

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 929 OF 2019

Vijay alias Viju Vasant Kamble ... Petitioner

Versus

State of Maharashtra ... Respondents

Mr. Prosper D'souza for the Petitioner.

Mr. Arfan Sait, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : MARCH 28, 2019

P.C.:

Considering the nature of controversy, rule is made returnable forthwith. Heard finally with consent.

2. Petitioner prisoner challenges the order dated 15/12/2018 categorizing him as per guidelines issued on 18/12/1978 as modified on 11/5/1992 and putting him in category 3(d) thereby specifying that he has to undergo 26 years of imprisonment including remission.

3. Counsel for the petitioner argues that on 15/03/2010 more beneficial and liberal guidelines on the subject of categorization were in force and therefore should have been used. According to

him, as per these guidelines issued on 15/3/2010, petitioner should have been placed in category 3 (b) specifying the period only of 22 years. Without prejudice and in alternate, learned counsel submits that at the most category 4(d) of 2010 guidelines should have been applied thereby specifying the said period to be 24 years.

4. The relevant part of the judgment of trial Court is read out to explain that the quarrel was between two families and because of that dispute, the crime has taken place. It is further submitted that the applicant before this Court is alleged to have used only stone. Thus stones lying on pathway between the field is alleged to be used as weapon and hence, that by itself cannot be seen as an exceptional violence.

5. Learned APP submits that 1992 guidelines were in force when the petitioner was punished and hence, have been rightly resorted to. He further adds that the Hon'ble Apex Court has not categorically observed that the guidelines more beneficial should be applied in all cases. He relies upon the very same observations of the trial court in effort to show that there was previous history and an attempt to eliminate/injure the brother of the deceased which failed and thereafter this attack on deceased. He submits

that the attack was premeditated and several persons participated in it with due preparation and weapons. After confronting the deceased and his wife and finishing the deceased, they went to the residence of the deceased also. He therefore, submits that this cannot be seen as an act of individual but it is action of gang and due to previous history and brutal manner of killing, it becomes the case of exceptional violence and exceptional nature.

6. Without prejudice, he submits that if 2010 guidelines are to be looked into, guideline 4(e) will have to be used which again prescribed the period of 26 years.

7. The Judgment of the Hon'ble Apex Court in the case of State of Haryana and Ors. Vs. Jagdish 2010 (4) SCC 216 shows that the Hon'ble Court has found that the subsequent policy decision which takes away particular benefit cannot override the earlier decision to extend it. In facts before it, the Hon'ble Apex Court noted that the policy dated 13/08/2008 cannot override the policy dated 04/02/1993 and prisoner therefore has a right to get his case considered on par with such of his inmates who were entitled to the benefit of that policy. In paragraph 54, in this backdrop, the Hon'ble Apex Court has observed that the State authority is under obligation to exercise its discretion in relation to an honest

expectation perceived by the convict at the time of his conviction that his case would be considered for remission as per policy existing on that date. The Hon'ble Apex Court has also observed that the State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case. If the liberal policy is prevalent on the date of consideration of the case, the convict should get the benefit of such liberal policy.

8. In the present facts, it appears that wife of brother of deceased was abducted and criminal case in the matter was going on. The accused persons were bringing pressure on the said brother and his family to withdraw that criminal case. In that effort, just prior to murder of deceased, they also attempted an attack on the brother of the deceased. The brother succeeded in running away and hiding himself. On the same day, when the deceased and his wife were coming back to their home from field on bullock cart, it appears they were encircled. The facts in the judgment show that the accused persons were hiding and some of them also came from the backside of the bullock cart. Wife of the deceased was permitted to go away and deceased was attacked with weapons and stones. Wife had rushed to the residence to get

the help but then accused persons reached there also. These facts therefore show that after premeditation, more than one person has given effect to the design.

9. The 1992 guidelines show that clause 3 therein deals with the murders for other reasons. Sub clause (a) envisage murder committed in the course of the quarrel without premeditation. Sub (b) envisage murder committed in the course of quarrel with premeditation or by a gang. Sub clause (c) speaks of murder resulting from the business rivalry or trade union activities. Sub clause (d) is about the murder committed with premeditation and with exceptional violence or perversity.

10. The facts at hand show that 6 to 7 accused persons used stones, sticks etc to kill the deceased and immediately thereafter they went to residence of deceased. The act of killing itself cannot be seen as an act of exceptional violence. The exceptional violence therefore, needs to be demonstrated by pointing out the mode and manner of killing or then treating the body. Material on record does not show that there was any such exceptional violence.

11. The guidelines issued on 15/03/2010 vide Government Resolution show that the murder for other reasons has been shown in the 4th category. Sub clause (a) therein speaks of the murder

without premeditation. Sub clause (b) is about murder committed with premeditation or persons having criminal history. Sub Clause (c) is about the murders during the trade union activities and business rivalry. Sub clause (d) contemplates murder committed by more than one person/group of persons. Sub clause (e) is about the murder committed with exceptional violence.

12. The 2010 guidelines specify 26 years of imprisonment for murders committed with exceptional violence i.e. same period as prescribed by clause 3 (d) of 1992 guidelines. We have also found that the said factor is not present in the matter before us.

13. Learned counsel for the petitioner has submitted that clause (3) which deals with the murders arising out of land dispute, family feuds, family prestige and superstition is relevant. According to him, there was dispute between two families. Sub clause (a) of clause (3) speaks of offence by individual without premeditation and sub clause (b) speaks of offence committed with premeditation either individually or by a gang. The actual imprisonment to be undergone under clause 3(b) is 22 years. However, facts above does not show that the murder was on account of any family feuds or family prestige issue. Family feuds would necessarily involve intra family dispute. Here, the dispute is

between the family from whom a woman has been abducted by the members of other family. We therefore, find that clause (3) is not applicable.

14. We have already found that clause (3)(d) of 1992 guidelines is not applicable. In the present facts, the other clauses of clause 3 of 1992 guidelines are also not attracted.

15. In this situation, the only clause left out is clause 4 of 2010 guidelines. Again there sub clause (e) is not attracted and sub clause (a) and (b) also have no application. Clause 4(d) therein has application and relevance which prescribes the period of 24 years.

16. In view of this discussion, we modify the order of categorization and direct that the petitioner shall stand categorized under clause (4)(d) of guidelines issued on 15/03/2010 and shall be given benefits accordingly.

17. Writ Petition is thus partly allowed and disposed of.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)