

(2008) 12 P&H CK 0196

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 132 DB of 2007

Dalip Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Dec. 19, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2008) 27 CriminalCC 848

Hon'ble Judges: K.S. Garewal, J; Jitendra Chauhan, J

Bench: Division Bench

Advocate: S.S. Rana, for the Appellant; V.K Jindal, AAG and Mr. P.S. Sullar, D.A.G., for the Respondent

Judgement

K.S. Garewal, J.

On November 26, 2008, we had expressed our extreme dismay at the long time the appellant's trial had taken before the trial court. We now propose to record some observations on the criminal justice system in the States of Punjab and Haryana and Union Territory, Chandigarh. Our desire is to highlight Dalip Singh's case, make it an example to demonstrate the rickety system we have developed.

2. It would be appropriate to preface our order with a brief chronology of Dalip Singh's trial. He was arrested on July 13, 1998 and charged for murder of his wife Jasbir Kaur by smashing her head with a spade. The occurrence had taken place at 6.30 a.m. on July 13, 1998. FIR 44 was registered u/s 302 IPC at Police Station Machhiwara.

3. After investigation, the report u/s 173 Cr.P.C. was presented to Judicial Magistrate 1st Class, Samrala on September 1, 1998. The case was committed to the Court of Sessions for trial on September 29, 1998. Charge against Dalip Singh was framed on October 27, 1998 to which he pleaded not guilty and claimed trial. The case was adjourned to February 2, 1999 for the recording of prosecution evidence. Therefore,

Dalip Singh's trial effectively commenced on February 2, 1999.

4. At the trial, the prosecution examined 14 witnesses, three of whom were examined on affidavits. Therefore, statements of the 11 witnesses were recorded and their depositions ran into only 28 pages. The prosecution evidence was finally closed on August 26, 2006, 6-1/2 years were consumed for recording 28 pages of evidence. From the above we can only conclude that the criminal justice system is in complete shambles.

5. No one seems to be in-charge of the criminal justice system. The police blames the prosecution, who blames the defence. The trial judge is over-burdened with work and the accused person, in whose favour there is a presumption of innocence, continues to languish in jail without bail.

6. The Code of Criminal Procedure entitles an accused to be released on bail if trials before Magistrates are not concluded within 60 days from the first date of recording of evidence. This is provided in Section 437(6) of the Code. An accused person can also be released on bail after 60/90 days where investigation has not concluded, (proviso 2 of Section 167 of Cr.P.C). Article 22 of the Constitution provides that preventive detention or detention without trial cannot be longer than three months unless the case is considered by an Advisory Board.

7. A person detained in custody has many rights. He has also the right to a speedy trial. This right has been recognized by the Supreme Court in a long line of judicial pronouncements [Hussainara Khatoom (I) v. Home Secy. State of Bihar, 1980 SCC (Cri.) 23, Abdul Rehman Antulay v. R.S.Nayak 1992 SCC (Cri) 93, Raj Deo Sharma v. State of Bihar 1998(2) Apex Court Journal 684 (S.C.) : (1988) 7 SCC 507, Smt. Akhtari Bi Vs. State of M.P., Bipin Shantilal Panchal v. State of Gujarat and another (2001) 3 SCC 1, Supreme Court Legal Aid Committee representing Undertrial Prisons vs. Union of India 1994 (3) RCR(Criminal) 639, Common Cause a Registered Society through its Director vs Union of India 1996 (2) RCR(Criminal) 419, Raj Deo Sharma versus State of Bihar, 1998(2) Apex Court Journal 684 (S.C.) : 1998 (4) RCR(Criminal) 206 and 396, Usha Ahuja versus State of Haryana, 1999(2) Apex Court Journal 456 (S.C.) : 1999 (4) RCR(Criminal) 52, P.Ramachandra Rao versus State of Karnataka 2002 (2) R.C.R. (Criminal) 553, and Moti Lal Saraf versus State of Jammu and Kashmir and another 2006(3) Apex Court Judgments 660 (S.C.) : 2006(4) Criminal Court Cases 1049 (S.C.): 2006 (4) R.C.R. (Criminal) 637.]

8. On November 26, 2008, we had asked the Advocates General of Punjab and Haryana to assist the Court. Today, the learned Additional Advocate General, Punjab has filed before us lists of undertrials lodged in Central/District Jails, Ludhiana, Patiala, Hoshiarpur and Bathinda. These lists are taken on record.

9. The lists contain names of undertrials, dates on which they were admitted to the jails, details of FIRs and the names of the trial courts but these lists give no information regarding the pace at which the respective trials are proceeding or the

degree of violation of the rights of speedy trial of the accused/undertrial. The lists are confined to accused in custody, what about the accused who are on bail. If this is the best information that can be produced by the State then it certainly conclusively establishes that there is no central agency to monitor or oversee the progress of trials in the trial courts. How many persons are being deprived of their rights to a speedy trial cannot be accurately gauged from the information sent by the respective Superintendents of Jails.

