

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.(S).14-16 OF 2009

LALLAN SINGH & ORS.

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH

Respondent(s)

O R D E R

Heard.

As many as six persons were convicted by the trial court for offences punishable under Sections 302, 147, 148 read with Section 149 of the Indian Penal code and sentenced to undergo imprisonment for life.

Appeals preferred by them against their conviction and sentence having failed, SLP(Crl.) Nos.7811-7813 of 2007 were filed by five out of the six convicts.

Three out

of the said petitioners in the said petitions appear to have surrendered while the remaining two, namely, Awadesh (Kumar) Singh and Sawaroo failed to do so.

By an order of this Court

dated 29th October, 2007, the special leave petitions of the

said two petitioners were dismissed by Judge In-Chambers.

Notice, qua the remaining three petitioners in the said special

Signature Not Verified

leave petitions, was issued by this Court on 1st February, 2008,

Digitally signed by

Mahabir Singh

Date: 2014.08.09

13:03:11 IST

Reason:

followed by an order dated 6th January, 2009 by which this Court granted leave to appeal against the impugned judgment of the

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High Court.

On 18th July, 2012 when the matter again came up before

this Court, learned counsel for the State of Uttar Pradesh was

asked whether the absconding convicts had eventually

surrendered to custody. He was however unable to make any statement and sought time to verify the position whether or not the absconding convicts had surrendered to custody. An affidavit was filed pursuant to the said direction stating that the absconding convicts continued to remain at large. While upholding the conviction of Lallan Singh and two others and dismissing the appeal filed by them, this Court noticed the affidavit filed by Mr. R.S. Rawat, D.S.P., Deoria but found the same unsatisfactory insofar as the same related to the efficacy of the steps allegedly taken by the authorities to apprehend the absconding convicts. This Court observed that the affidavits did not give any details as to steps taken over the past six years or so for apprehending the two convicts whose conviction for a double murder had been upheld by this Court with the dismissal of the special leave petitions filed by them and who had despite the said order of dismissal failed to surrender to custody. This Court was in that view constrained to direct an inquiry by the trial court into the circumstances in which the convicts continued to remain at large and fix responsibility of the concerned authorities. The trial court was directed to submit a report expeditiously but not later than six months from the date of the order.

When the matter came up again before us on 19th July, 2013,

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we examined the reports submitted by the trial court in terms of the order passed earlier and found that the trial court had found one Satish Chandra Shrivastava (then criminal clerk of the Chief Judicial Magistrate at Deoria) to be negligent in the discharge of his duties. The report, it is noteworthy, pointed out that although one of the convicts, Awadesh (Kumar) Singh, had already been taken into custody, Sawaroo, the other convict continued to remain at large. The Report did not deal with the role of the prosecuting agency of the State or the negligence of any other agency in the discharge of its duty relating to the apprehension of the convicts. It was in that backdrop that

this Court considered it fit to direct the Secretary, Home Department of the State of Uttar Pradesh to file an affidavit setting out the following information:

- (i) The total number of convicts who remain at large despite their conviction having attained finality.
- (ii) The offences, for which these convicts have been found guilty and sentence of imprisonment awarded to them as also the period for which they are at large despite dismissal of their appeals/revisions be also indicated.
- (iii) Whether the State has any mechanism for keeping track of cases in which the accused are convicted and sentenced to imprisonment. If so, what is that mechanism and who are the persons/agencies responsible for ensuring apprehension and detention of such convicts who have exhausted all the legal remedies available to them.
- (iv) Whether mechanism in place is effective having regard to the number of convicts at large despite their conviction having

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attained finality. If it is not, whether the State proposes to remove the deficiency in such mechanism to ensure that those who are guilty and convicted are apprehended and sent behind the bars to serve out the sentence.

- (v) Whether in the case at hand, the prosecuting agency or any other agency concerned with the arrest and detention of the accused/convicts has taken any steps for the apprehension of the absconding convicts. If so, to what result. The details of the steps, if any taken by the State Agency concerned, may be set out.
- (vi) Has anyone within the said agency neglected the discharge of his duty of apprehending the convicts, Awadesh Kumar Singh and Sawaroo in the present case? If so, whether the State proposes to institute any inquiry into the conduct of those responsible for such negligence.

Home Secretary has, pursuant to the above direction, filed an affidavit on 11th November, 2013 in which it is inter alia stated that as per the reports obtained from the Inspector General of Police (Crime) from the Director General of Police Headquarter, Lucknow, there were a total of 51 convicts who are still at large despite their conviction have attained finality. The affidavit goes on to state that non-bailable warrants against the said convicts have been issued and action taken

under Sections 82 and 83 of the Code of Criminal Procedure.

The particulars of the absconding convicts are also set out in the Annexure A, annexed to the affidavit. The affidavit asserts that there is a mechanism in place for apprehending convicts whose convictions have attained finality and that in terms of the said mechanism which includes a monitoring cell comprising the District Judge, the District Magistrate, the Superintendent of Police and the Chief Judicial Magistrate and execution of warrants for apprehending such convicts is monitored on a regular basis.

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When the matter came up before us on 3rd January, 2014, we examined the affidavit filed by the Home Secretary and were prima facie of the view that the mechanism, referred to in the affidavit, was not efficacious and required to be strengthened.

