(2009) 3 RCR(Criminal) 56

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 38361 of 2008 in Crl. Appeal No. 827 DB of 2007

Umed Singh and another		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: May 18, 2009

Citation: (2009) 3 RCR(Criminal) 56

Hon'ble Judges: Sham Sunder, J and K.S.Garewal, J

Advocate: Mr. G.S. Nagra, Advocate. Ms. Navin Malik, Additional Advocate General, Haryana., Advocates for appearing Parties

Judgement

K.S. Garewal, J.

1. Umed Singh (51) and his wife Roshni Devi (41) were found guilty of the murder of their daughterinlaw Anoop Devi, who died of burns on June 14, 2006. They were both sentenced to life imprisonment under Section 302 IPC and to pay fine of Rs. 10,000/ each. Umed Singh and Roshni Devi are parents of six children. Two of their older sons are married and settled. The younger children are Poonam (18), Bholi (15), Jaivir (13) and Kavita (10), who are under the care of their uncle. We are concerned with the welfare of the children of the convicts, particularly regarding their health, and education. Therefore, we chose to examine this case from the angle of the responsibility of the State towards the children of convicts. We wished to see if the convicts were getting minimum wage in view of the judgment in State of Gujarat v. Hon"ble High Court of Gujarat AIR 1998 SC 3164. We also wanted to examine if the convicts were able to send money home for the maintenance of their children.

2. In the certificate dated December 6, 2008 filed by Superintendent of Jail, Bhiwani, it has been disclosed that Umed Singh is being paid Rs. 12/ per day and Roshni is paid paid Rs. 10/ per day. Rs. 250/ and Rs. 3172/ stand deposited in the account of Umed Singh while Rs. 890/ stands deposited in the account of Roshni Devi upto October 31, 2008. On the basis of this, District Magistrate, Bhiwani furnished his supporting affidavit.

3. However, we were not satisfied with the manner in which the State was assisting the Court, we required the District Magistrate to furnish a fresh affidavit and also required that Advocate General, Haryana, to assist the Court.

4. Affidavit of Dr. John V George, IPS, Director General of Prisons, Haryana, dated February 25, 2009 reveals that the State of Haryana had complied with the order of the Supreme Court in Crl. Appeal 308 of 1986 (reported as State of Gujarat v. Hon''ble High Court of Gujarat AIR 1998 SC 3164). A Wage Fixation Board was constituted on March 18, 1999 for recommending wages for skilled, semiskilled and unskilled prisoners in Haryana. The Wage Fixation Board fixed wages for prisoners on July 15, 1999 as follows :

i. Skilled Rs. 16/ per day

ii. Semiskilled Rs. 12/ per day

iii. Unskilled Rs. 10/ per day.

5. In the affidavit the following reasons have been given for not applying minimum wages to industries in the jails.

"There will be no violation of Art. 23 of the Constitution if prisoners doing labour when sentenced to rigorous imprisonment are not paid wages. Such wages are payable only under the provisions of Prisons Act and Rules and not under the Minimum Wage Act for industrial labourers. Though prisoners doing hard labour are now being paid wages, the message must be loud and clear and in unmistakable terms that crime does not pay. The prisoners and the potential offenders must realize this. Prison cannot be made a place where object of punishment is wholly lost."

6. It has been submitted that convicts no longer do hard labour but are engaged in light tasks like maintenance, sanitation, gardening, cooking, watch duties, office work etc. for a few hours a day. They are also engaged in activities like weaving, carpentry, tent/furniture making, tailoring etc. which are more in the nature of vocational training for rehabilitating convicts after they are released. Such activities have therapeutic value for correctional behaviour and also help in reducing boredom and restlessness while in detention.

It has been further stated that the quality of work done by the convicts is much below the acceptable market norms. Very few jails have products for commercial sale. In jails productivity is low and cost of production is high. If the wages are raised to the market level, it would not be economically viable to run any industrial production units in the jails. In addition to the compensation for work done, the convicts also receive remissions of sentences.

7. Lastly, it was submitted that wages paid to convicts cannot be compared with the minimum wages fixed by the State Government for industrial workers because facilities

like accommodation, food, clothing, bedding, medical treatment etc. are provided to convicts at government expenses. It costs the State Rs. 104/ per day to keep one person in jail. Director General of Prisons Haryana had on February 7, 2008 proposed to the Government to revise the wages in the following terms :

i. Skilled Rs. 40/ per day

ii. Semiskilled Rs. 25/ per day

iii. Unskilled Rs. 20/ per day.

The Government had asked about the financial implication of the revision and the Director General of Prisons had sent his reply on January 12, 2009.

8. Furthermore, all Jail Superintendents have been asked to identify the families of convicts who are below poverty line (BPL). They have been directed to liaise with the Deputy Commissioners and SDMs to ensure that BPL ration cards are issued to the families. Jail Superintendents have also been instructed to ensure that adult members of the families of such convicts are brought under the National Rural Employment Guarantee Scheme. There are also other schemes under the District Rural Development Agency (DRDA) to assist the poor for purchasing buffaloes, goats etc. The families of convicts are being helped to avail the benefit of such government schemes so that they can sustain their lives.

9. The position which emerges is that no jail in Haryana is at present engaged in manufacturing of any worthwhile commercially viable product. This is inspite the fact that they have a very large captive labour force. It is obvious that convicts are neither trained nor given sufficient work to enable them to earn a minimum wage. The rates fixed in 1999 are being proposed for revision in 2009. We are unable to appreciate why a viable manufacturing base has not been set up in jails to enable convicts to acquire skills and produce marketable goods for open markets. We are also not clear regarding the other activities engaged by the convicts in jail including farming.