10. Advocates General of the States of Punjab and Haryana should be responsible, nay accountable, if trials are not conducted speedily and rights of accused are violated.

11. It seems to us that refusal of bail and keeping the accused person in custody has failed to raise the hackles of those in-charge of various limbs of the criminal justice system, if at all anyone is. An accused person in custody is entitled to assert that he is innocent and his detention is unwarranted. Therefore, there must be a time limit within which the trial should be concluded for the accused to establish his innocence, or for the prosecution to establish his guilt. Law provides time limits for various types of detention because each day's detention brings with it tension, worry, heartburn and loss. If an accused person is released on bail, he does not suffer the above collateral damage, is united with his family and is able to pursue his job or vocation and also provide for his family. He is also able to prepare his defence which he would have been unable to do if he had remained in custody. Needless to say he must refrain from winning over witnesses or abscond to escape punishment.

12. If a court is satisfied that the accused will resist tampering with evidence or try to abscond, the court should not hesitate from granting bail. Heavy amount of bond can be imposed with a local surety. The accused can be required to submit himself to police surveillance or electronic surveillance to keep a tag on him. Detention during trial destroys the man, bail saves him from ill affects of detention and yet makes him available to receive sentence, if he is convicted. Therefore, bail has many advantages which detention during trial does not have. This is particularly true if the trial is speedy, period of bail is short and verdict is pronounced while public memory about the crime is fresh.

13. We have thought about framing some guidelines for the benefit to appellants who have already spent long periods at the trial. Convicts get paid some daily wage. Undertrials get nothing, they lose their jobs, their families are deprived of income, their children are unable to pursue studies all because of the criminal justice system has condemned them to long judicial custody pending conclusion of trial. Dalip Singh's trial took 6-1/2 years for recording of prosecution evidence from February 2, 1999 to August 26, 2006, 28 pages of evidence and 6-1/2 years. There are large number of such cases where trial take unduly long time and the accused are denied bail.

14. Therefore, every trial court should consider release of accused on bail if 180 days have passed and the trial is not nearing conclusion. Trial court must be satisfied that the accused will not tamper with evidence or win over witnesses and shall not abscond. Trial courts should devise ways and means that the accused does not misuse bail. Therefore, bail ought to be considered by the trial court itself after 180 days from the date of commencement of the prosecution evidence.

15. We would like to suggest that the States of Punjab and Haryana and the Union Territory, Chandigarh, should examine the feasibility of a "Criminal Justice Monitoring Board" consisting of the heads of Police, Prosecution and Prisons. Such a Board would cover three important limbs of the criminal justice system-Investigators, Prosecutors, and Jail Superintendents. The Board could meet regularly to monitor the progress of all trials and give directions or guidelines to their respective wings, if it is found that delays are taking place on account of lack of infrastructure or manpower concerning their respective limbs.

16. As regards benefit given to appellants of suspension of sentence on account of long period spent in custody, this court is consistently following the judgments in Dharam Pal versus State of Haryana 1999 (4) RCR (Crl.) 600 and Daler Singh Vs State of Punjab, 2007(1) Criminal Court Cases 579 (P&H) (DB) : 2007 (1) RCR (Criminal) 316. However, both in Dharam Pal and Daler Singh's cases (supra), the appellants required to complete a certain minimum period post conviction before sentence can be suspended. In Dharam Pal's case, the appellant is required to complete 3 years post conviction and total period of 5 years in custody. In Daler Singh's case the appellant is required to complete period varying from 12 to 15 months post conviction and total sentence varying from 2 to 6 years.

17. We feel that in cases where accused spend long time in custody as undertrials, it would be unfair to require them to again spend certain fixed period post conviction before sentence can be suspended. u/s 428 Cr.P.C. the period of detention undergone by the accused is set off against the sentence of imprisonment. Therefore, we feel that the undertrial period should be added to the post conviction period and an appellant who has completed 5 years in all should be entitled to suspension of sentence automatically. In the present case, the appellant has served nearly 6-1/2 years of sentence as an undertrial and 2 years post conviction. There may be many such cases where accused languish in prison as undertrials and are deprived of suspension of sentence because their conviction is comparatively recent. When the undertrial period is also counted towards sentence then it should not make any difference if the appellant has or has not done three years after conviction.

18. We are of the view that on the above aspect, the Division Bench judgments in Dharam Pal (supra) and Daler Singh (supra) require to be re-considered. Refer to Full Bench. Let this case be placed before Hon'ble the Chief Justice for constituting a Full Bench.