Special Court, Red Fort, Delhi on 10th February, 1949. After undergoing 20 years rigorous imprisonment together with the remissions, he challenged the legality of his continued detention, claiming that he had served his sentence and was therefore, entitled to be released. One of the questions posed by the Court for its determination was:

"Whether the petitioner (Gopal Godse) who was sentenced to transportation for life (and whose sentence had not been commuted under s. 55 of the I.P.C. or under s. 402 (1), Cr. P.C. could be dealt legally as if he were a person sentenced to rigorous imprisonment"? After approving the Privy Council in decision Pandit Kishori Lal's case (supra) which was based on s. 58, I.P.C. and other statutory provisions, this

Court answered the question in the affirmative solely basing its conclusion on the provisions contained in s. 53 A (2)-a provision added by the Amending Act 26 of 1955 with effect from 1.1.1956. After setting out the provisions the court observed thus:

"Whatever justification there might have been for the contention that a person sentenced to transportation could not be legally made to undergo rigorous imprisonment in a jail in India except temporarily till he was so transported, subsequent to the said amendment there is none under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term." It may significantly be pointed out that Gopal Godse's sentence of transportation for life had been passed on 10th February, 1949, i.e. prior to the coming into force of the Amending Act 26 of 1955 and the question had come up for consideration before this Court in January 1961 long after the Amending Act had come into force whereunder the sentence of imprisonment for life had been substituted for transportation, with the result that this Court had to and did rely on s. 53A (2) for its conclusion. In other words, this Court in that case equated the sentence of transportation for life, (which continued as imprisonment for life on and after 1.1.1956) to rigorous imprisonment for life.

It may be pointed out that even thereafter there is no dearth of judicial precedents where, in the matter of nature of punishment, imprisonment for life has been regarded as equivalent to rigorous imprisonment for life. In *State of Madhya Pradesh v. Ahmadulla*(1) this Court, after reversing the judgment of acquittal recorded by the High Court on a charge of murder, imposed the following sentence:

"But taking into account the fact that the accused has been acquitted by the Sessions Judge-an order which was affirmed by the High Court-we consider that the ends of justice would be met if we sentence the accused to rigorous imprisonment for life".

Again in the celebrated case of *K.M. Nanavati v. State of Maharashtra*(2) (second Nanavati case) the Bombay High Court had sentenced the accused expressly to "rigorous imprisonment for life" and this Court while dismissing the appeal upheld the sentence as being correctly awarded.

During the hearing our attention was invited to a decision of the Kerala High Court in *Mathammal Saraswathi v. The State*,(3) where that High Court has taken the view that while passing the sentence of imprisonment for life a Criminal Court should keep in view the provisions of s. 60 of I.P.C. and choose one or the other form so as to clarify the exact nature of punishment intended to be inflicted on the accused, and went on to clarify the position by stating that the imprisonment for life in that case shall be simple imprisonment and not rigorous. It is not possible to sustain the aforesaid view of the Kerala High Court. 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 s. 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 s. 60 would be inapplicable.

However, for the reasons discussed above and in view of the authoritative pronouncements made by the Privy Council and this Court in Pandit Kishori Lal's case and Gopal Godse's case respectively, it will have to be held that the position in law as regards the 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. In this view of the matter, the recommendation of the Law Commission contained in its 39th and 42nd Reports suggesting a suitable amendment in the Indian Penal Code will have to be regarded as having been made only for a purpose of removal of doubts and clarifying or declaring the existing legal position. Presumably for that reason the suggested amendment has not been regarded as absolutely necessary and therefore not put through so far.

Having regard to the aforesaid discussion, none of the ground on which the petitioner's claim to immediate release rest can be held to be valid and therefore, in the absence of any order of commutation having been passed either under s. 55, I.P.C. or s. 433 (b) of Cr. P. C. 1973, the petitioner is not entitled to be released. Rule is therefore discharged.

H.L.C.

Petition dismissed.