

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.474 OF 1993
(Against acquittal)
WITH
CRIMINAL APPEAL NO.475 OF 1993
(For enhancement)

The State of Maharashtra] .Appellant

V/s.

Hanamant Sakharam Yadhav] .Respondent
Age:20 yrs]
R/o.Pargaon, Taluka-Khandala]
District-Satara.]

Smt.V.R.Bhonsale, APP, for the Appellant/State
Mr.Abhaykumar Apte, appointed Advocate for the
Respondent

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT.I.K.JAIN, JJ.**

DATE : 12TH FEBRUARY, 2015

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.)

. By Judgment and Order dated
10.05.1993, the learned Additional Sessions
Judge, Satara in Sessions Case No.73 of 1990
acquitted the respondent (original accused) of
the offence punishable under Section 376 of
the Indian Penal Code. Being aggrieved by the

said acquittal, the State has preferred Criminal Appeal No.474 of 1993 against acquittal of the respondent.

2. As the respondent had requested to appoint an Advocate to represent him from the Legal Aid Panel, we appointed Advocate Shri Abhaykumar Apte who is on the panel of Advocates of the High Court Legal Services Committee. At the outset, Shri Apte pointed out that the record and proceedings show that the date of birth of the respondent is 22.11.1972 and the date of the incident is 20.02.1990. Shri Apte submitted that this shows that the age of the respondent was below 18 years at the time of the incident and hence, as such the respondent should get the benefit of the Juvenile Justice (Care And Protection of Children) Act, 2000. He submitted thus, in the unlikely event that this Court is inclined to set aside the acquittal, the Birth Certificate of the

respondent is very much in the record and proceedings and the said Certificate needs to be taken into consideration. He submitted the said Certificate was not exhibited because at the time the incident was committed a boy was considered to be a juvenile if he was under 16 years of age.

3. The Juvenile Justice (Care And Protection of Children) Act, 2000 came into force on 01.04.2001. In the said Act, it is provided that "juvenile" means a person who has not completed 18 years of age. No doubt at the time of commission of the offence i.e. 20.02.1990 the Juvenile Justice Act, 1986 was in force. In the said Act, it was provided that "Juvenile" means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. Hence, as such, at the time of the offence the earlier Act being in force, the respondent could not have been said to be a juvenile at the time of the

incident. Explanation to Section 20 of the Juvenile Justice (Care And Protection) Act, 2000 reads as under :-

"Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause(1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

Clause (1) of Section 2 provides as under :-

" "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence."

4. In view of the above, by order dated 29.01.2015 we have directed the learned APP through the concerned police station i.e. Khandala Police Station, District-Satara to get the said Certificate of the respondent verified and find out whether it is genuine and correct. Pursuant to the order dated 29.01.2015, a report dated 10.02.2015 has been submitted by Khandala Police Station, District-Satara which states that the Birth Certificate is genuine. The said report along with the annexures is taken on record and marked as "X" colly. for identification.

5. In view of the above, it is quite clear that the respondent was a juvenile in conflict with law at the time of commission of the offence.

6. The Supreme Court in the case of **Dharambir Vs. State (NCT of Delhi) & Anr.**, reported in **AIR 2010 SUPREME COURT 1801** has observed as under :-

“12.....It is, thus, manifest from a conjoint reading of Sections [2\(k\)](#), [2\(1\)](#), [7A](#), [20](#) and [49](#) of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of

eighteen years on or before
the date of the commencement
of the Act of 2000....."

7. In view of the fact that the respondent was a juvenile in conflict with law at the time of commission of the offence, we do not think that it would be appropriate for us to entertain this Appeal against acquittal of the respondent under Section 376 of the Indian Penal Code. Hence, Criminal Appeal No.474 of 1993 is dismissed.

8. The State has also preferred Criminal Appeal No.475 of 1993 for enhancement of the sentence imposed on the respondent under Section 354 of the Indian Penal Code. In view of the fact that the respondent was a juvenile in conflict with law on the date of the incident, we are not inclined to entertain this Appeal for enhancement of sentence. Hence, this Appeal is also dismissed.

9. We quantify the total fees to be paid in both the Appeals to the appointed Advocate Shri Abhaykumar Apte at Rs.5,000/-.

(SMT.I.K.JAIN, J.) (SMT.V.K.TAHILRAMANI, J.)