We were also of the view that the problem of apprehending convicts who abscond after their convictions attain finality was not confined to the State of Uttar Pradesh only but appear to be a wider phenomena that may require to be addressed on a country-wide basis. We had for that purpose and with a view to evolving an effective mechanism appointed Mr. U.U. Lalit, Senior Advocate, to assist the Court as amicus.

Mr. Lalit is not present today for some personal reasons. We do not therefore have the advantage of his assistance. Even so, we feel that instead of making a substitute appointment or adjourning the matter to another day, it is proper that we address the issue which is of some significance and needs immediate attention.

The legal position as to the process that should follow an order of conviction is much too clear to require any special emphasis. We say so because Chapter XXXIII of the Code of Criminal Procedure, 1973, prescribes the process and the procedure to be followed for execution of sentence of death and/or other sentences awarded to convicts. We may in particular refer to Sections 417, 418, 472 and 420 of the

Cr.P.C. which deal with the power to appoint place of imprisonment of the convict, the execution of sentence of imprisonment and the direction of warrant for execution as also the persons with whom the same has to be lodged. Section 418

of the Code in particular deals with execution of sentence of imprisonment and inter alia empowers and obliges the court passing the sentence to forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is otherwise confined in such jail or other place to forward him to such jail or other place with a warrant. In terms of sub-section (2) of Section 418, where the accused is not present in the Court when sentence of imprisonment as is mentioned in sub-section (1) is pronounced, the Court is required to issue a warrant for his arrest for the purpose of forwarding him to jail or other place in which he is to be confined and in such cases the sentence shall commence on the date of his arrest. There is thus no gainsaying that upon

conviction of an accused and sentence of imprisonment awarded to him, the Court concerned is expected to commit him to jail in terms of a warrant that would authorise his confinement for the period he is to undergo such imprisonment. We have no

reason to believe that this procedure is not followed invariably in all such cases where the convict is not present before the court concerned and is required to be committed to imprisonment for undergoing the sentence.

We also believe that the process of issuing warrant to apprehend the convict is followed diligently in keeping with the spirit underlying Section 418 of

the Cr.P.C. The difficulty, in our opinion, arises when the warrants so issued by the Court concerned remain unexecuted. This happens not only in cases where the accused has been convicted and sentenced by the trial court but also where an appeal or revision preferred against the conviction is eventually dismissed by the High Court. There is no manner of

doubt that even in such cases the court is under an obligation after receipt of an intimation about the dismissal of the appeal or revision preferred by the convicts, to follow the procedure under Section 418 for apprehension of the accused, in case he has not surrendered voluntarily, and to commit him to jail to undergo the sentence awarded to him. Experience, however, shows that when warrants are forwarded to the police for execution the same remain unexecuted for years as noticed by us in the case at hand where despite the dismissal of the appeal filed by two of the life convicts, held guilty of a double murder, had remained at large for considerably long period. Although one of those absconding eventually surrendered, the second accused, Sawaroo, remains absconding for more than six years after the dismissal of the special leave petition in this Court. The question therefore is whether the warrant executing agencies, which part is entirely left to the police authorities at the district level, are accountable for their failure to do what the law enjoins upon them to do.

The affidavit filed by the Home Secretary suggests that there is a monitoring cell comprising the District Judge, District Magistrate, Superintendent of Police, Chief Judicial

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Magistrate concerned. Apart from the fact that the cell is a

rather loosely constituted, it does not appear to be proving effective. We say so because there is nothing on record to

suggest that the cell meets on regular intervals to review cases where convicts have not been apprehended or makes the officers concerned accountable for their failure or neglect or takes further action in the matter whether by way of attachment

of property or otherwise. The situation in other States may be

no different from what is prevalent in the State of Uttar

Pradesh where a very large number of such convicts remain absconding just because the enforcement agency proves

inadequate for the job. It is in this backdrop that we propose

to issue directions not because we intend to digress from the

procedure that the Cr.P.C. lays down but because the procedure so prescribed ought to be effectively enforced. A close monitoring of the working of the existing mechanism wherever it is in place is required for without such monitoring the process may steadily become wholly ineffective defeating the entire purpose underlying trial and conviction of such offenders. An

effective supervisory mechanism would, in our opinion, add to the efficacy of the law enforcement process. Having heard learned counsel for the parties on the question of composition, any such supervisory mechanism, we are of the opinion that a state level supervisory committee comprising (i) Secretary to Government, Home Department; (ii) Secretary to Government, Department of Law; (iii) Director General of the State Police and (iv) Secretary, State Legal Services Authority can be

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constituted to monitor and review such cases on a six monthly basis. A biannual status report shall then be submitted by the State level committee to the Executive Chairman of the State Legal Services Authority who may in consultation with the Patronage Chief of the State Legal Service Authority take such action in the matter as is considered fit including, if necessary, taking up the matter on the judicial side.

We accordingly direct the Chief Secretaries of all the States and Union Territories in the country to constitute a State level Supervisory Committee comprising the members, indicated above, within three months from the date a copy of this order is received by them under intimation to the Chairperson, State Legal Service Authority concerned. We make

it clear that the constitution of the State level committee is in addition and not in substitution of any existing mechanism at the district level. These proceedings are with the above directions disposed of.

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(T.S. THAKUR)

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(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)