10. The observations made by the Director General of Prisons, Haryana that convicts must realize that crime does not pay, have been re produced above, and seem to indicate the mind set that jail sentence is not punishment enough. If the convicts are made to work they must do so as a measure of correcting their conduct and behaviour. Activities in the jail are supposed to be of therapeutic value to reduce boredom and restlessness. We are totally unconvinced with the reply furnished by the State. Our reason is that the directions given by the Supreme Court in paragraph 51 of the judgment in State of Gujarat (supra), do not seem to have been understood at all. Modern theories of criminology like restorative and reparative theories mentioned in paragraph 48 of the judgment have not been considered. Neither has the State shown any concern towards setting apart a portion of the wages earned by the convicts to be paid as compensation to the victims of their crime.

The first effect of arrest of an accused person is that his income from his job, labour, or shop ceases immediately. This has a direct impact on his family. The crime also has a direct impact on the victim and his family. If convicts are made to work as an efficient carpenters, masons, farmers, factory workers or a machinists, in a well organized furniture making unit, farm, or a workshop in the jail and are paid a reasonable minimum wage, many advantages would flow. Some of them are that :

(i) the convicts shall acquire skills which would help them to rehabilitate themselves after release;

(ii) the convicts shall earn some money which they could save for the maintenance of their families; and

(iii) the convicts shall also be able to pay a reasonable amount as compensation to the victims.

11. It is easy to see that a well established and competitive furniture shop, farm or workshop in the jail shall have a marvellous impact on the convict''s family. The convict would receive enhanced wages to the level of minimum wages. Thus a competitive manufacturing base in jail would enable him to earn a decent amount of money. This would certainly not be a reward for the crime because the convict would continue to be lodged in prison. If the benefits to the convict''s family and the victim''s family are also weighed, the scheme would be extremely desirable and viable. We feel that the State of Haryana must examine the whole issue of wages on the above lines and on the basis of the above referred judgment of the Supreme Court. We feel that this would be a measure of reform which is badly needed to restore the faith of the people in the correctional theories for criminology which are most relevant in the 21st Century. The State is becoming increasingly involved in protecting its citizens from rising crime. The State must think of a new and innovative wage structure to prevent the collateral damage which every crime inflicts on the family of the accused and on the victims.

12. This is an opportune moment to revisit the wage policy for convicts in order to redetermine minimum wages. This can be drafted as a scheme for rehabilitation of the victims of the crime including the family of the convicts. To leave such a large section of society without financial support would amount to inflicting a great injustice to them.

13. The State also collects huge amounts from fines imposed on criminal offenders. Should not the State also think of using this money to pay compensation to the victims ? This is another angle from which victimology should be considered. Our court had in Krishan and another versus State of Haryana (Crl. Appeal No. 418 DB of 2000, decided on May 9, 2006) made some pertinent observation on the subject of victimology. Statistics had been gathered from the States of Punjab, Haryana and Union Territory, Chandigarh, regarding revenue from fines paid by prisoners in criminal proceedings for the year 20042005. Total sum of Rs. 24.61 crores was collected by the above states (Rs.

14.09 crores by Punjab, Rs. 9.37 crores by Haryana and Rs. 1.15 crores by Chandigarh). No part of this money was being paid to the victims of the crimes. In Krishan (supra) the heirs of the deceased were awarded Rs. 2 lacs as compensation and the persons who were permanently blinded were awarded Rs. 1.50 lacs as compensation.

14. Our court in Rohtash @ Pappu v. State of Haryana (Criminal Appeal No. 250DB of 1999 decided on April 1, 2008) considered many aspects of victim compensation, reviewed the law on the subject and the development taking place worldwide. Most importantly the court referred to the judgment in State of Gujarat (Supra) in the following terms: "In State of Gujarat v. The Hon''ble High Court of Gujarat (1998) 7 SCC 392, the Hon''ble Supreme Court observed that the State should make a law "for setting apart a portion of wages earned by prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in another feasible mode."

15. We are of the considered view that victim compensation paid by the accused from wages received during rigorous imprisonment is a scheme which can be successfully implemented if the convicts receive a realistic wage. Payment of compensation to the victims must be factored in. If a convict receives say Rs. 100/ per day, 1/3rd of this can be shelled out to the victim''s family, 1/3rd to his own family and 1/3rd can remain with the the convict as savings to help him to get rehabilitated after release from jail. We are not at all impressed with the manner in which the State of Haryana has dealt with the matter for constituting a Wage Fixation Board. If the State had considered the plight of the victim''s family and plight of the family of the convict, the fixation of wages would have been done more realistically and the convicts would also have been made to work much more productively.

16. In the light of the above, we wish to give the following directions to the State of Haryana :

(i) A Wage Fixation Board be set up to revise the wages for skilled, semi skilled and unskilled convicts in Haryana. The Board shall consider the need for payment of compensation to the victims and monthly maintenance to the families of the convicts.

(ii) The State of Haryana should redesign the vocational training and production activities in the jails so that the victims learn contemporary vocation in accordance with their skills and produce marketable products instead of mundane ones.

(iii) Most jails have large tracts of land which can be used for farming. Jails can also think of dairy farming and sell milk/milk products to enhance its income. All these activities can be undertaken in the jails to provide more income to the jail department and realistic wages to the convicts.

(iv) All families of convicts who are covered by the definition of BPL families should receive all benefits of BPL ration card and other Central/State Government sponsored social welfare scheme. The families which can be brought under NREGA should be helped in all possible manner to overcome the deprivation of the income of the members of family, undergoing jail sentences.

In the case of Umed Singh and Roshani Deviappellants herein, we direct that the Superintendent of Jail, Bhiwani, must pay special attention to get their children benefits of BPL scheme and NREGA. The application is disposed of in terms of the above directions but suspension of sentence is declined.