

(1996) 10 BOM CK 0088

In the Bombay High Court

Case No : Criminal Writ Petition No. 1122 of 1996

Anil Lala Soundade

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:

Constitution of India, 1950 — Article 21
Prisoners Act, 1900 — Section 31E

Citation : (1997) 2 BomCR 156

Hon'ble Judges : T.K. Chandrashekhara Das, J;Ashok Agarwal, J

Bench : Division Bench

Advocate : Jamdar, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—Petitioner, who is a life convict for an offence of murder punishable u/s 302 of the Indian Penal Code, has presented the present petition claiming that he is entitled to be released on his completing 22 years of imprisonment including remission period. He has been found guilty of committing the murder of one Leela Lahanu Gaikwad, whose husband, at the relevant time, was incarcerated for an offence committed by him. In his absence, deceased Leela appears to have developed illicit relations with the petitioner. As far as the details of the incident in question are concerned, the same can be gathered from the dying declarations made by the deceased prior to her death. In respect of the declaration made by her to P.W. 6 Dr. Gulshan Gupta, he has deposed as follows :

"In his absence, one Anil Soundade whose whereabouts were not known to the patient, always came to her to meet and ask her to live with him, for which she always refused. On 11-7-1982, at 9.00 p.m., this person Anil came drunk to her and said that if she did not come with him (Anil) he would burn her. On her refusal, Anil poured kerosene over her and burnt her."

In the statement, which is treated as the first information report (Exhibit-25)

Leelabai has involved the accused as her assailant stating that the accused Anil Lata (Lala) Soundade of Wanowrie used to visit her in her hut frequently and on 11-7-1982, at 10.00 p.m., he came to her hut. At that time, there was black full pant on his person and Anil (accused) told her that he was loving her. But, she gave no response to her love and told her that if she refused to love him, he would pour kerosene on her and set fire on her and so, she told him that she would see how he would set fire on her and immediately he lifted that tin of kerosene and poured kerosene on her person and lit the match stick and set fire on her.

2. On the aforesaid facts, Shri Jamdar, the learned advocate appearing on behalf of the petitioner, has contended that the case of the petitioner would fall under guideline 1 (a) and hence he is entitled to be released on his completing 22 years imprisonment. Prayer for release, made by the petitioner, is opposed by the learned Public Prosecutor contending that the petitioner's case falls under guideline 1(e) and hence the petition is liable to be dismissed.

3. Guidelines 1, which is relevant for the present enquiry, provides, as under:

1. MURDERS RELATING TO SEXUAL MATTERS OR ARISING OUT OF RELATIONS WITH WOMAN, DOWRY DEATHS & OTHER FORM OF BRIDE KILLING ETC.

3A. If one has regard to the facts which have lead to his conviction, it is not possible to categorise the petitioner in guideline 1(a). Petitioner cannot claim to belong to the category of an aggrieved person, if one has regard to the manner and circumstances in which the offence has been committed. The petitioner cannot claim to have a right to have the exclusive dominion or domain over the deceased who was a married woman. Her husband at the material time was undergoing a sentence of imprisonment. He could hardly claim a right over her being another man's wife. He could, therefore, hardly claim to be an aggrieved person when she refused to respond to his advances. In the circumstances, he cannot be categorised as an aggrieved person when he committed the crime. If at all any one was an aggrieved person it was the deceased Leelabai. It was the petitioner who was forcing himself upon her. She in the circumstances, was fully justified in refusing to respond to his advances.

4. Shri Jamdar next contended that the petitioner's case could well be categorised under guideline 1(c) as the instant offence has been committed without premeditation. However, if one has regards to the facts and circumstances of the case, we find that the present crime is accompanied by exceptional violence and perversity. Causing death by pouring kerosene and setting fire, in our view, is an act of exceptional violence. Petitioner has tried to take undue advantage of the absence of the husband of the deceased. He has tried to develop, rather he has tried to force an illicit and illegitimate relationship with her at a time she was deprived of the company of her husband. When she failed to respond favourably he has committed her murder. Committing murder by pouring kerosene and setting her on fire, in our considered view, is a cruel

and brutal form of murder. The same would aptly fall within the category of "exceptional violence" Moreover, committing murder of another man's wife, on whom the accused could claim no right merely because she had refused to respond to his overtures, in our view, is an act of perversity. The case of the petitioner, in the circumstances, has adequately been classified under guideline 1(e). No interference is, therefore, called for in the present petition. Petition in the circumstances is summarily rejected.