

(2017) 05 BOM CK 0012
In the Bombay High Court
Case No : 371 of 2017

Shaikh Razzak Shaikh

APPELLANT

Vs

The State of Maharashtra and Ors.

RESPONDENT

Date of Decision : 04-05-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 34 - Punishment for murder - Acts done by several
persons in furtherance of common intention

Citation : (2017) 05 BOM CK 0012

Hon'ble Judges : S.S. Shinde, K.K. Sonawane

Bench : DIVISON BENCH

Advocate : V.N. Shelke, P.V. Diggikar

Judgement

1. Heard.
2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.
3. This Petition is filed with prayer to quash and set aside the impugned order dated 15th July, 2011, passed by respondent no.1 and also seeking directions to respondent no.1 to place the petitioner in category no.2b of the Guidelines for Premature Release Under the "14 year Rule of Prisoners serving life sentence [for short "the Guidelines of 2010"].
4. It is the case of the petitioner that, in the year 1997, the petitioner has been convicted under Section 302 r/w.34 of the Indian Penal Code and he is directed to undergo imprisonment for life. Thereafter, the petitioner preferred Criminal Appeal No. 04/1998 before the High Court, and the same came to be dismissed, confirming the conviction of life imprisonment. At present, petitioner is undergoing sentence.
5. It is submitted that, on 15th July, 2011, respondent no.1 passed the order placing the petitioner under category no.1 (d) of the Guidelines for premature

release of prisoners sentenced to life imprisonment or to death penalty commuted to life imprisonment after 18th December, 1973, [for short "the Guidelines of 1992"] and under category no. 2 (c) of the Guidelines of 2010. It is further submitted that, the offence committed by the petitioner would fall under the category no.2b of the Guidelines of 2010, as the offence committed by the petitioner is not with exceptional violence or with brutality.

6. The learned counsel appearing for the petitioner submits that, the petitioner could not have been placed in category no.1 (d) of the Guidelines of 1992 and category no. 2 (c) of the Guidelines of 2010, because it provides punishment for murder committed relating to sexual matters or arising out of the relations with women, dowry, deaths or other form of bride killing etc. and the offences relating to crime by women. Further more, the petitioner could also not be placed under category no.2 (c) of the Guidelines of 2010. It is submitted that, in the case of State of Haryana and others v. Jagdish AIR 2010 SC 1690, the Hon'ble Apex Court has laid down that if the guidelines are prepared by the State Government in aforesaid regard and they are changed after date of conviction, the guidelines which are favourable to the convict must be used. The offence committed by the petitioner was not with exceptional violence or with perversity. The case of the petitioner would fall within the category no.2b of the Guidelines of 2010 and the appropriate sentence would be of 22 years. Therefore, the impugned order dated 15th July, 2011, is illegal, arbitrary and is liable to be quashed and set aside, and the petitioner may be placed under the category no.2b of the Guidelines of 2010. It is submitted that, the petitioner is having mother, who is old aged and suffering from ailments of kidney. Both kidneys of the mother are damaged, and therefore, she was required to take medical treatment regularly. The father of the petitioner is died, and therefore, there is no male member in the family to look after them. The petitioner is also having small children. The petitioner has actually undergone imprisonment of 15 years and including remissions, he has completed more than 23 years imprisonment. Therefore, the learned counsel appearing for the petitioner submits that, keeping in view the ailment of mother of the petitioner and the fact that, small children are dependent upon him, Petition deserves to be allowed.

7. On the other hand, the learned APP appearing for respondent - State relying upon the averments in the affidavit-in-reply filed on behalf of respondent nos.1 to 3 made following submissions:

8. The petitioner is not entitled for the relief claimed in the present Writ Petition for the reason that, when the petitioner was released on furlough leave on 10th April, 2009, vide order dated 27th March, 2008 issued by the Deputy Inspector General of Prison, Central Region, Aurangabad. At that time, the petitioner was supposed to surrender on 25th April, 2009, however, the petitioner did not surrender on the due date. Therefore, the police authorities had arrested the petitioner on 20th December, 2012. Accordingly, the petitioner overstayed for 1355 days illegally. As per the Government Resolution dated 2nd October, 2011,

if the prisoner released on furlough / parole leave, and if does not surrender even after the completion of leave period, then the Jail Authority is legally obliged to deduct the remission of concerned prisoner depending on number of days of unauthorized stay outside jail by him. It is also one of the relevant considerations whether the prisoner has surrendered on his own or required to be arrested and brought in jail by the police authorities. In the present case, the police authorities arrested the petitioner, and as such, the name of the petitioner is permanently removed from the remission register as per Rule 8 of the Government Resolution dated 2nd October, 2011.

9. It is submitted that, the petitioner filed Criminal Writ Petition No.309/2017, for granting all the jail facilities and to restore the name of the petitioner in remission register. In the said Criminal Writ Petition, the Government has filed the affidavit-in-reply pointing out the legal and factual aspects so also the act on the part of the petitioner. The said Writ Petition is pending for adjudication. During pendency of the said Writ Petition, the petitioner filed present Criminal Writ Petition, praying for inclusion of his name under category No.(2b) of the Guidelines of 2010. The petitioner further challenged the order dated 15th July, 2011, issued by the respondent - State. By way of impugned order, the petitioner is placed under category No.1 (d) of the Guidelines for premature release of prisoner's sentenced to life imprisonment or to death penalty commuted to life imprisonment after 18th December, 1973. So also the petitioner is placed under Category 2 (c) of the Guidelines of 2010 with regard to the remission of sentences. The petitioner placed under these categories, considering the nature of offences committed by the petitioner and the observations made by the Sessions Judge in the judgment and order of conviction. It is pertinent to note that, the Additional Sessions Judge, Aurangabad in the judgment and order of conviction dated 19th September, 1997, has observed in para 23 that, "the fact that accused was standing nearby when his wife was burning clearly goes to show that, he intended to see that Barkat Begum dies". The Additional Sessions Judge further observed in para 12 that, "..... much quantity of kerosene must have been used and that injuries are 100% sufficient to deep degree burns". In para 25 of the judgment of conviction, the Additional Sessions Judge has held that, ".....taking into consideration that, the accused has caused homicidal death with intention of young bride wherein, marriage has taken place just 6 months ago".

10. It is submitted that, it is clear from perusal of findings recorded by the trial Court that the offence committed by the petitioner is in a brutal manner and thus instead of placing him under the category 2 (b) of the Government Resolution dated 15th March, 2010, the Government has rightly placed the petitioner under Special Category for burn cases i.e., 2 (c) of the Government Resolution dated 15th March, 2010 and under category 1 (d) of the Government guidelines dated 11th May, 1992. The category 2 (c) of the Government Resolution dated 15th March, 2010, reads as under: 2 (c) : Offences relating to crime against women and minors : Where the crime is committed with exceptional violence and or with

brutality or death of victim due to burn. The category 1 (d) of the Government guidelines dated 11th May, 1992, is as under:

1 (d) Murders relating to sexual matters or arising out of relations with women, dowry deaths or other form of bride killing etc. : Where the crime is committed against the aggrieved person with premeditation.

In the present case, the nature of offence committed by the petitioner falls under category 2 (c) of the Government Resolution dated 15th March, 2010 and category 1 (d) of the Government Guidelines dated 11th May, 1992. As per these categories of the Government Guidelines, the petitioner has to undergo 26 years of imprisonment including the remission.

11. It is submitted that, as per the nominal roll provided by the Superintendent, Aurangabad Central Prison, Aurangabad, the petitioner - prisoner has undergone 15 years, 9 months and 29 days of actual imprisonment. Accordingly, the petitioner has undergone 17 years, 2 months and 24 days of imprisonment with remission as on 30th June, 2016. As such, in view of placing the petitioner in the aforesaid categories, the petitioner is required to undergo the actual imprisonment of 26 years with remission. Upon completion of 26 years of imprisonment with remission, the petitioner would be released.

12. It is submitted that, in view of these facts and circumstances, the category for death victim due to burns, applied in the case of the petitioner is correct and thus the prayer of the petitioner is required to be rejected. So also the petitioner is not entitled for remission of sentences for the reason that, his name is removed from the remission register on account of violation of the relevant Rules.

13. We have given anxious consideration to the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent - State. With their able assistance, we have carefully perused the findings recorded by the Additional Sessions Judge, Aurangabad in Sessions Case No.136/1996 [The State of Maharashtra v. Shaikh Rajjak s/o. Sayed Saleem], the trial Court, after appreciating the entire evidence in para 23 observed that, as accused has caused death of Barkatbegum by setting her on fire, his conduct clearly goes to show that death was caused intentionally. Had the accused not intended to kill his wife, he would have at least opened the door when the prosecution witnesses were shouting from outside. The fact that accused was standing nearby when his wife was burning clearly goes to show that he intended to see that Barkatbegum dies. If the said findings are considered, there is no manner of doubt that, the appellant not only intended death of Barkatbegum but the said death was committed with exceptional violence so as to ensure death of Barkatbegum.

14. Upon careful perusal of the category no.1d of the Government Guidelines of 1992 where the crime is committed by the aggrieved person but with premeditation, in that case, period of imprisonment is to be undergone including remissions subject to a minimum of 14 years of actual imprisonment including

set off period is of 26 years. Under the new guidelines of 2010 in category 2c, where the crime is committed by the aggrieved person with exceptional violence and / or with brutality or death of victim due to burns, in that case, period of imprisonment is to be undergone including remissions subject to a minimum of 14 years of actual imprisonment including set off period is of 26 years. Therefore, if the findings recorded by the trial Court are considered, in that case, in our considered view the petitioner is rightly placed in category no.1d of the Guidelines for premature release of prisoners sentenced to life imprisonment or to death penalty commuted to life imprisonment and category no.2c of the Guidelines for premature release under the 14 years Rule of Prisoners serving life sentence.

15. In that view of the matter, we do not find any substance in the Writ Petition, and the same is devoid of any merits. Hence, the Writ Petition stands rejected. Rule stands discharged.